



Original: **English**

No.: **ICC-01/05-01/13**

Date: **8 April 2016**

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**

Public with Confidential Annex A

Narcisse Arido's Request for the Admission of Evidence from the Bar Table

Source: Counsel for Narcisse Arido

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Melinda Taylor

Counsel for Aimé Kilolo Musamba

Paul Djunga Mudimbi

Steven Powles

Counsel for Jean-Jacques Mangenda Kabongo

Christopher Gosnell

Arthur Vercken De Vreuschmen

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Roland Azama Shalie Rodoma

Counsel for Narcisse Arido

Charles Achaleke Taku

Beth Lyons

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

Xavier-Jean Keïta

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and

Other

Reparations Section

I. INTRODUCTION

1. The Arido Defence requests Trial Chamber VII ('Trial Chamber') to admit 67 items identified in Confidential Annex A to this filing into evidence 'from the bar table' pursuant to Article 69 (4). Several categories of material are included in the annex such as emails and official documents. Additionally, a wide variety of material such as correspondences and publically available material is also submitted. The proposed evidence is relevant and has probative value as indicated in Annex A and in arguments in the present filing and should be admitted.

II. PROCEDURAL HISTORY

2. On 24 September 2015, whilst reserving the discretion to rule on particular items, the Trial Chamber decided that it would defer all assessments of "relevance and probative value of a given item of evidence after having received all of the evidence being presented at trial".¹

3. On 9 March 2016, through an oral order, the Trial Chamber set a deadline for the filing of any further applications for the addition or removing of items of evidence from the record stating:

In particular this deadline applies to applications, first, to introduce prior recorded testimony pursuant to Rule 68(2)(b) of the Rules; and second, to formally submit any items through the so-called Bar Table; and third, to exclude any items of evidence pursuant to Article 69(7) of the Statute.²

4. On 7 April 2016, the Arido Defence submitted its final request to amend its list of evidence.³

III. APPLICABLE LAW

5. Article 69(4) of the Statute provides that:

The Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.

6. Previous jurisprudence has interpreted this provision as providing three criteria for admissibility. First, the proposed evidence must have *prima facie* relevance to the issues at trial.⁴

¹ ICC-01/05-01/13-1285, para. 10.

² ICC-01/05-01/13-T-42-CONF-ENG ET, p. 43, lines 1-5.

³ ICC-01/05-01/13-1778.

Second, it must have “probative value”, which has been interpreted as “tending to prove or disprove the material issue or fact in question” which, in turn, requires “indicia of reliability including authenticity, that are sufficient in the circumstances in accordance with generally accepted legal principles.”⁵ The indicia need not establish “definitive proof of reliability but rather *prima facie* proof based on sufficient indicia.”⁶ Third, any potential prejudice to the fairness of the trial caused by the evidence must be weighed against its probative value.⁷

7. The admission of items from the bar table has been permitted in *Lubanga*,⁸ *Katanga and Ngudjolo*,⁹ *Ruto and Sang*,¹⁰ and *Bemba*.¹¹ The *Ruto* Trial Chamber has described this practice as “established in the jurisprudence of the Court.”¹²

IV. SUBMISSIONS

8. Confidential Annex A to this filing contains a table of items that forms the subject of this request. The table is divided into 5 categories: emails, letters and reports, official documents, internet articles and websites, and other relevant evidence. Specific notes concerning the relevance and probative value of specific items are placed within the table. More general points about the items and categories are outlined below.

9. The Defence notes that in this case by its assessment, around 1520 items have been submitted through witnesses, Prosecution bar-table motions, or the Mangenda bar-table motion¹³. Of the Arido Defence’s 130 items on its proposed amended list of evidence, 35 items¹⁴

⁴ ICC-01/04-01/06-1399-Corr, para. 27; ICC-01/04-01/07-2635, section B; ICC-01/05-01/08-2012-Red, paras 13-14; ICC-01/05-01/08-2299-Red, para. 8; ICC-01/09-01/11-1353, para. 15.

⁵ ICC-01/0901/11-1353, para. 15; ICC-01/04-01/07-2635, section C; ICC-01/05-01/08-2012-Red, paras 13, 15; ICC-01/05-01/08-2299-Red, para. 8.

⁶ ICC-01/0901/11-1353, paras 31-32; ICC-01/04-01/07-2635, section D; ICC-01/05-01/08-2012-Red, paras 13, 16-17; ICC-01/05-01/08-2299-Red, para. 8; ICC-01/09-01/11-1353, para. 16.

⁷ ICC-01/0901/11-1353, paras 31-32; ICC-01/04-01/07-2635, section D; ICC-01/05-01/08-2012-Red, paras 13, 16-17; ICC-01/05-01/08-2299-Red, para. 8; ICC-01/09-01/11-1353, para. 16.

⁸ ICC-01/04-01/06-1981.

⁹ ICC-01/04-01/07-2635.

¹⁰ ICC-01/09-01/11-1353.

¹¹ ICC-01/05-01/08-2012-Red and ICC-01/05-01/08-2299-Red.

¹² ICC-01/09-01/11-1353, para. 13.

¹³ ICC-01/05-01/13-1665.

¹⁴ CAR-OTP-0073-0239, CAR-D24-0003-0007, CAR-D24-0003-0013, CAR-D24-0003-0023, CAR-OTP-0070-0005, CAR-D24-0003-0001, CAR-D21-0001-0041, CAR-D21-0001-0048, CAR-D21-0001-0049, CAR-D21-0001-0051, CAR-D21-0001-0065, CAR-D21-0001-0007, CAR-OTP-0073-0058, CAR-OTP-0075-0284, CAR-OTP-0075-0285, CAR-OTP-0075-0506, CAR-OTP-0075-0567-R01, CAR-OTP-0075-0586, CAR-OTP-0075-0587, CAR-OTP-0075-0634, CAR-OTP-0075-0786, CAR-OTP-0073-0023, CAR-OTP-0075-0160, CAR-OTP-0080-0043, CAR-OTP-0088-0504, CAR-D24-0003-0034, CAR-D24-0002-0001, CAR-OTP-0090-0630, CAR-D24-0003-0006, CAR-D24-0004-0184, CAR-D24-0004-0108, CAR-D24-0004-0106, CAR-D24-0004-0018, CAR-D24-0004-0107, and CAR-D21-0007-0003.

have been submitted through a witness by a party or by the Prosecution through a bar-table motion. In short, the items in Annex A are only those items which have not been submitted previously through any of these means. The Arido Defence reserves its right to offer an interpretation of the already submitted evidence in its final brief – especially where it has been submitted by another party.

10. Some evidence in the present filing has been submitted on the Arido Defence list of evidence in its amendment request made on 7 April 2016. The decision is still pending on this request. Nevertheless, the Arido Defence submits this present request as filed in the interest of expeditiously and comprehensively completing this phase of the proceedings so far as possible.

11. As a general preface regarding much of the material, prominently featured in the annex is items that are probative of either (1) examples where Mr. Arido is acting in his professional expert capacity; (2) threats to Mr. Arido's security or concerns he has for his safety; (3) material demonstrating that Mr. Arido intended to testify until the very last minute, but was not given any response by the ICC to the threats to his security; and (4) material that impacts upon the background or credibility of individuals implicated in the allegations against Mr. Arido.

12. The continual threats to Mr. Arido's security are particularly relevant to understanding and interpreting his actions in the period after the security incident in mid-July 2012. His persistent fears offer a more compelling explanation for his actions than reasons offered by the Prosecution.

13. Mr. Arido acted in an expert capacity and intended to travel to the court to testify. This refutes the Prosecution allegations that he recruited and coached witnesses. His expert role contextualises the payments Mr. Arido received and shows that these were for his expert report and – not as the Pre-Trial Chamber found – linked to allegations of offences against the administration of justice.

Category I: Emails

14. The material in this category is *prima facie* relevant. Other than several emails emanating from the Arido Defence office, most of the items comprise textual communication of Mr. Arido. These cover the period between 18 April 2012 and 30 January 2013 which is highly relevant.

15. The fact that the emails come from Mr. Arido himself indicates the *prima facie* authenticity of this material. Particularly with regards to the emails to and from Mr. Arido, there is no

prejudicial effect to their admission as Mr. Arido's defence must be given the opportunity to explain the events that occurred to him using material that was generated by him over much of the relevant time-period.

Category II: Letters and Reports

16. The letters and reports, for which the relevance is indicated in the annex, fall into two sub-categories: (1) those which were prepared by Mr. Arido and conveyed through email, and (2) those which originate from the Prosecution. Those which come from Mr. Arido have the same *indicia* of authenticity as the containing emails. The reports created by the Prosecution appear to originate from that office and were disclosed by that office. Therefore the Prosecution is in the best position to demonstrate their authenticity and reliability.

Category III: Official Documents

17. The identified *prima facie* relevance can be found in the annex. All official documents feature indicia of authenticity through the various presence of letter-head, official stamps, document identification numbers, and national emblems and organisational symbols.

Category IV: Internet Articles and Websites

18. The *prima facie* relevance is indicated in the table. In some cases, the items in this category indicate the URL from which the item originates. In other circumstances, some internet research will lead to the article.

Category V: Other relevant evidence

19. For the reasons set out in greater detail in Confidential Annex A, all of the other documents meet the requirements of *prima facie* relevance and probative value. Their admission will not prejudice the proceedings under Article 69(4) of the Statute.

V. CONCLUSION

20. In light of the above, the Arido Defence respectfully requests the admission into evidence of the 67 items.

A handwritten signature in black ink, appearing to read 'Charles', with a stylized flourish extending to the right.

Chief Charles Achaleke Taku, Counsel for Mr. Arido

Dated this 8th Day of April 2016

Cameroon