

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.:

Date: 6 August 2015

PRESIDENCY

Before: Judge Silvia Alejandra Fernández de Gurmendi, President
Judge Joyce Aluoch, First Vice-President
Judge Kuniko Ozaki, Second Vice-President

IN THE APPEAL OF

[REDACTED]

Confidential *ex parte* with confidential *ex parte* Annexes A through I, Presidency,
Registrar, Counsel Support Section, Defence for [REDACTED] and Applicant
only

Request for Review of Decision to Deny the Applicant admission to the List of
Assistant to Counsel Pursuant to Regulation 125(4) of the Regulations of the
Registry

Source: [REDACTED] Applicant

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

Applicant

[REDACTED]

Counsel for the Defence in the case of

[REDACTED]

Registrar

Herman Von Hebel

Counsel Support Section

Esteban Peralta Losilla

I. Background

1. [REDACTED] ("Applicant") interviewed with the defence team [REDACTED] in the case of [REDACTED] on 18 May 2015. Lead Counsel for the [REDACTED] Defence Team informed the Applicant of his decision to select her for the role of Legal Assistant to Counsel pending the Applicant's appointment to the International Criminal Court's ("ICC") List of Assistants to Counsel ("List of Assistants"). The Applicant was selected among hundreds of candidates to enter into service on 13 July 2015.¹

2. The Applicant filed an application with the Counsel Support Section ("CSS") of the ICC to be placed on the List of Assistants on 26 June 2015 ("Application"). On 9 July 2015, the [REDACTED] Defence Team was informed by Mr. Esteban Peralta Losilla ("Mr. Peralta Losilla") of Counsel Support Section ("CSS") by email that the Applicant's Application was rejected ("9 July 2015 Email Decision"), finding that the Applicant "does not have five years of experience in criminal proceedings (she declares 4.5) and she does not have specific competence justifying her admission".² The [REDACTED] Defence Team advised the Applicant on 9 July of the Decision. The Decision was not, however, formally communicated directly to the Applicant by CSS.

3. On 9 July 2015, the [REDACTED] Defence Team requested by email to Mr. Peralta Losilla that CSS review the 9 July 2015 Email Decision, listing the Applicant's "competences, almost entirely from her CV".³ The [REDACTED] Defence

¹ Defence Request for Review of the Denial of an Applicant to the list of Assistant to Counsel Pursuant to Regulation 125(4) of the Regulations of the Court, ICC-RoR125-01/15-1 (confidential and *ex parte*), 24 July 2015 ("24 July 2015 Defence Request"), para. 7. The Applicant notes that the 24 July 2015 Defence Request erroneously refers to the commencement date as 15 July 2015 and that this date was in fact to be 13 July 2015 (see also Annex A (email communications between CSS and [REDACTED] of the [REDACTED] Defence Team), p. 3).

² See Annex A, p. 1.

³ See Annex A, p. 4.

Team also drew to CSS's attention to developments in relation to the Applicant's profile which took place since she made the Application.⁴

4. On 16 July 2015, the Applicant requested by email that Mr. Peralta Losilla and CSS communicate the 9 July 2015 Email Decision directly to the Applicant, provide reasons for the Decision, and that information on how to apply to the Presidency for review of the Decision be provided. The Applicant also provided CSS with an updated *curriculum vitae* to reflect changes to the Applicant's profile ("Updated CV").⁵ The Applicant did not receive a response to her email.

5. Given the urgency expressed by the [REDACTED] Defence Team to have the Applicant commence as a Legal Assistant, Counsel filed an urgent confidential and *ex parte* motion to the Presidency, requesting a review of the 9 July 2015 Email Decision in light of the urgent circumstances expressed therein, and annexing submissions made by the Applicant in relation to her Application ("July 24 2015 Defence Request").⁶

6. On 29 July 2015, the Presidency ordered, pursuant to Regulation 125(4) ("29 July 2015 Order"), that: (i) the Registrar provide the notification required to the Applicant; and (ii) the Applicant confirm whether she is requesting a review of any notified decision and, if so, if she requests such review in the terms provided for in the July 24 2015 Defence Request.⁷

7. On 4 August 2015, the Applicant was provided with the written decision of Mr. Peralta Losilla ("4 August 2015 Decision")⁸ which provided that the Applicant had neither: (i) five (5) years of relevant experience in criminal proceedings; nor

⁴ See Annex A, p. 4. See also Annex I.

⁵ See Annex B. The Applicant notes that she was formally appointed to the University of [REDACTED] to the position of Lecturer on [REDACTED] (see Annex I).

⁶ 24 July 2015 Defence Request, paras 1, 15, 17.

⁷ Order concerning the Request dated 24 July 2015, ICC-RoR125-01/15-1(confidential and *ex parte*), 29 July 2015 ("29 July 2015 Order"), p. 4.

⁸ Annex C, CSS/2015/551, Rejection of Application to the List of Assistants to Counsel, 4 August 2015 ("4 August 2015 Decision").

(ii) specific competence in international or criminal law and procedure.⁹ The Applicant's Application was therefore rejected.

II. Request for Confidentiality

8. Pursuant to Regulation 23*bis* of the Regulations of the Court, the Applicant files this request to review the 4 August 2015 Decision confidential *ex parte* Presidency, Registrar, Counsel Support Section, Defence for [REDACTED] and Applicant only. It is submitted that the subject matter of this request for review relate to the private information and background of the Applicant. Noting that the Presidency issued its 29 July 2015 Order confidential *ex parte*, and that there are no additional reasons in the interests of justice to make the matters contained herein or any future decision public, the Applicant files this request confidential and *ex parte*.

III. Request for Urgency

9. The Applicant notes that the [REDACTED] Defence Team, in its 24 July 2015 Defence Request, asserted that it is "imperative" that a decision is taken in relation to the Application "so the Defence can continue its investigations whilst getting real-time assistance from [REDACTED]".¹⁰ It was on this basis that the [REDACTED] Defence Team requested that time limits on the Registrar's response be reduced from 15 days to 5 days pursuant to Regulation 125(5) of the Regulations, arguing that its request that the Presidency review the 9 July 2015 Email Decision meets the requirements under Regulation 35(2) of the Regulations of the Court.¹¹ The Applicant therefore requests that the Presidency consider imposing similar timelines on the Registry in the interest of the Defence [REDACTED] The Applicant notes in this regard the [REDACTED]

⁹ *Ibid.*, p. 1.

¹⁰ *Ibid.*, para. 5.

¹¹ 24 July 2015 Defence Request, paras 3-5. See also 24 July 2015 Defence Request, paras 5-6.

[REDACTED]

[REDACTED]¹²

10. Furthermore, the Applicant notes that she has been granted [REDACTED] [REDACTED] to serve on the [REDACTED] Defence Team by the [REDACTED] [REDACTED], where she currently serves as [REDACTED]. Delays serve to disrupt [REDACTED] planning for the [REDACTED]. It follows that the Applicant would also like certainty with respect to her employment situation. The Applicant therefore argues that limiting the response times is therefore in the interests of the Defence [REDACTED], as well the interest of the Applicant.

IV. Submissions

11. By this filing, the Applicant hereby complies with the 29 July 2015 Order and informs the Presidency of the following request for review of the 4 August 2015 Decision. While largely reiterating those submissions made in the 24 July 2015 Defence Request, the Applicant humbly requests review of the 4 August 2015 Decision on the basis of this filing.¹³

12. In particular, it is argued that CSS: (i) committed an error of fact in relation to the year upon which the Applicant graduated from law school; (ii) ignored or failed to attribute the appropriate weight to the Applicant's relevant experience and *specific competence* in *international law and procedure* prior to 2011; (iii) failed to give appropriate weight to the Applicant's experience and *specific competence* in international criminal law since [REDACTED] 2011; (iv) failed to give appropriate weight to, and provide a reasoned opinion as to why, the Applicant's "impressive" profile

¹² [REDACTED]

¹³ The Applicant notes that the reasons provided by CSS necessitate submissions which were not outlined in the 24 July 2015 Defence Request which was submitted prior to the 4 August 2015.

which includes other relevant experience in *international law* does not demonstrate specific competency in international law; and (v) ignored or failed to give appropriate weight to the information provided to CSS in the Updated CV.¹⁴ Each of these submissions will be addressed in turn.

13. Regulation 124 of the Regulations of the Registry requires the following for admittance to the List of Assistants: (i) five (5) years of relevant experience in criminal proceedings; or (ii) specific competence in international or criminal law and procedure. It is submitted that CSS erroneously found that the Applicant does not have the specific competence in international or criminal law and procedure.¹⁵ On the contrary, the Application demonstrates that the Applicant has specific competence in international and criminal law and procedure since graduating from law school in [REDACTED] in 2007.¹⁶ The Applicant contends that CSS not only committed factual errors but failed to adequately provide reasons for determining that she lacks specific competence, save for generally referring to its consideration of her “professional training, academic background, and employment history” which it stated was “impressive”.¹⁷

14. First, the 4 August 2015 Decision erroneously states: “We equally note that *you graduated from law school in 2011*”.¹⁸ It is submitted that CSS ignores that the Applicant graduated from the University of [REDACTED] Law School in [REDACTED] 2007.¹⁹ The Applicant obtained an *additional degree* in Public International Law from the [REDACTED] University

¹⁴ See Annex C, 4 August 2015 Decision, p. 1.

¹⁵ The Applicant has never alleged to have 5 years of experience in criminal proceedings and was acutely aware of that fact when making the original Application to CSS. The Applicant further notes that the Applicant, as of the decision date being 4 August 2015, possesses experience at the [REDACTED] just days short of [REDACTED] as is asserted by CSS. Nonetheless, all parties agree that the Applicant does not have 5 years experience in *criminal law*.

¹⁶ See *contra*, Annex C, 4 August 2015 Decision, p. 1. It is further noted that the *curriculum vitae* included in the Application demonstrates that the Applicant is by no means a junior lawyer, having: (i) graduated from law school in [REDACTED] in 2007; (ii) *practiced international law*, and in particular international trade law from 2007 until the end of 2009; and (iii) been admitted to the bar [REDACTED] in 2008. The Applicant obtained a Master of Law in Public International Law in 2011 from [REDACTED] University (see Annex D, Applicant’s CV as provided in the Application).

¹⁷ Annex C, 4 August 2015 Decision, p. 1.

¹⁸ Annex C, 4 August 2015 Decision, p. 1 (emphasis added).

¹⁹ See Annexes B and D.

in 2011. A reasonable decision-maker with all of the relevant knowledge would be acutely aware that [REDACTED] are not required to hold Master of Law degrees in order to practice law since a law degree in these jurisdictions is considered a higher degree to be obtained after completion of a first undergraduate degree.²⁰ This point was clear from the facts submitted in the Application. Namely, the fact that the Applicant commenced legal practice at [REDACTED] upon graduation from [REDACTED] in 2007 and was formally admitted to practice law in [REDACTED] 2008. Owing to the fact that the Applicant had been practicing law since 2007 and had been subsequently formally admitted to the bar in 2008, it was erroneous to conclude that the Applicant only graduated from law school in 2011. This decision led CSS to unreasonably disregard the Applicant's additional degree in Public International Law which is directly relevant to the question of the Applicant's specific competence in *international law*. It is argued that this should have been considered as an additional factor supporting the Applicant's specific competency given that she obtained her Master of Laws after already being licensed to practice law and having practiced international trade law, in particular. While not annexed to the original Application, the Applicant points to the relevant facts that she graduated *cum laude* and was the recipient of prize for the best memorial in international law, the [REDACTED] award for the best Master Thesis in Public International Law, and was short-listed for the [REDACTED] Thesis Prize at [REDACTED] University.²¹

15. Second, while it is unclear as to the basis upon which CSS concluded that the Applicant lacked the specific competence in *international or criminal law and procedure*, it is argued that CSS has ignored the Applicant's experience in international law prior to 2011 in light of its erroneous conclusion that the Applicant graduated law

²⁰ The Applicant notes that she completed her undergraduate degree in [REDACTED] prior to commencing law school in 2004 as was stated in the Application.

²¹ See Annex E (transcripts and correspondence concerning the Applicant's academic performance at [REDACTED] University).

school in 2011.²² In particular, the Application expressly stated the Applicant's experience working on matters pertaining to international trade law and managing a potential and complex dispute before the [REDACTED].²³ It follows that this requires one to engage in the practice of international trade law (e.g. conduct complex legal research, draft various documents, collect and review evidence, provide legal advice, and advocate for the client). The Applicant respectfully notes that international trade law constitutes international law. The preparation for a dispute before the [REDACTED], as noted in the Application, therefore provided the Applicant with experience which amounts to specific competence in international law and procedure from [REDACTED] 2007 through [REDACTED] 2009 (i.e. 2.5 years). It was unreasonable for CSS to ignore this factor. In this regard, the Applicant also draws the Presidency's attention to the fact that she authored and published a book in the field of international [REDACTED] law in 2011 as stated in her *curriculum vitae*.²⁴ There is no indication that this factor, which further demonstrates specific competence in international law, was considered by CSS.

16. Third, the Applicant submits that CSS erred when finding that the Applicant's experience at the [REDACTED], coupled with other experience in *international criminal law*, does not amount to specific competence. It is argued that the Applicant has demonstrated expert knowledge and specific competence relevant to the role of Legal Assistant through her experience in international criminal law. In particular, the Applicant has worked in the [REDACTED] since [REDACTED] 2011 and has been entrusted with, *inter alia*, conducting complex research, providing legal advice, drafting [REDACTED], and analysing evidence, law and fact. It is noted in this regard that the Applicant has "exceed[ed] expectations" in her most

²² See *supra*, para. 14.

²³ See Annex D, p. 1, referring to the Applicant's employment at [REDACTED]. It is to be noted that [REDACTED] is now called [REDACTED].

²⁴ See Annex B, p. 3 and Annex D, p. 2, referring to [REDACTED].

recent performance appraisal as [REDACTED]²⁵ in [REDACTED] is “considered to be one of the more senior drafters” by [REDACTED] [REDACTED] and has been tasked with reviewing the work of more junior [REDACTED]²⁶ It is unreasonable to conclude that the Applicant “exceeds expectations” at the [REDACTED] and possesses the specific competence to, *inter alia*, provide advice [REDACTED] and supervise other lawyers in the [REDACTED] but doesn’t possess the specific competence to assist Counsel.²⁷

17. The Applicant submits that her experience in *international criminal law* since 2011 and performance demonstrates that she is a trusted expert and has specific competence in, *inter alia*, complex legal analysis, reviewing evidence, drafting, and providing advice in matters concerning international criminal law²⁸ – skills which are equally applicable to assisting Counsel at the ICC. In addition, the Applicant notes her role as [REDACTED] and appointment by the [REDACTED] as the [REDACTED]²⁹ which is argued to further demonstrate that the Applicant is a trusted member of the international criminal law community. It is submitted that the Applicant’s experience would allow her to readily and effectively assist Counsel in The Hague by, and not limited to, drafting, reviewing, conducting research, supervising the case managers on the [REDACTED] Defence Team, visit [REDACTED] and assist Counsel [REDACTED].

18. Moreover, CSS also ignored in the Application that the Applicant is certified to the Sexual and Gender Based Violence investigation roster by Justice Rapid

²⁵ Annex B, p. 12 (2014-2015 performance evaluation from the [REDACTED] where the Applicant received the rating of “exceeds expectations” as [REDACTED]. The Applicant notes that her performance appraisal was sent to CSS on 16 July 2015 (*i.e.* prior to the date of making the 4 August 2015 Decision).

²⁶ The Applicant notes that the letter of reference from [REDACTED] of the [REDACTED] was not included in the initial application. Since the letter directly speaks to the specific competence of the Applicant, it is kindly requested that this letter is taken into consideration (See Annex F).

²⁷ See Annex B (Applicant’s performance evaluation).

²⁸ The Applicant notes that CSS was provided with a copy of the Applicant’s performance evaluation which outlines her specific duties and competencies which are also directly relevant to her admission to the List of Assistants (see Annex B).

²⁹ See Annex G.

Response ("JRR") in partnership with UN Women.³⁰ A reasonable decision-maker would be aware of JRR as they are listed on the List of Actors working in the field of Complementarity³¹ and would therefore know that the Applicant was placed on the roster following a highly-competitive recruitment process and *training* of experts which demonstrates her expertise and therefore competence in international criminal law, and sexual and gender-based crimes as international crimes. As a certified expert on the JRR roster, a reasonable decision-maker would also know that the Applicant is specifically trained in interviewing techniques in relation to international crimes and is therefore specifically competent to aid Counsel in the investigation of the case against [REDACTED].³²

19. A reasonable decision-maker would also have regard to the Applicant's experience as an "expert lecturer" on the topic of international criminal law and procedure before international courts and tribunals at [REDACTED] University's LL.M. [REDACTED].³³

20. CSS's failure to recognise the Applicant's specific and unique experience before [REDACTED] and in international law *is akin* to CSS rejecting a trusted member of [REDACTED] staff at the ICC with experience in international criminal law at the Court since [REDACTED] 2011. The Applicant understands that there is a "possibility of reintroducing" her candidacy once she has "fulfil[led] the conditions" pursuant to regulation 125(4).³⁴ However, since the Applicant will continue to work at the [REDACTED] in the *same* unique and highly relevant role should she not assume the role of Legal Assistant, she would therefore not gain any

³⁰ See Annex D, p. 2. See also Annex B, p. 3

³¹ See e.g. http://www.icc-cpi.int/en_menus/asp/complementarity/List-of-Actors/Lists/Actorslist/DispForm.aspx?ID=3

³² See 24 July 2015 Defence Request, para. 5, where the Defence asserts that it "requires someone in The Hague to regularly visit [REDACTED]".

³³ See Annex D, p. 2. See also Annex B, p. 3. See the Applicant's profile posted on [REDACTED] website: [REDACTED]

³⁴ 4 August 2015 Decision, Annex C, p. 2. See also Annex H (Applicant's confirmation of certification to the JRR roster).

additional experience for CSS to consider as additionally relevant to the determination of her *specific competence*. CSS, in its 4 August 2015 Decision, therefore suggests that the Applicant will *only* be eligible for admission to the List of Assistants on [REDACTED] on the basis of the meeting the five year threshold in criminal law (*i.e.* 5 years after commencing at the [REDACTED]). In other words, the Applicant will be eligible to serve as a Legal Assistant to Counsel as of this date but will still not possess the specific competence, according to this reasoning, thereby reducing the test pursuant to regulation 125(4) of the Regulations to one which only has regard to the five-year requirement in the first prong.³⁵ This result is unreasonable in light of the Applicant's experience at the [REDACTED] and lecturing at universities on the topic of international criminal law.

21. Fourth, although the Applicant possesses specific competence and therefore meets the criteria for admittance based on the above, other relevant factors in relation to the Applicant's specific competence were either ignored or unreasonably considered by CSS. Although CSS noted the Applicant's profile as "impressive", it failed to articulate why such "impressive" experience in *international law* did not amount to specific competence. The Applicant draws the Presidency's attention to the *curriculum vitae* which was included the Application, and demonstrates that: (i) has specific knowledge of, and experience working in, [REDACTED] which is relevant in the context of defending persons suspected of (or charged with) crimes before the ICC which are alleged to have occurred in this regional context, noting that the Applicant worked on cases before the [REDACTED] [REDACTED] and has field and human rights advocacy experience in rural [REDACTED] as co-founder of a non-profit organization; (ii) is an experienced human rights educator and advocate, working, *inter alia*, as a Human Rights Consultant at the [REDACTED] [REDACTED] [REDACTED] at [REDACTED] Law and has lectured in a number of universities; and (iii) advised the former Prime Minister of [REDACTED] in relation to

³⁵ The Applicant recalls that her *additional* prior experience in international law as noted above which was to be taken into account as well (see *supra*, para. 14).

alleged violations of his human rights. The Applicant notes that Counsel for the Defence explicitly drew CSS's attention to these factors, among others, in its email of 9 July 2015.³⁶ It is argued that these factors also demonstrate the Applicant's specific competence in international law.

22. Moreover, CSS was also aware that the Applicant provided contact details for those who could speak to her specific competences and character. Two of the three references included can directly speak to the Applicant's competence in international criminal law; namely: (i) [REDACTED], programme director of [REDACTED] where the Applicant teaches international criminal law as part of an expert lecturer series; and (ii) [REDACTED] of the [REDACTED].³⁷ It is unclear whether references were contacted by CSS. It is submitted that a reasonable decision-maker would have had regard to all of the factors provided in the Application and would contact references who can speak to the *specific competence* of a particular candidate.

23. Finally, as noted above, an Updated CV was provided to CSS on 16 July 2015 (*i.e.* prior to being notified of the 4 August 2015 Decision) to reflect developments which occurred subsequent to making the Original Application. In particular, the Applicant informed CSS that she had: (i) been appointed to the role of lecturer at the University of [REDACTED] to teach, *inter alia*, human rights at the Faculty of Law on [REDACTED] and (ii) commenced working in collaboration with [REDACTED] [REDACTED] through her work with the [REDACTED].³⁸ The Applicant's role in advising on matters relating to current and former child soldiers demonstrates that the Applicant is suited to serve as an Assistant to Counsel and on the [REDACTED] Defence Team, in particular. There is no indication that CSS reviewed this additional information. Nonetheless, the Applicant submits that she possessed the specific competence notwithstanding these additional considerations.

³⁶ See Annex A, p. 4.

³⁷ See Annexes B, C.

³⁸ See Annex B, pp 1-2.

24. Based on the foregoing, it is submitted that the Applicant has specific competence in *both* international and criminal law, while regulation 125(4) of the Regulations only requires one or the other. Based on the information provided to CSS, it is clear that the Applicant is a highly competent and experienced international lawyer with exemplary commitment, skill, and passion for international law and peace and justice. It is clear that the Applicant has the experience, knowledge, and ability to provide a proper defence on behalf of [REDACTED]. The Applicant submits that it was unreasonable for CSS to conclude that the Applicant lacks the specific competence required to serve as a Legal Assistant. CSS's failure to explain its position and failure to give weight to the foregoing factors is unreasonable and amounts to an error.

V. RELIEF SOUGHT

Based on the foregoing, it is requested that the Presidency overturn the 4 August 2015 Decision, declare the Applicant to have specific competence, and order that CSS admit the Applicant to the List of Assistants.

Respectfully submitted,

[REDACTED]

Dated this 6th day of August 2015

At [REDACTED]