

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 9 June 2015

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

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***

**Confidential Document
with
Confidential Annex A**

**Prosecution's Request pursuant to Regulation 35 to vary the Time Limit for
Disclosure of an Expert Report**

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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I. Introduction

1. The Office of the Prosecutor ("Prosecution") requests a three-week extension to disclose the report of telecommunications expert Rene Pluijmers, pursuant to regulation 35(2) of the Regulations of the Court ("RoC"). The requested extension is justifiable in the circumstances, is supported by good cause, and is in the interest of justice. Further, it will in no way prejudice the Defence.

II. Background

2. On 6 May 2015, pursuant to the Trial Chamber VII ("Chamber")'s instruction,¹ the Prosecution engaged the Defence with a view toward jointly instructing proposed expert witnesses in this case. On 8 May 2015, the Prosecution informally notified the Chamber of the status of the discussions, which had not yet proved fruitful, and noted the Defence's request for time to consult with their respective clients on the matter.

3. On 21 May 2015, the Prosecution filed its Report on the Joint Instruction of Two Proposed Prosecution Experts with the Chamber. The Report reiterated the absence of an agreement with the Defence and expressed the Prosecution's *bona fide* undertaking to accommodate their request for additional time to consider their respective positions (until 15 June 2015).²

4. The next day, on 22 May, the Chamber issued its Decision on the Modalities of Disclosure, ordering that the Prosecution disclose all incriminating materials by 30 June.³ The Decision did not address the pending joint instruction issue, which

¹ ICC-01/05-01/13-T-8-CONF-ENG ET, 24 April 2015, p.49, lns.19-25 and p.50, ln.1.

² ICC-01/05-01/13-956-Conf. The filing also deals with an expert on the practices and procedures followed at Western Union. However, the Prosecution will deal with his evidence in a separate filing.

³ ICC-01/05-01/13-959.

rendered the deadline untenable with respect to Mr Pluijmers expert report, given that he could not be instructed by the Prosecution before 15 June, in view of its 21 May undertaking regarding the Defence.

5. Given the improbability that the Parties will reach an agreement anytime soon, the Prosecution now seeks the Chamber's permission to instruct the expert unilaterally as of 15 June 2015, or at such time as the Chamber otherwise deems appropriate. The requested extension to disclose Mr Pluijmers expert report is thus necessary and justified.

III. Confidentiality

6. This filing and its annex are classified as "Confidential" pursuant to regulation 23*bis*(1) of the RoC since they refer to confidential information. The Prosecution will file a redacted version of this filing.

IV. Submissions

7. As mentioned, on 21 May 2015, the Prosecution informed the Chamber that no agreement had yet been reached on the possibility of jointly instructing a telecommunications expert.⁴ The Prosecution expressly undertook to afford the Defence teams until 15 June 2015, as reasonably necessary to consider the issue and consult with their respective clients.⁵

⁴ ICC-01/05-01/13-956-Conf, para.7.

⁵ ICC-01/05-01/13-956-Conf, paras.8 and 23.

8. To date, the Prosecution has not received any substantive comments on the draft instructions provided to the Defence.⁶ Realistically, it is unlikely that an agreement with all the Defence teams will be reached by 15 June 2015. Even if an agreement could be reached today, the expert would need four to five weeks to draft his report. This means that the expert report will not be available within the disclosure deadline of 30 June 2015.

9. Under regulation 35(2) of the RoC, a Chamber may extend a time limit “if good cause is shown”. The Appeals Chamber has held that:

“[s]uch reasons as may found a good cause are necessarily associated with a party’s duties and obligations in the judicial process. A cause is good if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations.”⁷

The Appeals Chamber has further decided to extend a time limit where it was in the “interest of justice.”⁸

10. There is good cause to vary the time limit in this case. The Prosecution applied diligent and timely efforts to secure a telecommunications expert,⁹ and began consultations with the Defence immediately following the first Status Conference before the Chamber on 24 April 2015.¹⁰

⁶ These instructions were provided on 11 May 2015: Prosecution Email to Defence sent on 11 May 2015 at 16:26.

⁷ ICC-01/04-01/06-834 OA, para.7.

⁸ ICC-01/04-01/10-505, OA, para.11.

⁹ The telecommunications expert was identified and contacted in January 2015.

¹⁰ ICC-01/05-01/13-T-8-CONF-ENG ET.

11. As noted, on 6 May 2015, the Prosecution conferred with the Defence teams on the matter. On 8 May 2015, the Prosecution also sent the Defence teams the expert's *curriculum vitae* and identified the main areas for which his expertise was sought.¹¹ It sent its draft instructions for the proposed expert to the Defence on 11 May 2015,¹² on which it has yet to receive any substantive comments. Despite the Prosecution's good faith, its efforts to reach an agreement with the Defence on the joint instruction of experts have not succeeded.

12. Consequently, the Prosecution seeks the permission of the Chamber (i) to instruct Mr Pluijmers as a Prosecution expert as of 15 June 2015, in accordance with the instructions set out in the annex to this filing; and (ii) to file his expert report three weeks after the 30 June 2015 deadline. To preclude the requested extension would be, in effect, to penalise the Prosecution for its good faith efforts to discharge the Chamber's 24 April 2015 direction to productively negotiate with the Defence.

13. Conversely, granting the request is in the interest of justice, and causes no prejudice to the Accused. *First*, the Chamber should bear in mind that the Prosecution's 21 May 2015 undertaking was to accommodate the specific request of the Defence and without any knowledge of the Chamber's intentions concerning the further scheduling of the proceedings. *Second*, the Prosecution has already provided the Defence teams with the expert's *curriculum vitae* and draft instructions setting out in detail the subject matter and topics on which the expertise is solicited.¹³ Finally, the Prosecution seeks a relatively short three-week extension, ensuring the disclosure of the expert report well in advance of the start of trial.

¹¹ Prosecution Email to Defence sent on 8 May 2015 at 17:33.

¹² Prosecution Email to Defence sent on 11 May 2015 at 16:26.

¹³ See above, para.11.

V. Relief Requested

14. Based on the foregoing, the Prosecution seeks the Chamber's permission to instruct the telecommunications expert as a Prosecution expert as of 15 June 2015; and to extend the deadline for disclosure of the expert report by three weeks, pursuant to regulation 35 of the RoC.



Fatou Bensouda, Prosecutor

Dated this 9th Day of June 2015

At The Hague, The Netherlands