

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 19 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 Annexes A and B

**Prosecution Request for Leave to Reply to ICC-01/05-01/13-1002-Conf and
ICC-01/05-01/13-1004-Conf**

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. Pursuant to regulation 24(5) of the Regulations of the Court ("RoC"), the Office of the Prosecutor ("Prosecution") requests Trial Chamber VII ("Chamber")'s leave to reply to the Accused Jean-Pierre Bemba's ("Bemba") "Defence response to the Prosecution's Request pursuant to Regulation 35 to vary the Time Limit for Disclosure of an Expert Report"¹ and Accused Jean-Jacques Mangenda's ("Mangenda") "Response to Prosecution Request for an Extension of Time to file Expert Report"² (collectively, "Responses").

2. A limited and focused reply addressing the inaccuracies and misrepresentations in the Responses may clarify the salient facts before the Chamber concerning the Parties' negotiations on the possible joint instruction of experts, and assist it in the proper determination of the relevant issues.

II. Confidentiality

3. This filing is classified as "Confidential" because it relates to filings of the same designation. The Prosecution has no objection to its reclassification as "Public."

III. Submissions

4. The Prosecution seeks to reply regarding the following issues:

- a) Whether a commitment made by the Prosecution to the Defence in good faith allowing Counsel time to consult with their respective clients on the possible joint instruction of experts—including, the scope of such prospective evidence—undertaken at the instance of the Trial Chamber constitutes good cause to seek an extension of time for disclosing the expert report.³

¹ ICC-01/05-01/13-1002-Conf.

² ICC-01/05-01/13-1004-Conf.

³ See Annex A : Prosecution's email of 6 May 2015 to the Defence, noting "[a]s regards the Defence's position on the authenticity/provenance of the three categories of material comprising the Prosecution's first bar table

- b) Whether, in the context of a collective negotiation, a given Defence team can validly assert prejudice where the delayed disclosure of an expert report is directly attributable either to their request for time to consider the possible joint instruction and related issues, or the request of a co-Accused.⁴
- c) Whether the gamesmanship of certain Defence teams in pursuing so-called negotiations with the Prosecution is a relevant factor for the Chamber's consideration under regulation 35.

IV. Relief Requested

5. For the foregoing reasons, the Prosecution requests the Chamber to grant it leave to reply to the Responses, pursuant to regulation 24(5) of the RoC.



Fatou Bensouda, Prosecutor

Dated this 19th Day of June 2015
At The Hague, The Netherlands

motion (i.e., intercepts, CDR, and money transfer agency records from Western Union/Express Union), we will communicate to the Chamber our intention to delay our filing until you have had a reasonable opportunity to receive instruction from your clients, as this also bears on the possible scope of expert evidence"; see also Prosecution's email of 6 May 2015 to the Trial Chamber, copying the Defence and noting "that a stipulation [regarding the authenticity the three categories of proposed evidence] ... would also reduce the scope of certain expert evidence to be adduced at trial ... The Prosecution understands that the Defence will be able to provide their respective positions on the authenticity/provenance issue within the next two to three weeks" (emphasis added).

⁴ See Annex B: 8 May 2015 email of the Babala Defence to the Prosecution, "Counsel reaffirm[s] our position, as indicated during the meeting, namely that we will get back to you on the question of authenticity/provenance of the three categories of materials in three weeks' time" (emphasis added); see 8 May 2015 email of Arido Defence to the Prosecution, "[t]he Arido Defence takes the same position, and will get back to the Prosecution and the other Defence teams with its views on the authenticity of the documents listed in the Prosecution's table within three weeks" (emphasis added); see 18 May 2015 email of the Kilolo Defence to the Prosecution "Conformément à ce qui a été convenu lors du meeting du 6 mai 2015, ceci est pour vous informer que la défense de monsieur Kilolo sera en mesure d'apporter une réponse quant à votre requête sur l'authenticité des preuves dans une quinzaine de jours" (emphasis added).