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

Date: **25 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 Redacted Version

**Response to Prosecution Request for an Extension of Time to File Expert Report
(ICC-01/05-01/13-1004-Conf)**

Source: Defence for Jean-Jacques Kabongo Mangenda

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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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

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Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
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Other

1. Jean-Jacques Mangenda opposes the Prosecution request for an additional three weeks to file the expert report of its [REDACTED].¹ The Prosecution has failed to show good cause for the extension as required by Regulation 35(2) of the Regulations of the Court.
2. The Prosecution asserts that good cause is established by: (i) the Trial Chamber's instruction during the status conference on 24 April 2015 to the Prosecution to explore joint instruction of [REDACTED];² and (ii) the Defence's alleged failure to provide more timely input on the possibility of joint instruction.³
3. Neither of these reasons is valid, nor do they justify the Prosecution's request for an extension of time. Although the five Defence teams did write jointly to the Prosecution on 13 May 2015 requesting additional details concerning [REDACTED] anticipated report, no request has ever been made (as far as the Mangenda Defence is aware) that the Prosecution delay instructing [REDACTED].⁴ On the contrary, the Mangenda Defence wrote to the Prosecution on that same day giving a number of reasons for its view that it would be "very difficult at this stage to commit to any joint instruction."⁵ The Mangenda Defence also made clear that another proposed Prosecution expert, [REDACTED], was not an expert witness and, accordingly, could not be jointly instructed.⁶ Neither of these pronouncements was made conditional on further consultations, or on the occurrence of any other subsequent event. The Prosecution apparently (correctly) understood this email as being a rejection of the possibility of joint instruction: [REDACTED].⁷
4. This exchange of communications must also be read in light of the clear guidance provided by the Presiding Judge that discussions on joint instruction were expected to be completed, one way or the other, by 15 May 2015:

¹ [REDACTED]. The present submission is filed confidential pursuant to Regulation 23*bis* (2) of the Regulations of the Court. The Defence does not consider that the matters referred to in the Request should be confidential and requests that the Trial Chamber reclassify the Request and the present submissions as public.

² [REDACTED].

³ [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

And also we will, in light of the indication from one Defence counsel about the difficult they will have with the idea of a jointly-instructed expert witness, we note only from one counsel, but nevertheless we will have to put a deadline within which you must conclude your dialogue with the Defence with the view to exploring the possibility and then file your – or, instruct your own expert report if you still – expert witness if you need to do so and file the report promptly thereafter. We give you until mid-May, May the 15th, to conclude that discussion with the Defence. *So we don't want this matter to linger.*⁸

5. Six days after this 15 May deadline had passed, and without any variation thereof having been sought, the Prosecution submitted [REDACTED] The Prosecution correctly noted that [REDACTED]. The Prosecution declared in this submission that it [REDACTED].⁹
6. The Prosecution complains that the Trial Chamber's Decision on Modalities of Disclosure, issued the day after the Report, did not [REDACTED].¹⁰
7. This [REDACTED]. The Trial Chamber had already made its views clear: if no agreement could be reached by 15 May 2015, then the Prosecution was to proceed directly to instructing its expert and "and file the report promptly thereafter."¹¹
8. Any doubt about the need to proceed directly to instructing the witness would have been dispelled once the Prosecution had received the Trial Chamber's Decision on Modalities for Disclosure of 22 May 2015.¹² The expert report, as the Prosecution acknowledges, [REDACTED].¹³ The Prosecution would, accordingly, have been aware of the need to immediately instruct the expert witness to comply with the 30 June 2015 deadline, or to immediately seek leave to extend that deadline. Having done neither without reasonable explanation, no good cause for extending the deadline has been shown.

⁸ *Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Transcript of the First Status Conference, ICC-01/05-01/13-T-8-Red-ENG, 24 April 2015 ("Status Conference Transcript"), pp. 49-50 (italics added).

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ Status Conference Transcript, p. 49.

¹² *Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Modalities of Disclosure, ICC-01/05-01/13-959, 22 May 2015.

¹³ [REDACTED].

9. The Request should accordingly be rejected in its entirety.



Christopher Gosnell
Counsel for Mr. Jean-Jacques Kabongo Mangenda

Dated this 25 June 2015,
At The Hague, The Netherlands