

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 3 May 2016

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

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 Document

**Prosecution's Request for Variation of Page Limits Concerning Annexes to its
Closing Submission**

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. The Office of the Prosecutor (“Prosecution”) requests, pursuant to regulation 37(2) of the Regulations of the Court, a page limit extension of 70 pages to append two explanatory/analytical annexes to its final closing submission concerning discrete evidentiary issues (“Substantive Annexes”), specifically, the attribution of telephone numbers and the Detention Centre recordings (“Request”).¹ These Substantive Annexes will assist the Chamber in culling together and identifying the various sources of evidence in the record on which the Prosecution relies, as was done with the Prosecution’s Pre-Trial Brief. The Request is justified in the circumstances. Granting the requested extension will allow the Prosecution to fulfil Trial Chamber VII’s (“Chamber”) “Further Directions on the Conduct of the Proceedings in 2016” (“Decision 1518”),² ensuring a comprehensive and clear final submission addressing the salient trial evidence clearly and concisely.

2. In addition, the Prosecution requests clarification of Decision 1518. In that decision, the Chamber instructed the Parties that “[t]here is no need to recapitulate the argumentation advanced in trial, as the parties’ discussions are on the record.”³ It is the Prosecution’s understanding that the Chamber is disposed to consider the Prosecution’s arguments advanced during the pre-trial stage, in its Pre-Trial Brief and its annexes, and in its bar table motions, filed before the start of trial. Accordingly, it has structured its final submission so as to refer to and/or incorporate by reference these arguments and filings, rather than to reproduce them anew.

3. However, if the Prosecution’s understanding of Decision 1518 is not consistent with the Chamber’s intentions, the Prosecution would require 60 pages additional to

¹ The Prosecution notes that, concomitant to this Request, it has filed a separate application under regulation 37(2) on another matter, namely to extend the time for closing arguments. See ICC-01/05-01/13-1864.

² ICC-01/05-01/13-1518, paras. 20-23.

³ ICC-01/05-01/13-1518, para. 18.

the 70 pages requested above, to append an updated version of the analysis of codes and terms used by the Accused (“Codes Annex”) appended to its Pre-Trial Brief.⁴

II. Submissions

A. The two proposed annexes to the Prosecution’s closing submission are necessary for the full and fair exposition of trial evidence

4. In its “Decision on Prosecution’s Motion for Reconsideration of the Closing Submissions Directions”,⁵ the Chamber granted the Prosecution a page limit of 150 pages for its closing submission.⁶ However, the Chamber did not prescribe a page limit in respect of substantive annexes, in part because this was not the subject of the Prosecution’s requested relief in its reconsideration motion.⁷

5. The Prosecution requires the Substantive Annexes to address the trial evidence. As noted, the first annex is an updated telephone attribution table.⁸ Although the original document has been accepted as “formally submitted”, an update is necessary to: (i) include references to the evidence the Chamber has recognised as formally submitted and to remove references to materials not so recognised; and (ii) address evidence elicited at trial unavailable when the attribution chart was prepared, including witnesses’ testimonies, evidence submitted by the Defence, and the recent Independent Counsel disclosures. An updated attribution table is important as it explains how and why key telephone numbers identified in the call data records and

⁴ ICC-01/05-01/13-1110-Conf-AnxA.

⁵ ICC-01/05-01/13-1552.

⁶ ICC-01/05-01/13-1552, p. 6.

⁷ The Prosecution did not request any page limits in its Motion for Reconsideration as its requested relief was that the Chamber vacate the page limits pending further clarity on the full scope of the trial evidence. See ICC-01/05-01/13-1531, para. 16. This is also why the Prosecution has waited until now, with the closing of the evidence, to make this Request.

⁸ Update of CAR-OTP-0090-0831.

other telecommunications evidence are attributed to each Accused or other relevant participants.

6. The second annex comprises an analysis on the synchronisation of Detention Centre calls. It describes the technical issues affecting the Detention Unit calls in relation to the relevant portions of each recording and explains how given synchronisation issues may be surmounted.⁹ The annex is important to assist the Chamber's full understanding of these technical issues and their resolution. The annex supplements the Prosecution's arguments contained in its second¹⁰ and fourth¹¹ bar table motions explaining the reliability of the recordings on the points for which they are offered.

7. Considering that this case is document-intensive, requiring detailed explanations of how the material interrelates in respect of the charged offences and the individual responsibilities of each Accused, appending the Substantive Annexes to the Prosecution's closing submission is necessary and appropriate. Presenting the evidence in a comprehensive manner through discrete focused annexes, rather than in lengthy sections or footnotes in the main text of the closing submissions, will enhance the understanding of the contested issues in the case as well as its readability and clarity.

8. Granting the requested extension will not unfairly prejudice the Defence. First, an accurate and concise presentation of the Prosecution's closing submission addressing the trial would benefit the Chamber. Second, since the Substantive Annexes pull together information contained in prior filings and submissions, as well

⁹ As the Prosecution has previously noted, the synchronisation issues do not affect the conversations in equal measure and do not necessarily render them unintelligible. Furthermore, resolving these issues is not to find that a conversation is reliable to support the issue it is being proffered for, for example, in relation to an allegation that a money transfer has been made or that one of the speaker mentioned having spoken to a witness in the Main Case.

¹⁰ ICC-01/05-01/13-1113-Conf-AnxA.

¹¹ ICC-01/05-01/13-1310-Conf-AnxA.

as the evidence before the Chamber,¹² it more efficiently directs the Chamber to the salient issues and evidence under consideration.

B. Clarification is needed as to whether the Chamber will consider pre-trial submissions

9. The Chamber has consistently instructed the Parties on the limited scope and purpose of closing submissions,¹³ with which the Prosecution has endeavoured to comply. The Prosecution also understands the Chamber's instruction that Parties not "recapitulate the argumentation advanced in trial",¹⁴ to encompass its Pre-Trial Brief and Codes Annex,¹⁵ and arguments as to the relevance, authenticity, and reliability of the evidence submitted in its pre-trial bar table motions.

10. The Prosecution requests the Chamber's guidance, as concerns the Prosecution's understanding of Decision 1518. Indeed, this would enable the Parties to know the scope of the arguments currently being considered by the Chamber and thus better focus their closing submissions, avoiding repetition and inefficiency.

11. If the Chamber concludes that the Prosecution's pre-trial arguments described above will not be considered for the Judgement, then the Prosecution requests 60 pages in addition to the 70 pages requested above to file an updated Code Annex.¹⁶ The updates will contain limited arguments regarding certain codes as well as several codes reflected both in the trial evidence and in Prosecution submissions.

¹² CAR-OTP-0090-0831; ICC-01/05-01/13-1110-Conf-AnxA.

¹³ ICC-01/05-01/13-1518, para. 21; ICC-01/05-01/13-1552, para. 10; ICC-01/05-01/13-1812, para. 9.

¹⁴ ICC-01/05-01/13-1518, para. 21.

¹⁵ ICC-01/05-01/13-1110-Conf-AnxA.

¹⁶ Update of ICC-01/05-01/13-1110-Conf-AnxA.

III. Relief Requested

12. For the foregoing reasons, the Prosecution requests that the Chamber: (i) grant a page limit extension of 70 pages to append the Substantive Annexes to its closing submission; and (ii) clarify the scope of the submissions the Chamber will consider for its Judgement.

13. If the Chamber determines that it will not consider arguments advanced in the pre-trial stage, the Prosecution requests 130 pages to append three substantive annexes to its closing submissions, comprising the Substantive Annexes and an updated version of its Codes Annex.



Fatou Bensouda, Prosecutor

Dated this 3rd Day of May 2016
At The Hague, The Netherlands