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

Date: 15/09/2015

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, AIMÉ KILOLO MUSAMBA, JEAN-JACQUES
MANGENDA KABONGO, FIDÈLE BABALA WANDU AND NARCISSE ARIDO*

Public with Public Redacted Annexes A and B

**Joint Defence Request for Leave to Reply to the ‘Prosecution’s Response to “Joint
Defence Request pursuant to Regulation 35 of the Regulations of the Court to
defer notification concerning expert witnesses”’**

Source: Counsel for Jean-Pierre Bemba Gombo
Counsel for Aimé Kilolo Musamba
Counsel for Fidèle Babala Wandu
Counsel for Narcisse Arido

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

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REGISTRY

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Defence Support Section

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Detention Section

Victims Participation and Reparations Section Other

Introduction

1. The Defence for Mr. Jean-Pierre Bemba respectfully requests the leave of the Trial Chamber to file a reply in relation to the 'Prosecution's Response to "Joint Defence Request pursuant to Regulation 35 of the Regulations of the Court to defer notification concerning expert witnesses"(ICC-01/05-01/13-1235)'.¹

2. In particular, there is good cause to address the Prosecution's assertion that no prejudice was occasioned by the format of the version of the report of Mr. Pluijmers disclosed to the Defence.

3. Having received a format that enables the Defence to identify the specific references (as opposed to guessing which open source materials correspond to the footnotes),² the Defence has discovered that critical source material is only available in Dutch.

4. The Defence immediately requested the Prosecution to disclose a translation of these materials so that the Defence can properly explore the foundation for Mr. Pluijmer's conclusions.³ This is consistent with right of the Defence to examine and test any sources relied upon by an expert witness.⁴

¹ ICC-01/05-01/13-1242.

² For example, the top search result of "WODC: Het gebruik van de telefoon - en internettap in de opsporing" leads to the webpage in the domain of WODC: <https://www.wodc.nl/onderzoeksdatabase/effectiviteit-van-tappen.aspx?cp=44&cs=6796#project-informative>.

The second search result of the same keywords is a PDF file, which is also the linked file on the aforementioned page: https://www.wodc.nl/images/ob304-volledige-tekst_tcm44-453677.pdf. Neither of these documents are the correct result. If the Defence had attempted to rely on internet searches alone, it would have based its analysis on irrelevant/erroneous information.

³ Annex A.

⁴ "There must be sufficient information as to the sources used in support of the statements. The sources must be clearly indicated and accessible in order to allow the other party or the Trial Chamber to test or challenge the basis on which the expert witness reached his or her conclusions. In the absence of clear references or accessible sources, the Trial Chamber will not treat such a statement or report as an expert opinion, but as the personal opinion of the witness, and weigh the evidence accordingly". Prosecutor v. Dragomir Milosevic, Decision on Admission of Expert Report of Robert Donia, 15 February 2007, at para 8. See also Prosecutor v. Ojdanic, Order on Procedure and

5. The Prosecution responded on 15 September 2015 that it was not in possession of these documents in a working language of the Court, and that it was incumbent on the Defence to seek translations from the Registry.⁵

6. The Defence has submitted such a request, but has not yet received a response as concerns the capacity of the Registry to conduct these translations or the time required to do so.

7. Given that one of the documents is 200 pages, the Trial Chamber's adjudication of the Defence request would benefit from the submission of specific information on these matters, including the predicted translation date supplied by the Registry.

Relief sought

8. For the reasons set out above, the Defence for Mr. Bemba requests the Trial Chamber to grant it leave to reply to the "Prosecution's Response to "Joint Defence Request pursuant to Regulation 35 of the Regulations of the Court to defer notification concerning expert witnesses" (ICC-01/05-01/13-1235)', in order to update the Trial Chamber in relation to the matters raised herein.



Melinda Taylor

Evidence, 11 July 2006, para. 7, "Expert reports should, however, be fully referenced in order to facilitate the Chamber's determination of their probative value and, ultimately, the weight to be ascribed to them." See also ICC-01/09-01/11-844, para. 27, concerning the relevance of a witness's sources to the weight of the expert's testimony.

⁵ Annex B.

Counsel of Mr. Jean-Pierre Bemba

A handwritten signature in black ink, consisting of a series of diagonal strokes and a small dot at the end.

Paul Djunga

Lead Counsel of Mr. Aimé Kilolo

A handwritten signature in blue ink, featuring a large, sweeping loop on the left and a more complex, cursive script on the right.

Jean-Pierre Kilenda Kakengi Basila

Lead Counsel of Mr. Fidèle Babala

A handwritten signature in black ink, with a large, bold 'C' at the beginning and a long, sweeping tail.

Charles Achaleke Taku

Lead Counsel of Mr. Narcisse Arido

Dated this 15th day of September, 2015

The Hague, The Netherlands