

**Cour
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**International
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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

**Prosecution's Request for Variation of Page and Time Limits Concerning
the Pre-Trial Brief**

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. In respect of the filing of its Pre-Trial Brief,¹ the Office of the Prosecutor ("Prosecution") requests, pursuant to regulations 37(2) and 35(2) of the Regulations of the Court: (i) a page limit extension to a total of 200 pages, inclusive of a substantive referential annex on the Accused's use of coded language; and (ii) an extension of the 16 July 2015 filing deadline² by one week, until 23 July. Both requests are justified in the circumstances and supported by good cause.

2. Granting the requested extensions will allow the Prosecution to fulfil the purpose of the Chamber's invitation, and to produce a comprehensive document setting out its case theory and the supporting evidence with clarity, accuracy and conciseness. Further, extending the filing deadline for one week will not delay the proceedings or unfairly prejudice the Defence.

II. Confidentiality

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

III. Procedural History

4. On 13 April 2015, the Arido Defence requested that the Chamber order the Prosecution to submit a Pre-Trial Brief.³

¹ ICC-01/05-01/13-992, para.21.

² *Ibid.*

³ ICC-01/05-01/13-901, paras.55-56.

5. On 24 April 2015, the Chamber held a status conference and heard further oral submissions on the need for auxiliary documents.⁴

6. On 22 May 2015, the Chamber set 29 September 2015 as the date for the commencement of trial. It further ordered the Prosecution to complete disclosure and to file its lists of witnesses and evidence by 30 June.⁵

7. On 1 June 2015, the Prosecution informed the Chamber that since the first Status Conference, and pending the Chamber's decision regarding auxiliary documents, it had assigned its limited resources to other aspects of the trial preparation in view of the 30 June deadline and the date set for the commencement of trial.⁶

8. On 10 June 2015, the Chamber invited the Prosecution to file a Pre-Trial Brief by 16 July.⁷

IV. Submissions

A. The requested page limit extension is justified

9. Explaining the Prosecution's case theory regarding each confirmed charge with reference to the relevant evidence in a comprehensive, focused and accessible manner requires a substantial page limit extension.⁸ As developed below, a total of

⁴ At this hearing, the Prosecution indicated that it would file a Pre-Trial Brief "if the Chamber requires us to file one", see ICC-01/05-01/13-T-8-Red-ENG, p.64, lns.3-15.

⁵ See ICC-01/05-01/13-959, para.51; ICC-01/05-01/13-960, para.13.

⁶ See ICC-01/05-01/13-976-Conf, para.2, fn.5 and para.8 (noting the potential impact of requiring a Pre-Trial Brief at the then current stage). The Prosecution is conscious that the Chamber extended an "invitation" only, and that its submission is discretionary. Nevertheless, the Prosecution considers that the disposition of its resources in seeking to avail the Parties and Chamber of the benefit of a Pre-Trial Brief is a factor which the Chamber may and should consider in terms of this request.

⁷ ICC-01/05-01/13-992.

⁸ Other ICC Chambers have granted substantial page limit extensions for Pre-Trial Briefs. See ICC-01/04-02/06-500, para.9 (250 pages, one Accused); ICC-01/09-01/11-532, para.4 (75 pages, 2 Accused); ICC-01/09-02/11-590, para.4 (75 pages, 2 Accused).

200 pages for the Pre-Trial Brief, together with a substantive reference annex on coded language, is necessary and appropriate.

10. This case involves five Accused, concerning whom Pre-Trial Chamber II has confirmed multiple counts⁹ of offences against the administration of justice under five modes of liability.¹⁰ The case is document-intensive, requiring detailed explanations of how the material interrelates in respect of the charged offences and the individual responsibility of each Accused. During the confirmation proceedings, the Prosecution required 145 pages for its submissions¹¹ and 73 pages for its response to the submissions of the Defence.¹²

11. Although the quality and effectiveness of a brief are not *per se* contingent on its length, the latter undoubtedly can affect its comprehensiveness and, in this case, the detail sufficient to meet the objectives underlying the Chamber's invitation.

12. The requested extension is based on the Prosecution's careful assessment of the length necessary to complete its brief, having substantially progressed in its drafting. While it is obvious that the standard 20-page limit is inadequate for a Pre-Trial Brief, especially in a multiple-accused case as large as this, this extension request reflects the Prosecution's considered judgement regarding the length that is reasonable and necessary in the particular circumstances. It further reflects the Prosecution's intention to file a brief that is as concise and cogent as possible, recognising the need to avoid unnecessary omission of key information bearing on its theory of the case, particularly evidence acquired after the close of the confirmation stage.¹³

⁹ Pre-Trial Chamber II committed to trial: (i) Accused Bemba - on 42 counts; (ii) Accused Kilolo - on 42 counts; (iii) Accused Mangenda - on 42 counts; (iv) Accused Babala - on 42 counts; (iv) Accused Arido - 12 counts, see ICC-01/05-01/13-749.

¹⁰ ICC-01/05-01/13-749; regarding the complexity of this case see also ICC-01/05-01/13-992-Anx-Corr, paras.110-130.

¹¹ See ICC-01/05-01/13-597-Conf-AnxB.

¹² See ICC-01/05-01/13-646-Conf.

¹³ See e.g., ICC-01/05-01/13-670-Conf-AnxC-Red; ICC-01/05-01/13-845-Conf-AnxB-Red; ICC-01/05-01/13-845-Conf-AnxC-Red; ICC-01/05-01/13-982-Conf-Anx2-Red; ICC-01/05-01/13-982-Conf-Anx4-Red.

13. As noted, with the Chamber's leave, the Prosecution intends to supplement its Pre-Trial Brief with a separate reference annex of 80 pages containing a detailed and substantiated analysis of the Accused's use of coded language. This annex will contain sections on each alleged code, referencing the evidence supporting the Prosecution's analysis.

14. This type of reference annex will be useful to the Parties and the Chamber in understanding the contested issues in the case, such as the Accused's communications concerning the coaching and bribing of witnesses, or the cover up of the Overall Strategy.¹⁴ Presenting a comprehensive submission on the analysis of the codes in a dedicated document, as opposed to scattering its contents through the Pre-Trial Brief in footnotes or in a lengthy section, will enhance its readability and clarity.

B. Good cause exists to grant a one-week extension of time for filing the Pre-Trial Brief

15. An additional week beyond the 16 July 2015 deadline is necessary for the Prosecution to produce a meaningful and effective Pre-Trial Brief referencing the most salient evidence, and setting out its case theory concisely and comprehensively. Granting this limited extension, until 23 July 2015, is fully consistent with the underlying purpose of the Chamber's invitation, namely to provide a document that "could be beneficial to the Defence in the preparation for trial".¹⁵

¹⁴ ICC-01/05-01/13-749, paras.79-80.

¹⁵ ICC-01/05-01/13-992, para.21.

16. As noted, the Prosecution deployed its limited resources to other aspects of the trial preparation, pending the Chamber's decision regarding the necessity of auxiliary documents in this case. This was necessary to efficiently discharge its obligations, in accordance with the schedule set by the Chamber,¹⁶ while managing the demands of a five-Accused case,¹⁷ most of which is conducted on an *inter partes* base, and of which the Chamber is not apprised.¹⁸

17. The requested one-week extension will cause no prejudice to the Accused, since: (a) such a limited extension will have no impact on trial preparation, or the contemplated 29 September 2015 trial date;¹⁹ (b) the Pre-Trial Brief is not a statutory document and its submission is discretionary; (c) the additional time will be used, *inter alia*, for editing and streamlining the document, making it more easily understood, clearer and ultimately more useful to the Accused; (d) a Pre-Trial Brief, though a helpful tool, does not dismiss the Defence's responsibility for independently reviewing and evaluating the evidence in light of the charges confirmed;²⁰ (e) the Accused have been adequately notified of the charges since at least 11 November 2014;²¹ and (f) even with an extension, the Accused will receive the Pre-Trial Brief over 9 weeks in advance of the trial.

¹⁶ See ICC-01/05-01/13-959, para.51; ICC-01/05-01/13-960, para.13.

¹⁷ Since the date of the First Status Conference, the Prosecution has submitted 30 filings, inclusive of its responses to the filings of the Defence. The Defence teams have submitted 53 filings.

¹⁸ See ICC-01/05-01/13-T-8-Red-ENG, p.4, lns.16-21. Since the date of the First Status Conference, the Prosecution has received 9 separate disclosure requests from the Defence.

¹⁹ See ICC-01/05-01/13-960, para.12.

²⁰ See ICC-01/05-01/13-992, para.20; see also ICC-01/05-01/13-177, para.10.

²¹ See ICC-01/05-01/13-749.

V. Relief Requested

18. For the foregoing reasons, the Prosecution requests the Chamber to grant a page limit extension for its Brief to a total of 200 pages, including a substantive reference annex on coded language, and to vary the time limit to file it by one week, until 23 July 2015.



Fatou Bensouda, Prosecutor

Dated this 3rd Day of July 2015
At The Hague, The Netherlands