

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/05-01/13
Date: 20 January 2016

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Single Judge

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 the Mangenda Defence Request for Extension of Time Limit for
Disclosure of Potential Expert Report**

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

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) 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 Regulation 35 of the Regulations of the Court ('Regulations'), issues the following 'Decision on the Mangenda Defence Request for Extension of Time Limit for Disclosure of Potential Expert Report'.

I. Procedural History and Submissions

1. On 3 November 2015, the Single Judge issued directions on the defence presentation of evidence, *inter alia*, setting 7 January 2016 as the date by which each defence team must provide its final list of witnesses, summaries of the anticipated testimony and list of evidence.¹ Subsequently, this date was postponed to 21 January 2016.²
2. On 8 January 2016, the defence for Mr Mangenda ('Mangenda Defence') filed a motion requesting an extension until 3 February 2016 to disclose an expert report and designate the expert as a witness ('Request').³
3. On 12 January 2016, the defence for Mr Babala filed its response, indicating that it does not oppose the Request.⁴
4. On 13 January 2016, the Office of the Prosecutor ('Prosecution') filed its response, deferring to the Chamber's discretion, but submitting that an

¹ Directions on Defence Presentation of Evidence, ICC-01/05-01/13-1450.

² Further Directions on the Conduct of the Proceedings in 2016, 9 December 2015, ICC-01/05-01/13-1518.

³ Request for Variation of Time Limit for Disclosure of Potential Expert Report, ICC-01/05-01/13-1540.

⁴ Réponse de l'équipe de Défense de M. Fidèle BABALA WANDU à la « *Request for Variation of Time Limit for Disclosure of Potential Expert Report* » (ICC-01/05-01/13-1540), ICC-01/05-01/13-1543.

extension is not warranted since the report is *prima facie* inadmissible ('Response').⁵

5. On the same day, the Registry filed its observations, providing information on the administrative processes related to expert witnesses.⁶
6. On the same day, the Mangenda Defence filed a request for leave to reply to the Response ('Request for Leave to Reply').⁷
7. The Mangenda Defence explains that the appointment of the expert to provide testimony about the legality and propriety of the manner in which financial records were obtained in this case was sought in late December 2015, after consultations with the Registry regarding the remuneration rate provided to expert witnesses.⁸ These consultations regarding the remuneration are not yet complete, but the Defence anticipates that the expert can complete his report within two to three weeks.⁹
8. Further, the Mangenda Defence submits that the Prosecution will not suffer any prejudice by the belated disclosure, due to the relative short extension of time that is requested, the fact that the Prosecution already knows the general terms and scope of the expert report and the fact that the expert is not expected to be one of the first witnesses to testify in the defence case.¹⁰
9. The Prosecution submits that the anticipated report is *prima facie* inadmissible since it goes to legal issues and thus, in the view of the Prosecution, usurps the

⁵ Prosecution's Response to the Mangenda Defence's Request for Variation of Time Limit for Disclosure of Potential Expert Report, ICC-01/05-01/13-1544, paras 1, 4 and 5.

⁶ Registry's Observations on the "Request for Variation of Time Limit for Disclosure of Potential Expert Report" ICC-01/05-01/13-1540, ICC-01/05-01/11-1546.

⁷ Request for Leave to Reply to Prosecution's Response to Mangenda Defence's Request for Variation of Time Limit for Disclosure of Potential Expert Report (ICC-01/05-01/13-1544), ICC-01/05-01/08-1545.

⁸ Request, ICC-01/05-01/13-1540, para. 5.

⁹ Request, ICC-01/05-01/13-1540, para. 1.

¹⁰ Request, ICC-01/05-01/13-1540, para. 6.

functions of the Chamber.¹¹ Further, it states that the report ‘appears to contravene article 69(8) of the Rome Statute’ by addressing the legality of the application of national law.¹² Additionally, it requests that, should the Request be granted, the identity of the prospective expert witness should be disclosed.¹³

II. Analysis

10. As a preliminary matter, the Single Judge notes that in the Request the Mangenda Defence specifically requests that the request for extension of time encompass also the designation of the prospective expert.¹⁴ Contrary to the arguments of the Mangenda Defence brought forward in its Request for Leave to Reply, the Single Judge is of the view that it was reasonably foreseeable that the Prosecution would request the disclosure of the identity of the proposed expert in the event that the Request were granted, and does not accept that this is a novel issue warranting to be replied to. Further, the Single Judge requires no additional information to rule on the Request. Accordingly, the Request for Leave to Reply is rejected.
11. Turning to the merits of the Request, the Single Judge holds that any argument on the admissibility of evidence is premature. He considers discussions about the content somewhat speculative since he is not in possession of the report, or any summary of anticipated testimony, and therefore, at this point in time, cannot make any further assessments.
12. The Single Judge notes that the Mangenda Defence started the process of identifying a suitable expert in early December 2015 and seems to have acted expeditiously and diligently in its attempts to designate the expert witness it intends to call. Further, given the limited time for which an extension is sought

¹¹ Response, ICC-01/05-01/13-1544, para. 4.

¹² Response, ICC-01/05-01/13-1544, para. 5.

¹³ Response, ICC-01/05-01/13-1544, para. 7.

¹⁴ Request, ICC-01/05-01/13-1540, para. 7.

and that the subject matter of the anticipated report is known to the Prosecution, the prejudice to the Prosecution (and other defence teams) is minimal. Accordingly, the Single Judge finds that good cause is shown. Since the anticipated testimony of the expert witness is dependent on the expert report the Single Judge also extends the deadline to provide the summary of the anticipated testimony until 3 February 2016.

13. To minimise any prejudice caused by the delayed disclosure of the report, the Single Judge instructs the Mangenda Defence to identify this potential expert witness by name on its final witness list due on 21 January 2016. There is no prejudice to the Mangenda Defence in doing so: should it decide after analysing the expert report that it wishes not to call this person, it can still withdraw him.
14. The Single Judge stresses that granting the Request at this point in time is irrespective of any subsequent decision on the admissibility of the anticipated report or the decision to hear the proposed witness as an expert.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request for Leave to Reply;

PARTIALLY GRANTS the Request, extending the deadline to file the anticipated expert report and the summary of the anticipated testimony of the expert witness until 3 February 2016; and

REJECTS the remainder of the Request.

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

A handwritten signature in black ink, appearing to be 'BS', is written over a horizontal line.

Judge Bertram Schmitt, Single Judge

Dated 20 January 2016

At The Hague, The Netherlands