

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 29 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***

**Public Redacted Document
with
Confidential Annex A**

**Public redacted version of "Prosecution's Report on Joint Instructions by the
Parties of Two Proposed Prosecution Experts", 21 May 2015, ICC-01/05-01/13-956-
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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. During the 24 April 2015 Status Conference, the Trial Chamber VII ("Chamber") directed the Office of the Prosecutor ("Prosecution") to present a report once the Parties' dialogue regarding the joint instructions of experts identified by the Prosecution is concluded.¹

2. The Parties have conferred on two issues relating to expert testimony *via* email and during a meeting held on 6 May 2015.

3. In preparation for the 6 May meeting, the Prosecution invited the Defence to consider a stipulation concerning the authenticity/provenance of certain categories of material that will comprise its *in limine* bar table motion ("Bar Table Motion"). An annex listing this material (398 documents) was provided to the Defence, as well as a letter setting out the specific categories for which the Prosecution seeks agreement on authenticity. These comprise the intercepted communications by the Dutch authorities, call data records ("CDRs") and money transfer agency records, provided by independent private companies.² The Prosecution also provided the Defence with certain material regarding the experts proposed to testify concerning these materials.

4. The Prosecution conveyed to the Defence that stipulating to the authenticity of the material is not a precondition to discussing the possible joint instructions of the experts but bears on the scope of the subject-matter of their testimony. If the Parties reach an agreement as to the authenticity of certain material, the experts will not be instructed so as to ascertain its authenticity nor will additional evidence need to be adduced to do so.

¹ ICC-01/05-01/13-T-8-CONF-ENG ET, pp.49-50.

² Prosecution Email to Defence sent on 1 May 2015 at 19:59.

5. On 6 May, the Parties met from 10:00 to approximately 12:00 hours. First, the Parties exchanged on the Prosecution's proposal for a stipulation regarding the authenticity/provenance of documents to be proposed for admission from the bar table.

6. Second, the Parties conferred on the possibility of jointly instructing two experts: Mr René Pluijmers (Telecommunications) and [REDACTED]. The Prosecution expects that Mr Pluijmers will be able to provide expert evidence on CDRs. As regards [REDACTED], [REDACTED] is not an "expert" *per se* in financial transfers generally. Rather, because of [REDACTED] experience and post at [REDACTED], the Prosecution expects to elicit from [REDACTED] the evidence contained in his 29 October 2014 Witness statement (CAR-OTP-0084-0039)³ which provides specific information relating to the practices and procedures followed at [REDACTED].

7. However, no agreement has been reached to date on the various issues. Some Defence teams have indicated their need for additional time to confer with their clients regarding any possible joint instruction and/or to review and analyse material sought to be admitted through the bar table, on which the proposed expert's testimony will bear. Other teams, however, have provided their positions on the two issues.

8. The Prosecution does not oppose the Defence teams' request for additional time. In the Prosecution's view an extension of 15 calendar days (until 15 June 2015) should allow the Parties to conclude their discussions concerning the possibility of jointly instructing the proposed experts.

³ Disclosed to the Defence on 6 February 2015.

II. Confidentiality

9. This Report and its Annex A are classified “Confidential”, as they refer to confidential communications and information exchanged by the Parties.

III. Submissions

A. Expertise in Telecommunications

10. Regarding telecommunications expert Mr René Pluijmers, the Prosecution provided the Defence teams with his *curriculum vitae*, a copy of the judgment in a domestic case in which he testified as a defence expert; and a 16 February 2015 Prosecution letter to Mr Pluijmers, identifying the two main areas for which his expertise is sought: (a) the call data records (“CDR”), and (b) the intercepted communications (or wiretaps), appended herewith as Annex A. Furthermore, as requested by the Defence, the Prosecution provided further details regarding its expectations regarding Mr Pluijmers’ prospective evidence, subject to his independent expert opinion.⁴

11. On 11 May 2015, the Prosecution provided the Defence with a draft letter of instruction for Mr Pluijmers, requesting comments by 13 May 2015.⁵

12. On 13 May 2015, the Defence jointly expressed their inability to provide their position concerning these two specific persons and the scope of their testimony that day, due to the short time frame within which they were asked to respond.⁶

⁴ Prosecution Email to Defence sent on 8 May 2015 at 17:33.

⁵ Prosecution Email to Defence sent on 11 May 2015 at 16:26.

⁶ Joint Defence email sent on 13 May 2015 at 14:43.

13. In a separate 13 May communication, the Arido Defence (“Arido’s 13 May email”) indicated that it will not join the joint instruction of Mr Pluijmers at this stage for lack of clarity as to how his possible evidence is relevant to the case against Arido.⁷ The Arido Defence further indicated that as regards a stipulation as to the authenticity of the material for which Mr Pluijmers will provide his expert opinion, more time was needed to state its position.⁸

14. Likewise, the Mangenda Defence’s 13 May 2015 separate communication (“Magenda’s 13 May email”) states that, without knowing the content of Mr Pluijmers opinions and given the technical origin and extraction of call data records and intercepted communications, it could not stipulate or commit at this stage to his joint instruction.⁹

15. The Kilolo Defence informed the Prosecution on 18 May 2015 (“Kilolo’s 18 May email”) that it will be in a position to provide a response to the Prosecution’s request related to the authenticity of the material discussed within 15 days.¹⁰ The Kilolo Defence did not address the issue of joint instructions to either expert in his communication.

16. The Bemba Defence indicated on 19 May 2015 (“Bemba’s 19 May email”) that after consulting with their client on the issue of authenticity of the material at issue, it is not in a position to make an informed decision.¹¹ The issue of joint instructions to the experts was not mentioned.

⁷ Arido Defence email sent on 13 May 2015 at 16:13.

⁸ Arido Defence email sent on 13 May 2015 at 16:13.

⁹ Mangenda Defence email sent on 13 May 2015 at 17:16.

¹⁰ Kilolo Defence email sent on 18 May 2015 at 13:18.

¹¹ Bemba Defence email sent on 19 May 2015 at 10:52.

B. Testimony on practices and procedures followed at [REDACTED]

17. The Prosecution provided [REDACTED]'s Witness statement to the Defence teams regarding his possible joint instruction. [REDACTED]'s sole area of testimony concerns [REDACTED] records, in particular their authenticity/provenance, the process involved in their selection, and the manner in which [REDACTED] transactions are carried out and documented.¹²

18. On 8 May 2015, further to a Defence request, the Prosecution conveyed to the Defence, in greater detail, the evidence as contained in the Witness statement that the Prosecution expected to elicit from [REDACTED].¹³

19. On 11 May 2015, the Prosecution requested from the Defence their comments with respect to [REDACTED].¹⁴ As mentioned above, the Defence teams expressed their inability to respond by 13 May 2015.¹⁵

20. As regards [REDACTED], Arido's 13 May email stated that because [REDACTED] is not an expert, no joint instructions are needed but that it was studying the Prosecution's proposal of a formal admission regarding the mechanics of [REDACTED].¹⁶

21. Magenda's 13 May email conveyed that [REDACTED] appears more as a witness of fact rather than an expert witness thereby precluding any joint instruction. In addition, this Defence declared that the background facts of which he could provide evidence did not seem to be matters falling within Mr Mangenda's knowledge. Therefore, the Mangenda Defence concluded that it was not in a position

¹² Prosecution Email to Defence sent on 15 May 2015 at 17:43.

¹³ Prosecution Email to Defence sent on 8 May 2015 at 17:33.

¹⁴ Prosecution Email to Defence sent on 11 May 2015 at 16:26.

¹⁵ Joint Defence email sent on 13 May 2015 at 14:43.

¹⁶ Arido Defence email sent on 13 May 2015 at 16:13.

at this stage to make any admissions of fact that would obviate the need for [REDACTED] 's testimony.¹⁷

22. In both “Kilolo’s 18 May email”¹⁸ and “Bemba’s 19 May email”¹⁹ the issue of joint instructions were not raised. Both Defence teams stated that they could not yet provide a response on an agreement on the authenticity of the material.

IV. Conclusion

23. The Prosecution does not object to the Defence teams’ need for additional time to consult with their clients on the possibility of jointly instructing the two experts. The Prosecution submits that an extension of 15 calendar days (until 15 June 2015) will allow the Parties to conclude their discussions and provide a final Report concerning the possibility of jointly instructing the proposed experts.



Fatou Bensouda, Prosecutor

Dated this 29th Day of June 2015

At The Hague, The Netherlands

¹⁷ Mangenda Defence email sent on 13 May 2015 at 17:16.

¹⁸ Kilolo Defence email sent on 18 May 2015 at 13:18.

¹⁹ Bemba Defence email sent on 19 May 2015 at 10:52.