

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO**

Public Redacted Document

**Public redacted version of "Prosecution's Response to Arido's Request for the
Admission of Evidence from the Bar Table Motion", 25 April 2016,
ICC-01/05-01/13-1836-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**

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Mr Steven Sacha Powles

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Michael Gosnell

Mr Arthur Vercken De Vreuschmen

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Azama Shalie Rodoma

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Ms Beth Lyons

The Office of Public Counsel for Victims**The Office of Public Counsel for the Defence****States Representatives****Amicus Curiae****REGISTRY****Registrar**

Mr Herman von Hebel

Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations Section Others**

I. Introduction

1. The Office of the Prosecutor (“Prosecution”) opposes “Narcisse Arido’s Request for the Admission of Evidence from the Bar Table” (“Bar Table Motion”).¹ Many of the documents tendered lack any relevance to the charges in this case or are being tendered for erroneous reasons. Others lack probative value, and their admission would be prejudicial to a fair trial. Trial Chamber VII (“Chamber”) should thus reject the Bar Table Motion to the extent opposed.

2. The Prosecution’s objections concerning each category of documents tendered for admission is particularised below. It otherwise defers to the Chamber’s discretion in respect of the admissibility of the remaining documents.

II. Confidentiality

3. This response is filed as “*Confidential*” because of the classification of the evidence discussed therein. The Prosecution will file a “*Public Redacted*” version shortly.

III. Applicable Law

4. The submissions on the applicable law as set out at paragraphs four and five of the “Prosecution’s Response to Babala’s Request for the Admission of Evidence from the Bar Table Motion (ICC-01/05-01/13-1781-Conf)”² are incorporated by reference herein.

¹ ICC-01/05-01/13-1789.

² ICC-01/05-01/13-1821-Conf.

IV. Submissions

A. Category I – E-mails³

5. The Prosecution opposes the admission of two e-mails and an alleged attachment⁴ regarding [REDACTED]. The prejudicial effect of admitting these materials outweighs their probative value.

6. The Arido Defence argues that the materials “[REDACTED]” and tend “[REDACTED]”⁵ [REDACTED] was provided. In support of this proposition, the Arido Defence submits an e-mail from the representative of the Registry’s Counsel Support Section (“CSS”) in which he (the representative) indicates that the “[REDACTED].”⁶

7. Notably, the materials make no reference to P-0245’s background. Nor do they explain or provide any information bearing on his credibility, since they do not indicate the circumstances in which [REDACTED]. For instance, it is unclear: [REDACTED].⁷ Likewise, the materials fail to identify what information was conveyed by VWS to CSS.

8. The Prosecution opposes the admission of the materials, as they are not at all probative of the purposes for which they are tendered. Rather, the materials are being proffered on nothing more than conjecture and speculation. Absent any substantiation that [REDACTED] and the circumstances under which this occurred, if

³ For the Chamber’s convenience, the Prosecution has followed the structure of the categories identified by the Arido Defence.

⁴ CAR-D24-0004-0101; CAR-D24-0004-0314; CAR-D24-0004-0317.

⁵ ICC-01/05-01/13-1789-Conf-AnxA, rows 2-4.

⁶ CAR-D24-0004-0101.

⁷ There is no evidence that CAR-D24-0004-0317 is the document that was provided to P-0245 or even that it was attached to the e-mail chain concerned.

at all, no reasonable inference can arise of consequence to, or probative of, his credibility or testimony.

B. Category II – Letters and reports

9. The Prosecution opposes the admission of two investigator’s reports^[1] summarizing two telephone calls with [REDACTED], as their admission would be prejudicial to a fair trial.

10. The Arido Defence tenders the reports to support the thesis that D-0004 “[REDACTED]”.⁸ However, the reports do not support that thesis. In fact, the reports do not show that [REDACTED] confirms [REDACTED], but rather that he explained that people that were [REDACTED].⁹ In two subsequent conversations with the Prosecution, [REDACTED] clarified that “[REDACTED]” that one person amongst the group of [REDACTED] or again, that one of them “[REDACTED]” without specifying who.¹⁰ There is no suggestion or inference that the one individual to whom [REDACTED] refers [REDACTED]. To the contrary, given that Arido himself admitted to the French that “[REDACTED]”,¹¹ which also corroborates [REDACTED]¹² it is all the more likely that [REDACTED] reference was not to D-0004. Thus, the reports do not support the Arido Defence’s contentions as to their relevance.

11. Further, admitting the reports as to what [REDACTED] said during his meeting with Prosecution investigators would circumvent the application of rule 68 of the Rules of Procedure and Evidence (“Rules”) – as it would effectively admit his prior

^[1] CAR-OTP-0072-0476; CAR-OTP-0084-0087.

⁸ ICC-01/05-01/13-1789-Conf-AnxA, rows 37, 38.

⁹ CAR-OTP-0072-0476, at 0479.

¹⁰ CAR-OTP-0092-0794, at 0795.

¹¹ CAR-OTP-0074-1065, at 1068.

¹² ICC-01/05-01/13-T-26-CONF-ENG ET, p. 40, lns. 1-5.

statement without the requisite criteria being met. Although the Prosecution stands by the accuracy of its investigator's reports, this is not the issue as concerns their admissibility. Rather, rule 68 of the Rules requires that the declarant – not the investigator – attest to the truthfulness and accuracy of the information provided as a condition of its admissibility.¹³ This is manifestly not met here. Further, the reports were not used, for instance, with a competent witness at trial, depriving the Chamber and Parties of any opportunity to clarify the evidentiary basis of [REDACTED] utterances. The Chamber cannot simply presume the completeness and accuracy of the information in the reports so as to obviate the need for further clarification. Admitting the reports in such circumstances would be inconsistent with, if not, contrary to the interests of justice.

C. Category III – Official documents

12. The Prosecution opposes the admission of five “official documents”, comprising two legislative documents, a police report, a letter from the United Nations High Commissioner for Refugees (“UNHCR”), and a [REDACTED] public transportation fare schedule.

13. The Prosecution opposes the admission of two legislative documents concerning the status of refugees in [REDACTED],¹⁴ as they are not *prima facie* relevant to contested issues in this case. The Arido Defence tenders the documents to illustrate “[REDACTED]”.¹⁵ However, the Bar Table Motion presents no specific factual or legal nexus to a contestable issue, nor does it identify which “part” of the legal framework the documents illustrate.

¹³ See rule 68(2)(b)(iii) of the Rules.

¹⁴ CAR-D24-0004-0280 and CAR-D24-0004-0282.

¹⁵ ICC-01/05-01/13-1789-Conf-AnxA, rows 40, 41.

14. The Prosecution opposes the admission of a [REDACTED] police report regarding [REDACTED],¹⁶ as the relevance and/or probative value of this document is unclear at best. The Arido Defence erroneously interprets the document to state “[REDACTED]”.¹⁷ The contention is unsubstantiated, as the document does not answer this point. Instead, it merely indicates that [REDACTED].¹⁸ Given that the police report was produced in June 2015 — more than three years after the [REDACTED] — it is not at all probative of the issue for which it is proffered.

15. Further, the Prosecution opposes the admission of a UNHCR letter¹⁹ as it lacks any relevance to the charges. The Arido Defence claims that “[REDACTED].”²⁰ Nothing in the document supports this proposition. Instead, the document simply clarifies that [REDACTED].²¹ These procedures are plainly irrelevant to any issue before the Chamber.

16. Finally, the Prosecution opposes the admission of an 8 March 2005 public transportation fare schedule listing the costs of travel by taxi, cars and buses [REDACTED].²² The confirmed period of the charges runs from the end of 2011 until 14 November 2013. The travel costs applicable in March 2005 have no bearing on any contestable issues in this case.

¹⁶ CAR-D24-0003-0033.

¹⁷ ICC-01/05-01/13-1789-Conf-AnxA, row 42.

¹⁸ CAR-D24-0003-0033.

¹⁹ CAR-D24-0003-0059.

²⁰ ICC-01/05-01/13-1789-Conf-AnxA, row 44.

²¹ CAR-D24-0003-0059.

²² CAR-D24-0003-0061.

D. Category IV – Internet articles and websites

17. The Prosecution opposes the admission of four open-source materials,²³ as they are not *prima facie* relevant to any contested issue. Moreover, their *prima facie* authenticity is not established.

18. The Arido Defence tenders the first three documents²⁴ to provide “[REDACTED].”²⁵ However, two of those documents deal with the passing of [REDACTED].²⁶ The third with the history of the *Mouvement de Libération du Peuple Centrafricain* (“MLPC”). None of the documents refer to Arido [REDACTED]. And, it is unclear if and how they are relevant to the issues at trial. The Bar Table Motion further presents no specific factual or legal nexus to any contestable issue.

19. The fourth document is tendered to provide “[REDACTED].”²⁷ The document, comprised of what seem to be various press articles from 2002, 2008 and 2012, is irrelevant to any salient issue in the case. Nor does the Arido Defence articulate how it relates to his security situation in 2002, even if that was relevant.

20. All four documents lack any probative value. It is unclear from which website the documents were downloaded, and when. The Arido Defence’s guidance on the matter, that “[REDACTED]”,²⁸ is both unavailing and should be disregarded in the Chamber’s assessment of their admissibility. The documents patently fail to meet the minimal threshold of reliability for admission from the bar table.

²³ CAR-D24-0002-0926; CAR-D24-0002-0927; CAR-D24-0002-0929; CAR-D24-0004-0085.

²⁴ CAR-D24-0002-0926; CAR-D24-0002-0927; CAR-D24-0002-0929.

²⁵ ICC-01/05-01/13-1789-Conf-AnxA, rows 53, 54, 55.

²⁶ CAR-D24-0002-0926; CAR-D24-0002-0927.

²⁷ ICC-01/05-01/13-1789-Conf-AnxA, row 52.

²⁸ ICC-01/05-01/13-1789, para. 18.

E. Category V – Other evidence

21. The Prosecution opposes the admission of a note purportedly attributed to [REDACTED] regarding [REDACTED] (“Note”).²⁹ *First*, its prejudicial effect outweighs its probative value. *Second*, its admission would circumvent the requirements of rule 68 of the Rules.

22. The Arido Defence claims that the Note “[REDACTED]”.³⁰ However, the Note does not support that proposition. It merely indicates that [REDACTED] without clarifying when or where. There is no *sine qua non* requirement for [REDACTED]. Moreover, [REDACTED] at a point in time that is wholly irrelevant to the charges. Thus, the Arido Defence fails to satisfy the threshold requirement of demonstrating the Note’s relevance.

23. Even if the Chamber finds the Note to be of relevance to, and probative of, an issue arising in the case, admitting it without affording the Parties a reasonable opportunity to test or clarify its content – such as, where it is used at trial with a competent witness or otherwise ensuring that it meets the criteria required of rule 68(2)(b) of the Rules, deprives the Chamber of the ability to assess its truthfulness, accuracy or reliability. Admitting the Note in such circumstances would be prejudicial to the Prosecution and inconsistent with, if not contrary to, the interests of justice.

²⁹ CAR-D24-0003-0054.

³⁰ ICC-01/05-01/13-1789-Conf-AnxA, row 58.

V. Requested Relief

24. For the foregoing reasons, the Prosecution opposes the admission of the documents as discussed above, and defers to the Chamber's discretion with respect to the remaining documents tendered.



Fatou Bensouda, Prosecutor

Dated this 26th Day of April 2016
At The Hague, The Netherlands