

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **1 September 2015**

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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

Confidential Document

**Prosecution's Response to the "Request for Leave to Reply to Prosecution
Response to Motion to Declare Inadmissible Telephone Intercepts of Mr.
Mangenda"**

Source: The Office of the Prosecutor

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

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I. Introduction

1. The Office of the Prosecutor ("Prosecution") opposes the Mangenda Defence "Request for Leave to Reply to Prosecution Response to Motion to Declare Inadmissible Telephone Intercepts of Mr. Mangenda"¹ ("Request"). The Request circumvents regulation 24(5) of the Regulations of the Court by advancing substantive arguments in reply to the pending response without first obtaining the Chamber's leave. It should thus be dismissed on this basis. Alternatively, the Request fails to justify the relief requested.

II. Confidentiality

2. This filing is classified as "Confidential", as it responds to a filing of the same designation. The Prosecution does not oppose its reclassification as "Public".

III. Submissions

3. Regulation 24(5) is neither a vehicle to introduce substantive rebuttals, nor a second chance to articulate the original submission. The Request is effectively a reply to the Prosecution's response to the Defence motion, setting out extensive counter-arguments² and attempting to revamp the original assertions.³ It fails on this basis alone, in accordance with the Appeals Chamber's jurisprudence.⁴

¹ ICC-01/05-01/13-1194-Conf.

² See e.g. ICC-01/05-01/13-1194-Conf, paras.6, 8, 11, 13, 14.

³ See e.g. ICC-01/05-01/13-1194-Conf, para.12.

⁴ See ICC-01/04-01/06-824 OA7, para.68; ICC-01/05-01/08-602 OA2, para.9. See also ICC-01/05-01/08-2985, para.5.

4. In addition, Mangenda has appropriated the Prosecution's Second Bar Table Motion to expand on the issues that are the subject-matter of his contemplated reply.⁵ As such, further submissions on the matter are neither necessary, nor helpful to the Chamber's proper determination of the Defence motion.

5. Mangenda's Request, as well as his original submission, rests on the erroneous assumption that the Single Judge's decision⁶ constituted an "order" for the interception of Mangenda's telephone communications.⁷ It did not. Rather, the Single Judge authorised the Prosecution to *request* this particular investigative action of the appropriate national authorities.⁸ Indeed, the Single Judge had no power, nor was he requested, to order the concerned States to implement the surveillance. A State party is solely and independently competent and responsible to order such measures in its territory.⁹

6. Mangenda's Request mistakenly conflates two distinct and independent legal acts, *i.e.* the Single Judge's authorisation for the Prosecution to contact the national authorities, and the latter's subsequent authorisation to carry out the requested interception. It would thus be of no benefit to the Chamber to receive further submissions expanding on this conflation.

⁵ ICC-01/05-01/13-1200-Conf, paras.1, 8-16.

⁶ ICC-01/05-52-Red2.

⁷ See ICC-01/05-01/13-1136-Conf-Corr, para.1: "Allowing the Prosecution to rely on such misstatements to obtain an ICC Judge's approval of a warrant to engage in one of those most severe invasions of privacy, and then use it in a criminal proceeding without consequence, would be antithetical to, and damage the integrity of, proceedings" (italics added); see further ICC-01/05-01/13-1194-Conf, para.5: "The key issue raised in the present case is whether information obtained pursuant to a judicial authorisation obtained on the basis of Prosecution misrepresentations would 'be antithetical to and would seriously damage the integrity of the proceedings'" (italics added); cf. footnote 8, *infra* (quoting the text of the Single Judge's authorisation).

⁸ See ICC-01/05-52-Red2, p.7: "**AUTHORISES** the Prosecution to *seize the relevant authorities* of Belgium and of The Netherlands, *with a view to collecting* logs and recordings of telephone calls placed or received by Mr Aimé Kilolo and Mr Jean-Jacques Mangenda" (emphasis in the original; italics added).

⁹ See *e.g.* ICC-01/05-01/13-424-Anx1, esp. p.4: "Taken together, the requests for legal assistance were for the communication with the suspects' telephone numbers to be recorded and for this telecommunication and the historical data of the telephone numbers for the period from 1 October 2013 to 23 November 2013 to be delivered to the ICC. On an application by the public prosecutor, *the examining magistrate granted authorizations (and authorizations for an extension) for these telephone numbers* for the period from 1 October 2013 to 23 November 2013" (italics added).

IV. Relief Requested

7. For the foregoing reasons, the Prosecution requests the Chamber to dismiss the Request.



Fatou Bensouda, Prosecutor

Dated this 1st Day of September 2015
At The Hague, The Netherlands