

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 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, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA
WANDU and NARCISSE ARIDO***

Public

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

Decision 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

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Others

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Trial Chamber VII (the ‘Chamber’) of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Regulations 23 bis, 24, 35 and 44 of the Regulations of the Court (the ‘Regulations’), issues the following ‘Decision on “Prosecution’s Request pursuant to Regulation 35 to vary the Time Limit for Disclosure of an Expert Report”’.

I. Background and submissions

1. On 24 April 2015, the Chamber instructed the parties to conclude consultations on the joint instruction of expert witnesses by 15 May 2015 (the ‘Order’).¹
2. On 15² and 21³ May 2015, the Office of the Prosecutor (the ‘Prosecution’) reported on consultations concerning, *inter alia*, the joint instruction of a proposed expert in telecommunications (the ‘Expert’).⁴ According to the Prosecution, joint instruction is dependent, at least in part, upon parallel consultations regarding certain proposed agreed facts.⁵ The Prosecution reported that, between 13 and 19 May 2015, all defence teams (collectively, the ‘Defence’) indicated their need for additional time and/or information before taking a position on joint instruction or relevant proposed agreed facts.⁶ The Prosecution did not oppose an extension of time and submitted that consultations could conclude by 15 June 2015.⁷
3. On 22 May 2015, the Chamber ordered the Prosecution to disclose all evidence upon which it intends to rely at trial by 30 June 2015 (the ‘Disclosure Deadline’).⁸

¹ Transcript of hearing on 24 April 2015, ICC-01/05-01/13-T-8-Red-ENG ET, page 49, line 19 to page 50, line 1.

² Email communication from Prosecution to Trial Chamber on 15 May 2015 at 17:34 (‘15 May Report’)

³ Prosecution’s Report on Joint Instructions by the Parties of Two Proposed Prosecution Experts, ICC-01/05-01/13-956-Conf, with one confidential annex (‘21 May Report’).

⁴ 21 May Report, ICC-01/05-01/13-956-Conf, paras 2-6 and 10-14; 15 May Report.

⁵ 21 May Report, ICC-01/05-01/13-956-Conf, para. 4 (certain proposed agreed facts bear on the scope of the subject matter of the expert witnesses’ testimony); *see also* Transcript of hearing on 24 April 2015, ICC-01/05-01/13-T-8-Red-ENG ET, page 35, lines 2-4 ; page 50, lines 3-11.

⁶ 21 May Report, ICC-01/05-01/13-956-Conf, paras 7 and 12-15; 15 May Report.

⁷ 21 May Report, ICC-01/05-01/13-956-Conf, paras 8 and 23.

⁸ Decision on Modalities of Disclosure, ICC-01/05-01/13-959, para. 51 and page 19.

4. On 9 June 2015, the Prosecution requested (i) permission to instruct the Expert as a Prosecution expert and (ii) a three week extension for disclosure of the Expert's report (the 'Prosecution Request').⁹ The Prosecution submits that it acted in good faith, the Defence has the Expert's *curriculum vitae* and draft instructions, and the requested extension ensures disclosure well before the start of trial.¹⁰
5. On 15 June 2015,¹¹ the defence for Mr Mangenda (the 'Mangenda Defence'),¹² defence for Mr Bemba (the 'Bemba Defence')¹³ and defence for Mr Kilolo (the 'Kilolo Defence')¹⁴ responded. The Bemba Defence and Mangenda Defence submit that the Prosecution failed to show good cause for an extension. They claim that (i) the Defence never requested a variation of the deadline for consultations on joint instruction and (ii) the Prosecution failed, without justification, to take reasonable measures to meet the Disclosure Deadline.¹⁵ The Bemba Defence further submits that an extension would be prejudicial because the Expert's report would be disclosed during the judicial recess and the Defence may have to identify another expert to analyse the report or produce 'counter-expertise' on short notice.¹⁶ The Kilolo Defence submits that it should have adequate time to analyse the Expert's report.¹⁷

⁹ Prosecution's Request pursuant to Regulation 35 to vary the Time Limit for Disclosure of an Expert Report, ICC-01/05-01/13-989-Conf, with one confidential annex.

¹⁰ Prosecution Request, ICC-01/05-01/13-989-Conf, paras 12-13.

¹¹ The Chamber directed the parties to file any response to the Prosecution Request by 15 June 2015. Email communication from Legal Officer of the Trial Chamber to the parties on 10 June 2015 at 13:20.

¹² Response to Prosecution Request for an Extension of Time to File Expert Report, ICC-01/05-01/13-1004-Conf ('Mangenda Defence Response').

¹³ Defence's response to Prosecution's Request pursuant to Regulation 35 to vary the Time Limit for Disclosure of an Expert Report, ICC-01/05-01/13-1002-Conf, with three confidential annexes ('Bemba Defence Response').

¹⁴ Réponse de la défense de Monsieur Aimé Kilolo à la « Prosecution's Request pursuant to Regulation 35 to vary the Time Limit for Disclosure of an Expert Report ICC-01/05-01/13-989-Conf », notified on 16 June 2015, ICC-01/05-01/13-1009-Conf ('Kilolo Defence Response').

¹⁵ Mangenda Defence Response, ICC-01/05-01/13-1004-Conf, paras 3-8; Bemba Defence Response, ICC-01/05-01/13-1002-Conf, paras 6-28.

¹⁶ Bemba Defence Response, ICC-01/05-01/13-1002-Conf, paras 29-32.

¹⁷ Kilolo Defence Response, ICC-01/05-01/13-1009-Conf, paras 4-8.

6. On 19 June 2015, the Prosecution requested leave to reply in order to address 'inaccuracies and misrepresentations' on the part of the Bemba Defence and Mangenda Defence ('Reply Request').¹⁸

II. Analysis

7. The Chamber does not consider it necessary to receive additional submissions in order to decide the Prosecution Request. It therefore rejects the Reply Request. The Chamber notes that the Prosecution does not object to reclassification of the Reply Request. As no information therein warrants 'confidential' classification, the Chamber, pursuant to Regulation 23 *bis*(3) of the Regulations, reclassifies the Reply Request as 'public'.
8. Turning to the merits of the Prosecution Request, the Chamber recalls that the Order did not require the Prosecution to seek the Chamber's permission before instructing the Expert, whether jointly or as a Prosecution expert.¹⁹ The Chamber therefore dismisses this portion of the Prosecution Request as moot.
9. In relation to the request for an extension of time, the Chamber notes with concern that the Prosecution Request was filed more than two weeks after the Chamber set the Disclosure Deadline and does not indicate that the Prosecution took any other measures relating to the Expert's instruction in light of the Disclosure Deadline. The Chamber once again enjoins the Prosecution to exercise the utmost diligence, in particular in matters relating to disclosure, in the interest of fair and expeditious proceedings.²⁰
10. Nevertheless, the Chamber considers that informed and complete consultations regarding joint instruction could, in principle, expedite the proceedings. It

¹⁸ Prosecution Request for Leave to Reply to ICC-01/05-01/13-1002-Conf and ICC-01/05-01/13-1004-Conf, ICC-01/05-01/13-1018-Conf, with two confidential annexes.

¹⁹ Transcript of hearing on 24 April 2015, ICC-01/05-01/13-T-8-Red-ENG ET, page 49, lines 23-24.

²⁰ See also Decision on Prosecution Request to obtain Records from the VWU, 4 June 2015, ICC-01/05-01/13-983-Conf, para. 7; Decision on Modalities of Disclosure, 22 May 2015, ICC-01/05-01/13-959, para. 50; Transcript of hearing on 24 April 2015, ICC-01/05-01/13-T-8-Red-ENG ET, page 70, lines 9-13.

appears that the Prosecution Request is the result of efforts taken, before the Disclosure Deadline was set, to further such consultations. Indeed, in response to the apparent need of the Defence for additional time and/or information, the Prosecution undertook to consider Defence observations on joint instruction until 15 June 2015.

11. The Chamber is not persuaded by Defence assertions that the requested extension risks undue prejudice. As noted by the Prosecution, the Defence has already received the Expert's *curriculum vitae* and draft instructions detailing the subject matter of the proposed expertise. The requested three week extension results in a 21 July 2015 deadline, ten weeks before the trial commencement date.
12. In these circumstances, pursuant to Regulation 35(2) of the Regulations, the Chamber finds that there is good cause to extend by three weeks the deadline for disclosure of the Expert's report. The Chamber emphasises that this limited and exceptional extension applies only to the Expert's report. In the event the Prosecution intends to call the Expert or rely on other evidence related to the Expert's report, the Prosecution shall, as appropriate, include this information on its evidence list and disclose it by the Disclosure Deadline.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ORDERS the Prosecution to disclose the Expert's report no later than 21 July 2015;

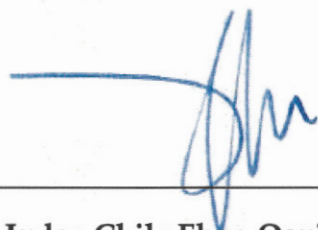
ORDERS the Prosecution to file a 'public, redacted' version of the Prosecution Request within five days of notification of this decision;

ORDERS the Defence to file 'public, redacted' versions of their responses within ten days of notification of this decision;

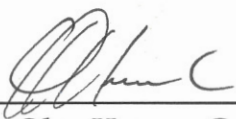
ORDERS the Registry to reclassify the Reply Request as 'public'; and

REJECTS all other requests.

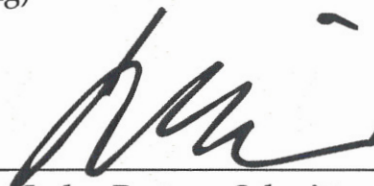
Done in both English and French, the English version being authoritative.

A blue ink signature, appearing to be 'Chile Eboe-Osuji', written over a horizontal line.

Judge Chile Eboe-Osuji
(Presiding)

A black ink signature, appearing to be 'Olga Herrera Carbuccion', written over a horizontal line.

Judge Olga Herrera Carbuccion

A black ink signature, appearing to be 'Bertram Schmitt', written over a horizontal line.

Judge Bertram Schmitt

Dated 24 June 2015

At The Hague, The Netherlands