

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **10 May 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 Prosecution Requests for Extensions Related to Closing Submissions
and Closing Statements**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

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Ms Melinda Taylor

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Counsel for Jean-Jacques Mangenda Kabongo

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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

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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 Regulations 35(2), 36(2)(b) and 37 of the Regulations of the Court, issues the following 'Decision on Prosecution Requests for Extensions Related to Closing Submissions and Closing Statements'.

I. Procedural Background

1. On 9 December 2015, the Single Judge gave, *inter alia*, certain directions on closing submissions and statements.¹ The Single Judge required that closing submissions in this case would be a maximum of 100 pages long. The parties were also informed that: (i) any closing submissions must be filed three weeks after the closing of the evidence and (ii) any closing statements must be presented four weeks after the closing of the evidence. It was subsequently clarified that, in the event of any convictions in this case, the parties would be given a further opportunity to make submissions on sentencing considerations and were not required to use their closing submissions pages for this purpose.²
2. On 15 January 2016, the Single Judge partially granted a request from the Office of the Prosecutor ('Prosecution') for additional pages. The Single Judge allowed the Prosecution to make a 150 page closing submission, permitting the extension on grounds that the Prosecution's submissions are intended to reflect the individual criminal responsibility of all five accused.³

¹ Further Directions on the Conduct of the Proceedings in 2016, ICC-01/05-01/13-1518.

² Email from Trial Chamber VII Communications to the parties, 6 May 2016 at 17:21.

³ Decision on Prosecution's Motion for Reconsideration of the Closing Submissions Directions, ICC-01/05-01/13-1552.

3. On 29 April 2016, the Presiding Judge closed the submission of evidence in the case.⁴ By the terms of the previously indicated timeline, this meant that closing submissions fell due on 24 May 2016 and closing statements would commence on 31 May 2016.
4. On 3 May 2016, the Prosecution requested that the Chamber extend the date for closing statements by at least one week ('Extension of Time Request').⁵
5. That same day, the Prosecution also requested an extension of 70 pages to append two substantive annexes to its closing submission ('Extension of Pages Request').⁶ The Prosecution also requests clarification as to how pre-trial submissions will be considered, indicating that, if the Chamber is not considering such submissions for its judgment, it would require a further page extension to update the analysis in its pre-trial brief annex.
6. On 6 May 2016,⁷ the defence teams for Mr Kilolo,⁸ Mr Mangenda⁹ and Mr Arido¹⁰ responded to the Extension of Time Request. None of these defence teams oppose this request, though the Mangenda Defence challenges the Prosecution's argumentation used in justifying it.
7. That same day,¹¹ the defence teams for Mr Bemba,¹² Mr Kilolo,¹³ Mr Mangenda¹⁴ and Mr Arido responded to the Extension of Pages Request.¹⁵ The Kilolo

⁴ Decision Closing the Submission of Evidence and Further Directions, ICC-01/05-01/13-1859.

⁵ Prosecution's Request for Variation of Time for Closing Statements, ICC-01/05-01/13-1864.

⁶ Prosecution's Request for Variation of Page Limits Concerning Annexes to its Closing Submission, 3 May 2016, ICC-01/05-01/13-1865.

⁷ The response deadline was shortened to this date. Email from Trial Chamber VII Communications to the parties, 3 May 2016 at 17:38.

⁸ Kilolo Defence's Consolidated Response to Prosecution's Requests for Variation of Trial Chamber's Orders (ICC-01/05-01/13-1864 and ICC-01/05-01/13-1865), ICC-01/05-01/13-1870.

⁹ Response to Prosecution's Request for Variation of Time for Closing Statements, ICC-01/05-01/13-1880.

¹⁰ Narcisse Arido's Response to the Prosecution's "Prosecution's Request for Variation of Time for Closing Statements" (ICC-01/05-01/13-1864) and "Prosecution's Request for Variation of Page Limits Concerning Annexes to its Closing Submission" (ICC-01/05-01/13-1865), ICC-01/05-01/13-1875.

¹¹ The response deadline was shortened to this date. Email from Trial Chamber VII Communications to the parties, 4 May 2016 at 11:09.

¹² Defence Response to "Prosecution request for a variation of page limits concerning annexes to its Closing Submissions" (ICC-01/05-01/13-1865), ICC-01/05-01/13-1877.

Defence takes no position on this request, while the other defence teams all oppose it.¹⁶

II. Analysis

A. Extension of Time Request

8. The Prosecution justifies its relief sought in reference to the length and complexity of the Defence's closing briefs, referencing the possibility of having to read 500 pages of defence arguments in five days prior to the closing statements. The Prosecution submits that these time constraints make it 'exceedingly difficult for the Prosecution to address [the defence closing submissions] adequately' and, given its burden of proof, a proposed extension 'would enhance the fairness of the proceedings'.¹⁷
9. The Single Judge recalls that the Prosecution previously requested an extension of time to file its closing submissions, and it was rejected without prejudice to a substantiated request being raised at a later time.¹⁸
10. The Prosecution has likewise failed to sufficiently substantiate its request for an extension of time to present closing statements. The prospect that the Prosecution may have one week to read five 100 page long defence briefs was readily apparent from the initial timeline set out by the Single Judge in his decision of 9 December 2015. This is not a new fact justifying an extension of time – this is effectively asserting that the original timeline was unreasonable, and the Single Judge remains unpersuaded that this is the case. The Prosecution

¹³ ICC-01/05-01/13-1870 (consolidated response).

¹⁴ Response to Prosecution's Request for Variation of Page Limits Concerning Annexes to its Closing Submission, ICC-01/05-01/13-1879.

¹⁵ ICC-01/05-01/13-1875 (consolidated response).

¹⁶ The Arido Defence submission is not entirely clear on this point, but the Single Judge understands paragraph 3 of its response as constituting opposition to the Extension of Pages Request.

¹⁷ Extension of Time Request, ICC-01/05-01/13-1864, paras 2-3.

¹⁸ Decision on Prosecution's Motion for Reconsideration of the Closing Submissions Directions, 15 January 2016, ICC-01/05-01/13-1552, para. 11.

describes the defence teams' forthcoming submissions like they will be 500 pages of unexpectedly new material. In fact, the purpose of these submissions is only to 'crystallise their final positions on the charges and the evidence' which have been discussed at length throughout the entire trial.¹⁹

11. The Single Judge is also unconvinced that the Prosecution's burden of proof should justify additional time. The Prosecution has been given a myriad of opportunities in this trial to argue that it has discharged its burden of proof, including a pre-trial brief, an opening statement and submissions relating to the relevance and probative value of every individual item submitted through the 'bar table'. The Single Judge does not see how an extra week of preparation to present closing statements will make any meaningful difference in the Prosecution's opportunity to discharge its burden of proof.
12. For these reasons, the Extension of Time Request is rejected.

B. Extension of Pages Request

13. The Prosecution requests an extension of 70 pages to append two 'explanatory/analytical annexes' to its closing submission. The first annex is an 'updated telephone attribution table', with reference to evidence recognised as formally submitted ('Attributions Annex'). The second annex describes the technical issues affecting the calls received from the Detention Unit and explains how given synchronisation issues may be surmounted ('Detention Calls Annex'). The Prosecution submits that these annexes will assist the Chamber in 'culling together and identifying the various sources of evidence in the record on which the Prosecution relies'.²⁰

¹⁹ ICC-01/05-01/13-1518, para. 21.

²⁰ Extension of Pages Request, ICC-01/05-01/13-1865, paras 1, 4-8.

14. The defence teams variously argue that this request to file substantive annexes is nothing more than an attempt to get additional pages to file closing submissions and is, as such, an unjustified request to reconsider the Single Judge's previous decision on the page limit allotted to the Prosecution.²¹
15. The Single Judge notes that Regulation 36(2)(b) of the Regulations provides that appendices are not counted when calculating page limits only when they include 'non-argumentative material' and no 'submissions'. By asking to append two annexes clearly substantive in character, the Prosecution's request indeed amounts to a 70 page extension request. However, and contrary to what is suggested in the defence submissions, the Prosecution does not hide the fact that its request is one for additional pages. Paragraph 1 of the Extension of Pages Request clearly requests relief pursuant to Regulation 37(2) of the Regulations,²² which is the provision governing page limit extensions. The Single Judge is satisfied that the Prosecution's request is framed on the correct legal basis.
16. This said, the Single Judge considers that the number of additional pages sought is excessive. The Prosecution already had a request for a 200 page closing submission rejected,²³ and it presents little explanation as to what has changed to justify a different ruling on this point. As regards the Detention Calls Annex, the Prosecution's submissions suggest that this annex would primarily contain analytical comments on specific pieces of evidence.²⁴ The Single Judge considers that the proposed Detention Calls Annex is too argumentative in character to justify a deviation from the Single Judge's previous ruling – the Prosecution can raise the points it intended to make in this annex in its primary submissions.

²¹ ICC-01/05-01/13-1877, para. 7; ICC-01/05-01/13-1879, para. 9.

²² Extension of Pages Request, ICC-01/05-01/13-1865, para. 1.

²³ ICC-01/05-01/13-1552, para. 8.

²⁴ See Extension of Pages Request, ICC-01/05-01/13-1865, para. 6.

17. However, the Single Judge considers that the request to add an Attributions Annex is more modest in character and may have some value in the Chamber's determination of the facts in this case. Such an annex would not appear to contain any submissions *per se*, but would merely link phone number attributions to particular pieces of evidence. The Chamber already received such a chart,²⁵ and the Single Judge considers it would be of assistance to receive updated information on this point.
18. Contrary to arguments made by the defence,²⁶ the Single Judge does not consider an updated chart in this respect to be submitting new evidence in the case. The previous chart which has been recognised as formally submitted is merely demonstrative in character – it does not prove anything on its own, but rather directs the Chamber to which evidence proves the attribution in question. The Single Judge emphasises in this regard that recognising the previous iteration of this chart as formally submitted cannot be construed as an acknowledgement that evidentiary weight should be attributed to the chart itself – in general, considerations as to the probative value of evidence in this case are deferred until the trial judgment.²⁷
19. For these reasons, the Extension of Pages Request is partially granted only with respect to the Attributions Annex.
20. As a final note, the Prosecution requests clarification as to whether the Chamber will consider its pre-trial submissions, most notably in its pre-trial brief and bar table motions.²⁸ The Single Judge explicitly informed the parties that '[t]here is no need to recapitulate the argumentation advanced in trial, as the parties'

²⁵ CAR-OTP-0090-0831.

²⁶ ICC-01/05-01/13-1875, para. 3; ICC-01/05-01/13-1877, paras 30-31.

²⁷ Decision on Prosecution Requests for Admission of Documentary Evidence (ICC-01/05-01/13-1013-Red, ICC-01/05-01/13-1113-Red, ICC-01/05-01/13-1170-Conf), 24 September 2015, ICC-01/05-01/13-1285, para. 9.

²⁸ Extension of Pages Request, ICC-01/05-01/13-1865, paras 9-11.

discussions are on record'.²⁹ This direction makes it clear that all evidentiary submissions made during the trial phase, unless ruled upon in the course of trial, are available for consideration in the judgment.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Extension of Time Request;

PARTIALLY GRANTS the Extension of Pages Request in accordance with paragraph 19 above and

REJECTS the remainder of the Extension of Pages Request.

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


Judge Bertram Schmitt, Single Judge

Dated 10 May 2016

At The Hague, The Netherlands

²⁹ ICC-01/05-01/13-1518, para. 21.