

**Cour
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Internationale**

**International
Criminal
Court**



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No: **ICC-01/05-01/13**
Date: **07 December 2015**

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF
THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA
WANDU AND NARCISSE ARIDO

Confidential
with
Confidential Annex A

**Kilolo Defence Response to "Prosecution's Fifth Request for the Admission
of Evidence from the Bar Table".**

Source: Defence of Mr. Aimé Kilolo Musamba

Document to be notified in accordance with regulation 31 of the *Regulations of the Court*
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I. INTRODUCTION

1. On the 27th of November 2015 the Prosecution filed "Prosecution's Fifth Request for the Admission of Evidence from the Bar Table" (herein after referred to as "Fifth Request").¹
2. The Prosecution seeks the admission of 108 items of evidence. The material is divided into 8 categories: (i) email correspondences by the accused; (ii) invoices and hotels reservations; (iii) recordings and call logs from ICC detention Unit; (iv) social media evidence (Facebook); (v) information extracted from telephones seized from M. Arido; (vi) Independent Counsel Reports and related materials (vii) materials related to M. Arido's statements to the French authorities; and (viii) other materials.²
3. Again the Defence does not propose to repeat the submissions made in its responses to previous Prosecution's requests for admission of evidence from the Bar Table on the propriety of the Prosecution's attempt to adduce evidence from the Bar Table.³
4. As with the Defence Response to the Prosecution's fourth Bar Table Motion, the Defence adopts, *mutatis mutandis*, the relevant submissions made in response to the first and second Prosecution's requests for admission of evidence from the Bar Table.⁴

¹ ICC-01/05-01/13-1498-Conf and ICC-01/05-01/13-1498-Conf-AnxA, 27 November 2015.

² Ibid.

³ ICC-01/05-01/13-1075-Conf, 9 July 2015 para. 10-13.

⁴ ICC-01/05-01/13-1075-Conf, 9 July 2015, ICC-01/05-01/13-1201-Conf, 24 August 2015.

II. SUBMISSIONS

5. As a preliminary matter, the Defence would like to respectfully refer the Trial Chamber to its confidential Annex A in which specific objections are made in relation to each individual items of evidence that the Prosecution proposes to admit. However, in light of the Decision on Prosecution Requests for Admission of Documentary Evidence of 24 September 2015,⁵ the Defence for Mr. Kilolo respectfully reserves the right to make further submissions on the admissibility of the material in due course..

6. In summary, the Defence objections to particular items for which the Prosecution seeks admission in its Fifth Request are as follows:

(i) Email correspondences by the accused

7. The Defence notes that some of the items for which the Prosecution seeks the admission were disclosed by the Defence for M. Kilolo.⁶ In relation to these items, the Defence submits that it does not necessarily oppose their admission but reserves the right to dispute the Prosecution's interpretation on the relevance of these items.

8. As regards items allegedly related to Mr. Kilolo, the Defence submits that some of the items are either not *prima facie* relevant to the charges brought against him and/or not probative of any alleged wrongful conduct or knowledge on his part.⁷ Therefore, they do not meet the criteria for admission through the Bar Table. Regarding other items, the Defence

⁵ ICC-01/05-01/13-1285, 24 September 2015.

⁶ See confidential Annex A, items nos. 1 to 4.

⁷ See for instance, confidential Annex A, items nos. 6-8.

reserves the right to comment upon the Prosecution's interpretation of their purported relevance and admissibility.⁸

9. As for the remaining items in this category, the Defence note that they do not relate to Mr. Kilolo and are thus not *prima facie* relevant to any of the charges brought against him. As such they should not be admitted through the Bar Table against him.⁹

(ii) Invoices and hotels reservations

10. The Defence respectfully reserves the right to dispute the Prosecution's interpretation of the purported relevance and probative value of each item at a later stage.

(iii) Recordings and call logs from ICC detention Unit

11. As a preliminary matter, the Defence notes that Mr. Kilolo is not a party to any of the conversations that the Prosecution seeks to admit. Accordingly, the defence adopts *mutatis mutandis* its submissions in its response to the "Prosecution's Third Request to for Admission through the Bar Table" and reiterates that out of court statements of other accused should not be admissible against Mr. Kilolo unless and until that person gives evidence and is thereby available for cross-examination.¹⁰
12. Even so, the Defence challenges the admissibly of the items presented by the Prosecution in this category for the reasons set out in the following paragraphs.

⁸ See confidential Annex A, items nos. 5, 11, 14 and 15.

⁹ See confidential Annex A, items nos. 9, 10, 12 and 16.

¹⁰ See ICC-01/05-01/1246, para 6.

13. Regarding the log information relating to intercepted communications in this category, the Defence generally submits that obvious issues of authenticity and reliability with regards to each of the documents submitted warrants that these items be not admitted through the Bar Table.
14. As for the audio recording of the intercepted communications, the Defence generally submits that there are also obvious issues of reliability and the criteria for admission through the Bar table is therefore not met.
15. Concerning, the transcripts of the audio recordings and their translations, the Defence submits that these items are not *prima facie* relevant and should thus not be admitted through the Bar Table.

(iv) Social media evidence

16. The Defence notes that none of the items in this category are *prima facie* relevant to Mr. Kilolo. As such the Prosecution has not shown that they are *prima facie* relevant to the charges brought against him. Moreover, the Prosecution does not show why these items could not have been presented through the relevant person. Thus, these documents should not be admitted through the Bar Table.

(v) Information extracted from telephones seized from M. Arido

17. As with the previous category, the Defence notes that none of the items are *prima facie* relevant to Mr. Kilolo. Thus, these documents should not be admitted through the Bar Table.

(vi) Independent Counsel Reports and related materials

18. The Defence submits that it generally challenges the admissibility of all items in this category and respectfully refers the Trial Chamber to confidential Annex A for a detailed analysis of its arguments.¹¹

(vii) Materials related to M. Arido's statements to the French authorities

19. The Defence notes that none of the items are *prima facie* relevant to Mr. Kilolo and respectfully submits that they should not be admitted through the Bar Table against him.

(viii) Other materials

20. The Defence generally challenges the admissibility of all items in this category and respectfully refers the Trial Chamber to confidential Annex A for a detailed analysis of the arguments.¹²

III. RELIEF SOUGHT

21. The Defence respectfully requests the Trial Chamber to reject the 'Prosecution's Fifth Request for the Admission of Evidence from the Bar Table' for the aforementioned reasons.

Respectfully submitted,

¹¹ See confidential Annex A, pages 31-34.

¹² See confidential Annex A, pages 38-42.

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Dated this 07 December 2015,
At The Hague, The Netherlands.