

**Cour
Pénale
Internationale**



**International
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Court**

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TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

**Public Document
With
Public Annex A**

Prosecution's Request to Install Additional Software in the Courtroom

Source: The Office of the Prosecutor

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

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Introduction

1. The Office of the Prosecutor (“Prosecution”) seeks the installation of additional software (i.e. CaseMap) in its desktop computers in the courtroom to increase its ability to follow the testimony and enabling expeditious and efficient conduct of the trial proceedings. Upon request, the Registry refused this request and other requests of this nature. It indicates that if this request is granted, it may be precedent for future requests by the parties and participants in this and any other case before the Court for the installation of other applications.¹

2. The Prosecution considers that its rights include the use of CaseMap during its work in the courtroom. The Registry’s decision to refuse its request affects its rights and should be reviewed by Trial Chamber III (“Chamber”). On the merits, the Prosecution submits the Registry has no authority to reject the Prosecution request. The Registry should limit itself to providing the services necessary to ensure availability of an efficient electronic system that supports its work during the daily judicial proceedings of the Court.

3. Alternatively, if the Chamber considers that this is a matter of “the proper administration of the Court”,² the Prosecution requests that the issue be referred to the Presidency for a final decision.

4. Finally, the Prosecution notes that the Defence also desires access to CaseMap within the courtroom.³

¹ ICC-01/05/01/08-920, Registry submission on the installation of additional software in the courtrooms and certain modalities of evidence presentation, 1 October 2010., at para. 5 and ICC-01/05-01/08-1004, Registry Submission on the Feasibility Study of CaseMap Installation in the Courtrooms, 8 November 2010 (notified on 9 November 2010), at para. 10.

² Article 38(3)(a) of the Rome Statute.

³ Email sent by the Defence to the court officer on 18 November 2010 at 13:59.

Procedural background

5. During the status conference of 24 September 2010, the Prosecution informed the Chamber of the request⁴ it made to the Registry in order to install CaseMap in the courtroom for the mutual benefits of the parties and participants to the proceedings.⁵

6. On 1 October 2010, the Registry filed its submission on the installation of additional software in the courtrooms and certain modalities of evidence presentation (“Registry submissions”).⁶

7. In its submissions, the Registry indicates that the courtroom technology is designed to allow for the presentation of evidence and not for case preparation. Therefore, the Registry supports an evidence presentation system such as Ringtail Court Book (“Ringtail”), whereas it does not support CaseMap which, in its view, is an evidence analysis tool used for the preparation of the case.

8. The Registry further points out the potential technical difficulties resulting from the installation of the said software, on which it will provide a full feasibility assessment. Nonetheless, prior to conducting this full assessment, the Registry expressed its strong discouragement of additional installation of further software applications in the courtroom, stating that “Today it is the installation of Case Map that is requested, tomorrow it may be yet another case preparation tool”.⁷

9. The Registry proposes instead the possibility to install CaseMap on a standalone laptop, without provision of technical support related to this application.⁸

⁴ See Annex A: Memorandum from the Prosecution to the Registry on 21 September 2010, requesting access to CaseMap in the ICC courtrooms.

⁵ ICC-01/05-01/08-T-25-CONF-ENG CT, p. 26, lines 15-25 and p. 27, lines 1-6.

⁶ ICC-01/05/01/08-920.

⁷ *Ibid*, at para. 5.

⁸ *Ibid*, at para. 6.

In response to the Registry's proposal, the Defence now requests that it too have a standalone laptop available in the courtroom so that it may use CaseMap.

10. During the status conference of 21 October 2010, the Prosecution reiterated its position.⁹ The Registry informed the Chamber that it would file a feasibility study.¹⁰ On 9 November 2010, the Prosecution was notified of the Registry's submission on the feasibility study of CaseMap installation in the courtrooms ("feasibility study").¹¹ The Registry concludes that installation will require additional resources and entail potential risks and that CaseMap is not an essential tool for the purposes of evidence presentation. Accordingly, it affirms its opposition to the Prosecution's request and renewed its previous alternative proposal to only install CaseMap on a standalone laptop for the parties and participants requiring the use of the system. Nonetheless, it notes *inter alia*:

a) The latest version of CaseMap is compatible with the Court's technical standards and as such could be installed on the Court's IT infrastructure.¹²

b) The Office of the Public Counsel for the Defence ("OPCD") has purchased three CaseMap licenses, one of which it lent to the Defence team in this case.¹³

11. In an email on 18 November 2010, the Prosecution was informed that counsel for the Accused also requests access to CaseMap in the courtroom; if installation on a standalone computer is the process to be followed, it requests that it too be given a standalone computer for that purpose.

⁹ ICC-01/05-01/08-T-30-ENG, p. 22, line 21 to p. 23, line 21.

¹⁰ *Ibid*, p. 25, lines 12-16.

¹¹ ICC-01/05-01/08-1004, Registry Submission on the Feasibility Study of CaseMap Installation in the Courtrooms, 8 November 2010.

¹² *Ibid*, at para. 2.

¹³ *Ibid*, at para.1.

Prosecution's submissions

12. The Prosecution reiterates that it does not propose to alter the technology used for evidence presentation or to replace Ringtail.¹⁴ It requests the installation of CaseMap in the courtroom on top of the existing technology, as an additional tool necessary to improve the manner in which the Prosecution will exercise its responsibilities.

13. Unlike Ringtail or other software presently available in the courtroom, CaseMap is a case management tool to facilitate the communication of the case information to the trial team and provide a medium for analysis, evaluation and search of the factual and legal elements of the case. The value of this software lies particularly in its ability to organize the factual matrix of the case with the proper linkage to the relevant legal issues. Its use facilitates presentation of the case and response to issues arising during the hearing in a timely manner. It is also the only tool available to support analytical products such as the in-depth analysis charts, which reflect the relevance of each item of evidence in relation to the constituent elements of the crimes.¹⁵ This functionality is not provided by any other software available, at present, in the courtrooms. Therefore, the Prosecution believes that it is necessary, or at a minimum highly useful, to complement the courtroom software.

14. The Registry's opposition to the requested addition to the existing software in the courtroom appears not to be based on specific concerns about CaseMap or other technological issues. Rather, it views the installation of CaseMap as a step that will

¹⁴ ICC-01/05-01/08-T-25-CONF-ENG, p. 31, lines 5-14.

¹⁵ The importance of these charts is reflected in decisions from both the Pre-Trial Chamber and the Trial Chamber: see for instance: ICC-01/05-01/08-55, Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties, 31 July 2008; ICC-01/05-01/08/-232, Decision on the submission of an updated, consolidated version of the in-depth analysis chart of incriminatory evidence, 10 November 2008; ICC-01/05-01/08-T-18-CONF-ENG, 8 December 2009, p. 44, line 24 to p.45, line 10; ICC-01/05-01/08-682, Decision on the "Prosecution's Submissions on the Trial Chamber's 8 December 2009 Oral Order Requesting Updating of the In-Depth Analysis Chart", 29 January 2010.

open the door to additional software installations. Thus, it explains that “[t]oday it is the installation of Case Map that is requested, tomorrow it may be yet another case preparation tool”,¹⁶ a rationale which was further reiterated in its feasibility study.¹⁷ And it appears to be of the view that the only software that a party is entitled to is that which facilitates the actual presentation of evidence.

15. The Prosecution submits that the Registry’s mission is to be a service provider. The Registry is not authorized to challenge or second-guess the Prosecution’s request on such a ground. Additionally, it would be a regression to close the Court to new software that can positively affect the manner in which it conducts its proceedings.

16. The electronic system envisaged by the legal framework of the court is one that supports the Court’s daily judicial and operational management and its proceedings.¹⁸ In this context, the Prosecution submits that proceedings in the courtroom are benefitted if the Prosecution has timely access to the extensive factual and legal records of the case during hearings in such a manner as to support effective presentation of the case. Access to those records will also allow the Prosecution to provide timely and accurate clarifications and responses to issues arising in the proceedings.¹⁹ Without access to the factual databases in the courtroom, the Prosecution and other parties and participants may be forced to request additional time to consult their databases outside the courtroom in order to respond to questions raised in the courtroom.²⁰

¹⁶ ICC-01/05/01/08-920, at para. 5.

¹⁷ ICC-01/05-01/08-1004, at para. 10.

¹⁸ Regulation 26 of the Regulations of the Court provides that: “1. The Court shall establish a reliable, secure, and efficient electronic system which supports its daily judicial and operational management and its proceedings. 2. The Registry shall be responsible for the implementation of the system described in sub-regulation 1, taking into account the specific requirements of the judicial activity of the Court, including the need to ensure authenticity, accuracy, confidentiality and preservation of judicial records and material. [...]”

¹⁹ For instance, the Chamber may ask questions seeking clarification or additional information during hearings, see Regulation 28 of the Regulations of the Court.

²⁰ It is not an answer that other members of the team will have access to CaseMap outside the courtroom and will be able to communicate the result of their research to the members attending the hearing. Timely response is required in the courtroom where the trial actually occurs. Reliance on out-of-court assistance does not suffice, considering the delay between the hearing and its internet broadcasting and the fact that closed proceedings are

17. Pursuant to Regulation 26 of the Regulations of the Court, the Registry's specified responsibility is to implement the system. The feasibility study confirmed that the installation does not pose any material technical difficulties that may interfere with the functions of the courtroom technology. There is, accordingly, no objection to its implementation on technical grounds. The substantive conclusion that CaseMap, though feasible and able to be implemented, is unnecessary, is beyond the Registry's Regulation 26 responsibility. It is the Chamber (if this is considered a right of the Prosecution or part of a fair proceedings) or the Presidency (if this is an administrative matter) who should ultimately decide on the provision of the requested service.

18. The Prosecution notes that the Registry summarily estimates that it will take four months to put in place the necessary technical infrastructure and support for the proper deployment of the software. The Registry did not provide the basis for this calculation and thus the Prosecution cannot assess its accuracy.²¹ Nonetheless, the Prosecution suggests the following factors that may significantly reduce this estimate: (i) deploying a compatible version of CaseMap that is not necessarily the latest version would only require installing the software on the existing computers in the courtroom, which can be arranged in the span of few hours, and the Prosecution is willing to assist in such installation; and (ii) no hardware or further equipment would be required for such installation. Nor is the possible need for training a reason to defer installation of the program; the fact that some of the parties and participants already use the software, as indicated above, reduces the need for training; and any necessary training can be arranged subsequent to the installation of CaseMap so that the whole process is not unnecessarily hindered.

not broadcast. In addition, real-time transcription is only available to a restricted number of staff members and its accuracy, unedited, is not guaranteed

²¹ It is not explained in the feasibility study why 82 working days are required for the deployment of CaseMap. Similarly, it was not explained why purchase and delivery of hardware is required, or why the existing hardware is not sufficient.

19. The Registry's proposal that the software be available solely on a standalone laptop is an incomplete and inadequate substitution. A standalone system can only be used by one member of the team, whereas the database is a shared resource for all the team members. Additionally, such solution would create database integrity problems between the network version and the standalone version, and new procedures will be required to create extra back-up and ensure the database that is edited in the courtroom is consistent with the database on the network.

Relief sought

20. For the foregoing reasons, the Prosecution respectfully requests that the Chamber authorize the expeditious installation of CaseMap in the courtroom or at least in the Prosecution's desktop system in order to better implement its mandate and to facilitate the trial proceedings.

21. Alternatively, if the Chamber considers that this is an administrative issue, the Prosecution request to send this issue to the Presidency in accordance with the internal corporate governance.²²



Luis Moreno-Ocampo, Prosecutor

Dated this 22nd Day of November 2010

At The Hague, The Netherlands

²² Report of the Court on measures to increase clarity on the responsibilities of the different organs, ICC-ASP/9/CBF.1/12, 18 March 2010.