

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 2 October 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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO**

**Public Redacted Document
with
Confidential Annex A**

**Public redacted version of "Prosecution's Fourth Request for the Admission of
Evidence from the Bar Table", 28 September 2015, ICC-01/05-01/13-1310-Conf**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the Regulations of the**Court to:****The Office of the Prosecutor**

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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) requests the Trial Chamber VII (“Chamber”) to admit 57 items of evidence from the bar table, pursuant to articles 64(9)(a), 69(3) and 69(4) of the Rome Statute and rule 63(3) of the Rules of Procedure and Evidence.
2. The proposed evidence falls within the following categories: Category I – call logs from the ICC Detention Centre; Category II – invoices, e-mails and letters containing the Accused’s contact information; Category III – call data records (“CDRs”); Category IV – intercepted communications; and Category V – other materials.
3. The evidence is *prima facie* relevant and probative of material issues at trial. It constitutes direct evidence of the conduct charged and/or corroborates other such evidence in the case. Some of the proposed materials were provided by the Registry, the Independent Counsel on instruction by the Court, or by national authorities in executing the Prosecution’s requests for assistance (“RFA”). The materials were provided voluntarily or were otherwise lawfully seized from the persons or premises of the Accused pursuant to judicial authorisation and the applicable laws of the national jurisdictions where the seizures took place.
4. Admitting the proposed materials from the bar table would help streamline the presentation of evidence, obviate the need to call Registry staff to attest to the authenticity of some of the underlying material, and save valuable Court resources and time.
5. Annex A provides the following information with respect to each item tendered: (1) the evidence registration number (“ERN”); (ii) the type; (iii) the source

identity; (iv) the date; (v) the title; (vi) the basis of relevance; and (vii) the date of disclosure(s).

II. Confidentiality

6. The Motion is classified as “Confidential” as it refers to filings and materials of the same designation. A public redacted version will be filed.

III. Applicable Law

7. The Prosecution incorporates by reference the discussion of the law applicable to the admission of evidence from the bar table set out at paragraphs 6 through 9 of the Prosecution’s Bar Table Motion.¹

IV. Submissions

8. The 57 items for which the Prosecution seeks admission fall within the following categories of materials: (1) call logs from the ICC’s Detention Centre; (2) invoices, e-mails and letters containing the Accused’s contact information; (3) CDRs; (4) intercepted communications; and (5) other materials. The Prosecution has described the relevance for each item of evidence in more detail in Annex A. The required criteria for admissibility for each document are met, and the Chamber’s admission of the proposed evidence will assist in adjudicating the issues and understanding other complex evidence in the case.

A. Category I: Call logs from the ICC Detention Centre

(i) *The materials are prima facie relevant to the issues at trial*

9. The call logs are relevant to the Prosecution’s allegation that the Accused circumvented the ICC Detention Centre’s monitoring system through multiparty

¹ ICC-01/05-01/13-1013-Conf (“First Bar Table Motion”).

calls, abusing the Registry's privileged line.² The call logs relate to Bemba's communications from the ICC's Detention Centre during the relevant period. One call log³ details Bemba's calls on the Registry's privileged line between April and August 2013. The remaining eight call logs⁴ are monthly or bi-monthly logs of Bemba's communications on the non-privileged line allotted to him at the ICC Detention Centre between 1 March 2013 and 18 November 2013. The call logs show Bemba's almost daily contact with co-accused Babala.

(ii) The materials are prima facie reliable and authentic

10. As noted in the Prosecution's Second Bar Table Motion,⁵ the call logs were provided to the Parties, pursuant to the Single Judge's authorisation.⁶ The compilation and maintenance of these records was undertaken by the Registry in the regular administration of the Detention Centre, in accordance with the Regulations of the Registry⁷ and the Court's statutory framework. This alone imbues them with sufficient indicia of reliability for admission from the bar table.

(iii) Probative value outweighs any undue prejudice

11. The probative value of the proposed material outweighs any prejudicial effect due to the following factors: (i) the items are highly relevant to the confirmed charges, as described above; (ii) the items are reliable and authentic because they emanate from the Registry, an independent and impartial organ of the Court; (iii) the materials will assist the Chamber in the determination of the truth; (iv) the Defence have been put on sufficient notice of the content of the items – a fact previously noted

² See e.g. ICC-01/05-01/13-749 ("Decision Confirming the Charges"), paras. 79, 98-99.

³ CAR-OTP-0074-0078.

⁴ CAR-OTP-0074-0057; CAR-OTP-0074-0058; CAR-OTP-0074-0073; CAR-OTP-0074-0074; CAR-OTP-0074-0085; CAR-OTP-0074-0086; CAR-OTP-0074-0088; CAR-OTP-0074-0090.

⁵ See ICC-01/05-01/13-1113-Conf, para. 25.

⁶ See ICC-01/05-46, para. 4, p. 8; ICC-01/05-50, p. 8.

⁷ See e.g. regulation 173(1) of the Regulations of the Registry.

by the Chamber⁸ – and that the Prosecution would be relying on these documents;⁹ and (v) the reliability, veracity, and weight of these records are independently corroborated by other evidence in the case.

B. Category II: Invoices, e-mails, and letters containing the Accused’s contact information

(i) *The materials are prima facie relevant to the issues at trial*

12. The items are significant to establishing the Accused's direct communication with witnesses to discuss the content of their testimony, which in turn is relevant to the confirmed charges of corruptly influencing witnesses.¹⁰ The materials consist of 14 financial invoices,¹¹ 4 letters¹² and 10 e-mails¹³ containing contact information for Kilolo, Mangenda, Arido and Witness D-7 from the Main Case. The documents attribute the phone numbers “32495483939” to Kilolo and “[REDACTED]” to Arido, neither of which the Accused have ever contested. They also attribute the telephone number “[REDACTED]” to Witness D-7 in the Main Case. The same numbers appear in call logs between the Accused and Defence witnesses from the Main Case, including at times after the VWU cut-off date and during breaks between the witness testimony.¹⁴

⁸ See ICC-01/05-01/13-1191, para. 10 (“Given the limited number of items, the remaining preparation time available to the defence prior of the commencement of the trial and the fact that large parts of the information in the call logs are presented in items already contained in the List of Evidence, the Chamber considers that the prejudice to the defence, if any, is minimal.”).

⁹ See generally ICC-01/05-01/13-1114-Conf.

¹⁰ See e.g. Decision Confirming the Charges, paras. 53, 72, 76 and pp. 47-54.

¹¹ CAR-OTP-0075-0212; CAR-OTP-0075-0216; CAR-OTP-0075-0231; CAR-OTP-0075-0237; CAR-OTP-0075-0241; CAR-OTP-0075-0243; CAR-OTP-0075-0256; CAR-OTP-0075-0275; CAR-OTP-0075-0282; CAR-OTP-0075-0384; CAR-OTP-0075-1215; CAR-OTP-0075-1229; CAR-OTP-0075-1234; CAR-OTP-0075-1237.

¹² CAR-OTP-0075-0482; CAR-OTP-0075-0599; CAR-OTP-0075-1213, CAR-OTP-0075-1251.

¹³ CAR-OTP-0075-0271; CAR-OTP-0075-0284; CAR-OTP-0075-0586; CAR-OTP-0075-0635; CAR-OTP-0075-1160, CAR-OTP-0075-1161, CAR-OTP-0075-1211, CAR-OTP-0075-0484; CAR-OTP-0075-1219, CAR-OTP-0075-1254.

¹⁴ See e.g. CAR-OTP-0090-0630 at 0631 to 0633, 0635.

(ii) *The materials are prima facie reliable and authentic*

13. The documents were obtained pursuant to RFAs to the French authorities¹⁵ and were transmitted to the Prosecution on 23 January 2014.¹⁶ The documents were extracted from Arido's email address, aridonarcisse@yahoo.fr, which Arido concedes he owned and used during the time the documents were generated.¹⁷ The financial invoices originate from Arido's business in Cameroon, *Arc-en-Ciel Multiservices* – a company Arido concedes he owns or owned.¹⁸ The authenticity and *prima facie* reliability of these documents is further corroborated by the general appearance of the documents, the valid email addresses, and the signatures.

(iii) *Probative value outweighs any undue prejudice*

14. The admission of these documents would not prejudice the Defence. The following factors establish that the probative value of the proposed material outweighs any prejudicial effect: (i) the items are highly relevant to the confirmed charges; (ii) the items bear sufficient indicia of reliability for which they propose to show; (iii) the materials were lawfully seized from Arido pursuant to the applicable laws of the national jurisdiction where the seizures took place; (iv) the materials have been in the Defence's possession for a long time – in excess of a year – and the Defence was aware that the Prosecution would be relying on these documents; and (v) the reliability, veracity, and weight of these records are independently corroborated by other evidence in the case – for instance other documents equally indicate that the telephone number “32495483939” belongs to Kilolo¹⁹ and the telephone number “[REDACTED]” to Arido.²⁰

¹⁵ [REDACTED], [REDACTED] and [REDACTED].

¹⁶ CAR-OTP-0075-0022.

¹⁷ ICC-01/05-01/13-1072-Conf (“Second Submission on Agreed Facts”), p. 6.

¹⁸ Second Submission on Agreed Facts, p. 6.

¹⁹ See e.g. CAR-OTP-0074-0067; CAR-OTP-0074-0079; CAR-OTP-0070-007, tab A Musamba, rows 2, 16, 26, 35, 36, 62, 63, 94, 100; CAR-OTP-0075-0586; CAR-OTP-0072-0234. See also CAR-OTP-0090-0831 at 0831.

²⁰ See e.g. CAR-OTP-0077-0942 at 0942, row 6; CAR-OTP-0070-0005, tab ARIDO, rows 72, 76-79; CAR-OTP-0075-1161; CAR-OTP-0075-0212; CAR-OTP-0075-0271; CAR-OTP-0075-0484; CAR-OTP-0075-1160;

C. Category III: Call Data Records

15. The CDRs are relevant as they demonstrate the Accused's direct communication with witnesses after the VWU cut-off dates, which in turn is relevant to the confirmed charges of corruptly influencing witnesses.²¹ Specifically:

- Rows 173 and 174 of CAR-OTP-0077-1024 show call between Kilolo and Witness D-0026 from the Main Case after the 16 August 2013 VWU cut-off date for that witness.²²
- Rows 208, 222, 225, 226, and 228 of CAR-OTP-0077-1025 show calls between Kilolo and Witness D-0015 from the Main Case after the 11 July 2013 VWU cut-off date for that witness.²³
- Rows 75-76, 98, 333-335 of CAR-OTP-0077-1027 show calls between Kilolo and Witnesses D-0003, D-0006, and D-0029 from the Main Case after the VWU cut-off dates for those witnesses.²⁴

16. The CDRs were received by the Dutch authorities on 5 March 2014 and have been in the Defence's possession since 18 March 2014. The Prosecution incorporates by reference the arguments made in its First Bar Table Motion,²⁵ for why the CDRs are reliable and authentic and why the probative value of the documents outweighs any undue prejudice.

CAR-OTP-0075-1211; CAR-OTP-0075-1219; CAR-OTP-0075-1251; CAR-OTP-0075-1254; CAR-OTP-0075-0216. *See also* CAR-OTP-0090-0831 at 0832.

²¹ *See e.g.* Decision Confirming the Charges, paras. 53, 60, 72, 76 and pp. 47-54.

²² CAR-OTP-0078-0290 at 0295. *See also* CAR-OTP-0090-0630, p. 93.

²³ CAR-OTP-0078-0290 at 0297. *See also* CAR-OTP-0090-0630, p. 67.

²⁴ *See* CAR-OTP-0078-0290 at 0294 (13 June 2013 VWU cut-off date for D-0003 and D-0006), 0296 (26 August 2013 VWU cut-off date for D-0029). *See also* CAR-OTP-0090-0630, pp. 27, 38, 95.

²⁵ *See* First Bar Table Motion, paras. 36-39.

D. Category IV: Intercepted Communications

17. CAR-OTP-0080-1355, CAR-OTP-0080-1358, and CAR-OTP-0080-1359 are SMS messages that were intercepted and include communications between Kilolo and Mangenda concerning Witness D-0002 from the Main Case. Duplicates of these documents²⁶ were included in the Prosecution's First Bar Table Motion.²⁷ However, the Prosecution proposes to also add these versions because they, unlike their counterparts, include the electronic serial numbers (IMEI/ESN), a unique identification number used for mobile devices.

18. CAR-OTP-0079-1509 contains logs of intercepted conversations from the Independent Counsel report. The document is relevant as it reflects the dates, times and durations of relevant calls and SMSs. The document is also relevant to attributing the phone number "[REDACTED]" to Kilolo,²⁸ which was the phone number used by Kilolo to speak to Mangenda about how Bemba was pressuring him to call Witness D-0054.²⁹

19. The intercepted communications were received by the Prosecution in April and June 2014. They have been in the Defence's hands since May and June 2014. The Prosecution incorporates by reference the arguments made in its First Bar Table Motion,³⁰ for why the intercepted communications are reliable and authentic and why the probative value of the documents outweighs any undue prejudice.

²⁶ CAR-OTP-0080-1355 is a duplicate of CAR-OTP-0080-1354; CAR-OTP-0080-1358 is a duplicate of CAR-OTP-0080-1356; CAR-OTP-0080-1359 is a duplicate of CAR-OTP-0080-1357.

²⁷ See First Bar Table Motion, para. 16; ICC-01/05-01/13-1013-Conf-AnxA, p. 18, counts 235, 236, 237.

²⁸ See ICC-01/05-01/13-1110-Conf ("Pre-Trial Brief"), fn. 222.

²⁹ See Pre-Trial Brief, para. 83.

³⁰ See First Bar Table Motion, paras. 23-29.

E. Category V: Other Materials

20. The Prosecution also tenders the 13 items listed below. Their relevance is set out in detail in Annex A.

- Analysis of Bemba's mobile phone – CAR-OTP-0047-1622

21. The report is the results of an analysis of an LG mobile phone owned by Bemba, its SIM card and memory card. That analysis was conducted by Belgian authorities. The report contains general information, including a list of names and their telephone numbers, recorded SMSs, last communications and the duration of all communications. The report was received by the *police judiciaire fédérale* of the Government of Belgium in response to an RFA by the Prosecution.³¹

- Telephone numbers provided by VWU – CAR-OTP-0072-0116, CAR-OTP-0077-0942

22. The two documents consist of telephone numbers for Defence witnesses in the Main Case. These numbers were provided to VWU either by the witnesses themselves or by the Defence in the Main Case.

- Background reports on Kilolo – CAR-OTP-0072-0234, CAR-OTP-0072-0329

23. The reports were generated by the Ministry of Justice of the Government of Belgium in response to a Prosecution RFA seeking information for the time period between 1 January 2012 and 30 September 2013 for two phone numbers: “32495483939” and “[REDACTED]”.³² The reports contain background information on Kilolo and attribute him with the phone numbers “32495483939” and “[REDACTED]”.

³¹ [REDACTED].

³² [REDACTED].

- Telephone numbers of Bemba extension at the ICC Detention Centre – CAR-OTP-0082-0315, CAR-OTP-0074-0067, CAR-OTP-0074-0079, CAR-OTP-0074-0075

24. The four documents consist of contact lists of privileged and non-privileged telephone numbers associated with Bemba’s detention unit extension “[REDACTED]”. Three of these documents³³ were provided by the Registry, which maintains these records in the regular administration of the Detention Centre. One³⁴ was seized pursuant to a search warrant and disclosed by the Pre-Trial Chamber following review by the Independent Counsel.³⁵ The documents attribute numbers to specific individuals involved in the case, including Kilolo and Babala, and also identify the persons with whom Bemba was permitted to have privileged communications. Together with the call logs listed above, the documents show that Bemba abused the privileged phone lines to speak with Babala, who is listed on Bemba’s list of non-privileged telephone numbers.

- List of telephone calls - CAR-OTP-0085-0502

25. The document is a list of telephone calls made from 7 October 2013 to 20 December 2014. It contains all call data of telephone numbers “0818938707” and “[REDACTED]”, known to belong to Babala. The document was received from the Congolese authorities on 22 January 2015, pursuant to an RFA,³⁶ and disclosed to the Defence on 6 February 2015.

³³ CAR-OTP-0074-0067; CAR-OTP-0074-0079; CAR-OTP-0074-0075.

³⁴ CAR-OTP-0082-0315.

³⁵ See ICC-01/05-01/13-408.

³⁶ [REDACTED].

- Kilolo's contact list - CAR-OTP-0090-1872

26. The document is a contact list from Kilolo's *carte mémoire* that was released by the Independent Counsel on 24 July 2015 on instruction by the Chamber.³⁷

- Annexes to the Second and Third Independent Counsel Reports – CAR-OTP-0074-0926, CAR-OTP-0080-1138

27. The Prosecution hereby incorporates by reference the arguments made in support of the relevance, reliability and probative value of the annexes to the Independent Counsel reports advanced in its First Bar Table Motion.³⁸

V. Relief Requested

28. For the foregoing reasons, the Prosecution requests that the Chamber grant the Motion and admit into evidence the materials listed in Annex A.



Fatou Bensouda, Prosecutor

Dated this 2nd Day of October 2015
At The Hague, The Netherlands

³⁷ See ICC-01/05-01/13-1092.

³⁸ ICC-01/05-01/13-1013-Conf, paras. 11-29.