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**International
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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 the "Prosecution's Fifth Request for the Admission of
Evidence from the Bar Table", 27 November 2015, ICC-01/05-01/13-1498-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 Trial Chamber VII (“Chamber”) to admit 108 items of evidence from the bar table, pursuant to articles 64(9)(a), 69(3) and 69(4) of the Rome Statute (“Statute”) and rule 63(3) of the Rules of Procedure and Evidence.

2. The proposed evidence falls within the following categories: Category I – email correspondence by the Accused; Category II – invoices and hotel reservations; Category III – recordings and call logs from the ICC Detention Unit; Category IV – social media evidence (Facebook); Category V – information extracted from telephones seized from Accused Arido; Category VI – Independent Counsel Reports and related materials; Category VII – materials related to Arido’s statements to the French authorities; and Category VIII – 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 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. All of the proposed evidence meets the criteria for admission pursuant to article 69 of the Statute, as set out below. Their admission from the bar table will also save valuable Court resources and time and promote judicial economy without causing any unfair prejudice to the Accused.

5. Annex A provides the following information with respect to each item tendered: (i) 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). Information concerning the codes used is also included with respect to all ICC Detention Unit recordings and call logs.

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 First Bar Table Motion.¹

IV. Submissions

8. The 108 items for which the Prosecution seeks admission fall within the following categories of materials: (1) email correspondence by the Accused; (2) invoices and hotel reservations; (3) recordings and call logs from the ICC Detention Unit; (4) social media evidence (Facebook); (5) information extracted from telephones seized from Arido; (6) Independent Counsel Reports and related materials; (7) materials related to Arido’s statements to the French authorities; and (8) other materials. The relevance of each proposed item of evidence is set out in detail at Annex A. The required criteria for their admissibility under the Statute 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.

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

A. Category I: Email Correspondence by the Accused

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

9. These items comprise email communications sent or received by the Accused. They go to establishing the Accused's communications with each other, Defence witnesses in the Main Case, and other individuals allegedly involved in the implementation of the overall strategy, such as Joachim Kokate. The email communications also provide important contextual information for understanding the Accused's contacts with Main Case Defence witnesses, including the location and dates of those contacts.

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

10. Many of the emails were provided/disclosed by the Accused themselves,² which directly lends to their authenticity and reliability. Others³ were obtained pursuant to RFAs to the French authorities⁴ and were transmitted to the Prosecution on 23 January 2014.⁵ As noted in the Prosecution's Fourth Bar Table Motion,⁶ these 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.⁷ 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.

² See CAR-D21-0001-0011, CAR-D21-0002-0072, CAR-D21-0003-0050, CAR-D21-0003-0057, CAR-OTP-0075-2618.

³ See CAR-OTP-0075-0244, CAR-OTP-0075-0285, CAR-OTP-0075-0478, CAR-OTP-0075-0506, CAR-OTP-0075-0537, CAR-OTP-0075-0750, CAR-OTP-0075-0752, CAR-OTP-0075-0781, CAR-OTP-0075-0784, CAR-OTP-0075-0849, CAR-OTP-0075-1152.

⁴ CAR-OTP-0091-0546, CAR-OTP-0091-0551 and CAR-OTP-0091-0556.

⁵ CAR-OTP-0075-0022.

⁶ ICC-01/05-01/13-1310-Conf ("Fourth Bar Table Motion"), para. 10.

⁷ ICC-01/05-01/13-1072-Conf-Corr, p. 6.

(iii) *Probative value outweighs any undue prejudice*

11. The admission of these documents would not prejudice the Defence. Any prejudice would be marginal and far outweighed by their probative value. The documents: (i) are highly relevant to the confirmed charges; (ii) bear sufficient indicia of reliability as to the matters they purport to show; (iii) were lawfully seized from Arido pursuant to the applicable laws of the national jurisdiction where the seizures took place or were otherwise provided by the Accused themselves; (iv) have been in the Defence's possession for over a year, and the Defence has been aware of the Prosecution's clear intention to rely on these documents, given their inclusion on the Prosecution's List of Evidence; and (v) their reliability, veracity, and weight are independently corroborated by other evidence in the case, including the testimony of witnesses P-0245, P-0260, and P-0261.

B. Category II: Invoices and Hotel Reservations

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

12. These proposed documents are relevant to establishing the Accused's presence at locations where they met with and allegedly corruptly influenced Defence witnesses in the Main Case. They also provide important contextual information, such as the precise dates of these meetings.

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

13. The documents were produced and disclosed by Accused Kilolo who, the Prosecution alleges, participated in the meetings associated with the invoices and reservations. They are also corroborated by the testimonial evidence of P-0214, P-0245, P-0260, and P-0261, who all gave evidence substantiating that these meetings occurred with Kilolo at the locations reflected in the documents. The authenticity and *prima facie* reliability of these documents is further corroborated by their general

appearance, the appropriate presence of signatures, and accurate addresses and contact information for the associated locations.

(iii) Probative value outweighs any undue prejudice

14. The admission of these documents would not prejudice the Defence. Any prejudice would be marginal and far outweighed by their probative value. The documents: (i) are highly relevant to the confirmed charges; (ii) bear sufficient indicia of reliability as to the matters that they purport to show; (iii) the documents were provided by Kilolo, to whom they relate; (iv) the documents have been in the Defence's possession for over a year, and the Defence has been aware of the Prosecution's clear intention to rely on these documents, given their inclusion on the Prosecution's List of Evidence; and (v) their reliability, veracity, and weight are independently corroborated by other evidence in the case, including the testimony of witnesses P-0214, P-0245, P-0260, and P-0261.

C. Category III: ICC Detention Unit Calls

15. These documents comprise recordings and call logs from the ICC Detention Unit. They are relevant as they contain conversations between Bemba and Babala on a range of topics; including the recruitment and management of Defence witnesses; the coaching of prospective witnesses, the payment of money through Western Union and MoneyGram to various individuals; Kilolo's trips to see prospective Defence witnesses in the Main Case; and the use of code words to disguise the illicit nature of the conversations. The conversations reflect Bemba's participation in the common plan and Babala's significant involvement with the Main Case Defence, including the procurement of Defence witnesses, as well as the participation of both in the cover-up of the overall strategy.

16. The ICC Detention Unit recordings and call logs were produced by the Registry and provided to the Parties, pursuant to the orders of Pre-Trial Chamber II. The Prosecution incorporates by reference the arguments made in its Second Bar Table Motion,⁸ for why the recordings and call logs and derivative materials are reliable and authentic and why the probative value of the documents outweighs any undue prejudice.

D. Category IV: Social Media Evidence (Facebook)

17. The items comprise screenshots of the publicly available Facebook profiles [REDACTED]. They are relevant to establishing the association and relationship the Accused and the witnesses had with each other. The documents are open source materials from Facebook and, thus, *prima facie* authentic and reliable. The authenticity and reliability of these documents is further corroborated by their general appearance, which bears indicia that they originate from Facebook, including the placement of the well-known Facebook logo, the layout of the webpage in the screenshot, and its structure.

18. The admission of these documents would not prejudice the Defence. Any prejudice would be marginal and far outweighed by the document's probative value. The documents: (i) are highly relevant to the confirmed charges; (ii) bear sufficient indicia of reliability as to the matters that they purport to show; (iii) are open source material taken from the very source from which they are claimed to originate; and (iv) have been in the Defence's possession since May and the Defence has been aware of the Prosecution's clear intention to rely on these documents given their inclusion on the Prosecution's List of Evidence; and (v) their reliability, veracity, and weight are independently corroborated by other evidence in the case, including the testimony of witnesses P-0245, P-0260, and the statement of witness P-0264.

⁸ See ICC-01/05-01/13-1113-Conf ("Second Bar Table Motion"), paras. 17-27.

E. Category V: Information Extracted from telephones and SIM cards seized from Arido

19. These items comprise reports on information extracted from SIM cards seized from Arido and received by the Registry pursuant to instructions from the Single Judge.⁹ The reports contain the names and phone numbers of persons listed as contacts on Arido's phone, including other Defence witnesses in the Main Case alleged to have been corruptly influenced. They are, thus, relevant to demonstrating Arido's contacts and relationships with those witnesses.

20. The admission of these documents would not prejudice the Defence. Any prejudice would be marginal and far outweighed by the document's probative value. The documents: (i) are highly relevant to the confirmed charges; (ii) bear sufficient indicia of reliability for which they propose to show; (iii) are taken from the very source from which they are claimed to originate; and (iv) with the exception of one,¹⁰ have been in the Defence's possession for over a year and, for all documents, the Defence has been aware of the Prosecution's clear intention to rely on them, given their inclusion on the Prosecution's List of Evidence.

F. Category VI: Independent Counsel Reports and Related Materials

21. These documents comprise filings of the Independent Counsel released to the Parties pursuant to the order of Single Judge of Pre-Trial Chamber II, or by this Chamber. They include items seized from Bemba's ICC Detention Centre cell, or obtained by the Dutch or Belgian authorities, which comprise of receipts for Western Union transfers allegedly used in corruptly influencing Main Case Defence witnesses, and handwritten notes that include phone numbers attributable to the Accused or to other significant persons.

⁹ ICC-01/05-01/13-41-Red.

¹⁰ CAR-OTP-0083-0148.

22. The Prosecution incorporates by reference the arguments made in its First Bar Table Motion,¹¹ for why the records obtained from the Independent Counsel are reliable and authentic and why the probative value of the documents outweighs any undue prejudice.

G. Category VII: Arido's Statements and Related Materials

23. These documents include Arido's statements to the French authorities in detention and related material, such as the steps taken by the French authorities to comply with the Prosecution's RFA, the list of the rights read to Arido, letters from judicial authorities in France permitting Arido's interview, and a report concerning the conduct of Arido's conduct during his second interview. They provide important contextual information as to the circumstances of the interviews and their legality.¹²

24. The Prosecution incorporates by reference the arguments made in its Third Bar Table Motion,¹³ for why the statements and related materials are reliable and authentic, and why their probative value outweighs any undue prejudice.

H. Category VIII: Other Materials

25. The Prosecution also tenders the 25 items listed below. Their relevance is set out in detail in Annex A.

- Email containing the non-verbatim transcript of D-0026's interview – CAR-D21-0004-0546

¹¹ See First Bar Table Motion, paras. 11-29.

¹² See also ICC-01/05-01/13-1432, paras. 22-27.

¹³ See ICC-01/05-01/13-1170-Conf ("Third Bar Table Motion"), paras. 26-27.

26. The document is an email forwarded by Kilolo to his Defence team containing a non-verbatim transcript of D-0026's interview with the *Bemba* Defence. The Kilolo Defence disclosed this document to the Parties in 2014. The Prosecution proposes its admission as relevant to establishing that Kilolo coached D-0026 to testify inconsistently with information provided during his interview.

- A "note de service" from [REDACTED]– CAR-OTP-0042-0237

27. The document is an internal instruction from [REDACTED]. It was obtained from [REDACTED] authorities in response to a Prosecution RFA.¹⁴ [REDACTED]. It contradicts the testimony of P-0201 that despite [REDACTED].¹⁵ The structure and composition of the [REDACTED] was also a matter Kilolo coached the witness about.¹⁶

- Executed signatory form from [REDACTED] – CAR-OTP-0043-0063

28. The document is an executed signatory form from [REDACTED] concerning an organisation called "[REDACTED]" located in [REDACTED], of which [REDACTED] is a principal. It was obtained from the [REDACTED], in response to a Prosecution RFA.¹⁷ The document is relevant to and corroborates other evidence establishing that the code "[REDACTED]" refers to [REDACTED], a matter Bemba concedes in his confirmation submissions.¹⁸

- Legends for Call Data Records – CAR-OTP-0072-0398 and CAR-OTP-0072-0411

¹⁴ OTP/CAR11/190209/BLF-er.

¹⁵ ICC-01/05-01/08-T-348-CONF-ENG ET, 31 October 2013, p. 33, ls. 6-20; ICC-01/05-01/08-T-348-CONF-FRA ET, 31 octobre 2013, p. 34, l. 20 - p. 35, l. 6.

¹⁶ See e.g. CAR-OTP-0080-1364 (Audio), CAR-OTP-0082-0877, at 0882-0883, ls. 143-190 (French Translation); CAR-OTP-0091-0205, at 0210-0211, ls. 140-186 (English Translation).

¹⁷ CAR/B6/150109/mlms.

¹⁸ ICC-01/05-01/13-599-Conf, para. 96.

29. The documents are legends used for understanding call data records received from KPNGB and Base Company. They were obtained by Belgian authorities in response to a Prosecution RFA.¹⁹ They are relevant to understanding and assessing call data records received from those companies and also corroborate the analysis and understanding of those records by witnesses P-0361 and P-0433.

- Plane ticket issued by [REDACTED] – CAR-OTP-0075-0155

30. The document is an electronic ticket issued by [REDACTED] from Yaoundé to Paris. The document was seized from Arido and received by the Registry on instruction by the Single Judge.²⁰ The document is relevant to establishing how Arido left Cameroon, and the date on which he left relative to his scheduled testimony as a witness in the Main Case.²¹

- Handwritten declaration of Arido – CAR-OTP-0075-0160

31. The document is a handwritten declaration by Arido containing a number of notes and listing various other documents. The document was seized from Arido and received from the Registry on instruction by the Single Judge.²² The document is the Registry certified copy made pursuant to decision ICC-01/05-01/13-41-Conf-Red and in the presence of the Independent Counsel on 19 December 2013.

- Copies of Jacques Seara’s military expert report – CAR-OTP-0075-0424 and CAR-OTP-0075-2256

32. The documents are copies of Defence witness Jacques Seara’s military expert report in the Main Case. A full version of the report, including its annexes, CAR-D04-

¹⁹ CAR-OTP-0091-0437.

²⁰ ICC-01/05-01/13-41-Red.

²¹ See also ICC-01/05-01/13-1072-Conf-Corr, para. 14.viii, and ICC-01/05-01/13-1072-Conf-AnxA, p. 10, proposed fact 37. *Contra* ICC-01/05-01/13-T-20-CONF-ENG ET, 14 October 2015, p. 89, l. 16-p. 90, l.1; ICC-01/05-01/13-T-20-CONF-FRA ET, 14 octobre 2015, p. 92, l. 28-p. 93, l. 12.

²² ICC-01/05-01/13-41-Red.

0003-0342, was formally submitted pursuant to Decision ICC-01/05-01/13-1285. These versions of the report were obtained from the Accused or seized from Arido's computer by French authorities in response to RFAs by the Prosecution.²³ They are relevant to showing that the report was sent to Arido by Kilolo, thereby corroborating their work together, and showing that Arido had important information at his disposal concerning the *Bemba* Defence's theory of the case in 2012.

- Letter from Western Union – CAR-OTP-0078-0012

33. The document sets out Western Union's internal regulations on international money transfers, including the identification requirements for Western Union payouts. It is relevant to the authenticity and reliability of contact information obtained by Western Union for individuals making and receiving payments, including the Accused.

- Information about the Dutch interception process – CAR-OTP-0079-1553 and CAR-OTP-0079-1571

34. These documents contain reports by a Dutch investigative judge concerning the process by which communications are intercepted. They were directly provided to the Single Judge by the Dutch authorities, who in turn disclosed the reports to the Parties pursuant to an order on the filing of documents in the record of the case.²⁴

- Contact Information in Professional Organizations – CAR-OTP-0072-0114 and CAR-OTP-0085-0204

35. These documents comprise of screenshots of public information concerning Mangenda's and Kilolo's membership in the *Barreau de Kinshasas/Matete* (the Kinshasa Bar Association) and the *Barreau de Bruxelles* (the Brussels Bar Association),

²³ CAR-OTP-0091-0546, CAR-OTP-0091-0551 and CAR-OTP-0091-0556.

²⁴ ICC-01/05-01/13-6-Conf-Exp.

respectively.²⁵ They include the Accused's contact information, including telephone number and e-mail addresses, and are also relevant to assessing the Accused's knowledge of their ethical and legal obligations as members of their respective national bar associations.

- Interviews with the Media – CAR-OTP-0072-0098, CAR-OTP-0084-0152 and CAR-OTP-0085-0828

36. The documents consist of open source video-clips obtained on the internet of interviews by Babala and Kilolo with various media outlets before and after their release from detention. They confirm Babala's detailed knowledge of the Main Case prior to his own arrest, Babala's close relationship with Bemba, the attribution of phone numbers to Kilolo, and Kilolo's work on the Main Case.

- List of Questions by Legal Representatives of Victims – CAR-OTP-0088-1626 and CAR-OTP-0088-1630

37. These documents are court filings from the Main Case released by Trial Chamber III, consisting of questions to be posed by the Legal Representatives of Victims to Defence Witness D-0054 (P-0201). Other documents, including intercepted communications, reveal that the filings were sent by Mangenda to Kilolo to coach D-0054 during the Victims and Witnesses Unit prohibited period.²⁶

- Letter from the French authorities – CAR-OTP-0089-0007

38. The letter was provided by France's Deputy Prosecutor in response to a Prosecution RFA seeking information regarding interviews conducted by the French

²⁵ See also ICC-01/05-01/13-1072-Conf-Corr, para. 12.ii, ICC-01/05-01/13-1072-Conf-AnxA, p. 6, proposed fact 18.

²⁶ CAR-OTP-0080-1367 (Audio); CAR-OTP-0082-1109 at 1113, ls. 101-106, 1123-1139, ls. 439-1024 (French Translation); Mangenda sent the LRV questions to Kilolo *via* email on 31 October 2013: see CAR-OTP-0088-0504 at 0516-0518.

authorities.²⁷ It substantiates the fact that French law does not foresee the recording of interviews in relation to offences against the administration of justice.

V. Relief Requested

39. 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 30th Day of November 2015
At The Hague, The Netherlands

²⁷ CAR-OTP-0091-0599.