

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 15 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***

**Public Redacted Document
with
Confidential Annexes A to C**

**Public redacted version of "Prosecution's Notice of Compliance with Decision on
Mangenda Defence Request for Cooperation ICC-01/05-01/13-1148-Conf", 10
September 2015, ICC-01/05-01/13-1233-Conf**

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. Notice of Compliance

1. The Office of the Prosecutor (“Prosecution”) hereby notifies Trial Chamber VII (“Chamber”) of its compliance with the Chamber’s [REDACTED] Decision,¹ as set out below.

A. Background

2. As set out at Annex A, on 17 June 2015, the Mangenda Defence requested that the Prosecution disclose, or obtain and disclose, “any and all judicial decisions relevant to the legality of the telephone surveillance of Mr. Mangenda and his co-accused.”² The Prosecution responded to the request on 18 June, indicating that it did not possess any judicial decisions concerning the legality of the telephone surveillance of Mangenda or the other Accused besides the information already made available to the Defence.³ The Prosecution further indicated that it did not believe that its intervention was either necessary or required to obtain the requested materials from the Dutch authorities, and that Mangenda was not prevented from seizing those authorities directly.⁴ The Prosecution’s 18 June Response to Mangenda’s 17 June Request is attached at Annex B.

3. On 19 June 2015, in a letter [REDACTED] attached at Annex C, the Mangenda Defence directly requested Dutch officials to disclose “any and all decisions, records of proceedings, requests, or other materials whatsoever as may be pertinent to the authorisation and execution of surveillance of [Mangenda] by Dutch authorities that occurred starting in the middle of 2014[sic].”⁵

¹ ICC-01/05-01/13-1148-Conf (referring to the Chamber’s disclosure Order).

² See Letter of the Mangenda Defence to the Prosecution, 17 June 2015, para.1 (“17 June Request”).

³ See Letter of the Prosecution to the Mangenda Defence, 18 June 2015, para.1 (“18 June Response”).

⁴ 18 June Response, para.3.

⁵ Letter of the Mangenda Defence [REDACTED], 19 June 2015, para.1 (“19 June Request to the Dutch Authorities”).

4. The Dutch authorities responded to Mangenda's request on 22 June, directing that his Defence appropriately seize the Chamber with its request pursuant to article 57 of the Rome Statute ("Statute").

B. Compliance

5. The Prosecution has discharged its disclosure obligations in respect of the Dutch intercepts, and complied with the Chamber's [REDACTED] Decision with its 28 August 2015 disclosure of its related judicial requests for assistance ("RFAs") to the authorities of The Netherlands.⁶

6. The Prosecution considers that, by its terms, the Chamber's [REDACTED] Decision is constrained to the particular subject matter of the Request, namely the intercepted material⁷ and does not extend — out of context — to "any and all" evidence collected in this case. The Prosecution further understands that the [REDACTED] Decision, per rule 77 of the Rules of Procedure and Evidence ("Rules"), is necessarily confined to documents *material* to the preparation of a defence⁸ and thus, at least capable of being asserted within the Court's procedural framework.

7. The materiality of Mangenda's request must thus be assessed in light of article 69(8), which provides:

"When deciding on the *relevance* or *admissibility* of evidence collected by a State, the Court shall not rule on the application of the State's national law."⁹

8. Notably, Mangenda's request to the Dutch authorities set out in his article 57(3)(b) request to the Chamber, is substantially broader than his request to the Prosecution. In the latter case, the only documents *prima facie* relevant to the preparation of an admissibility defence based on the "legality" of the intercepts even

⁶ ICC-01/05-01/13-1195 and Annex B.

⁷ ICC-01/05-01/13-1148-Conf, p.6.

⁸ See rule 77 of the Rules.

⁹ See, article 69(8) (emphasis supplied).

if it could be mounted — which article 69(8) effectively precludes — are the requested “judicial decisions”.¹⁰

9. However, as noted in its 18 June Response, the Prosecution possesses no order, decision or record of the Dutch Courts concerning the legality of the intercepts to which the Defence does not have access. Indeed, the Prosecution only gained access to such material by virtue of the Pre-Trial Chamber’s release of it to the Parties in this case.

10. Beyond the disclosed RFAs, it is more likely that Mangenda – as a participant in the Dutch proceedings or even the Chamber – having dealt with the Dutch authorities regarding the intercepts, are better positioned to determine with reasonable specificity further material, if any, relevant to Mangenda’s purported legality-based admissibility defence.

II. Confidentiality

11. This Notice is filed as “Confidential” as it refers to filings of the same designation and to *inter partes* communications. A public redacted version of the Notice will be filed.



Fatou Bensouda, Prosecutor

Dated this 15th Day of September 2015
At The Hague, The Netherlands

¹⁰ 17 June Request, para.1.