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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 Confidential Annex A

**Public Redacted Version of Defence Request for Correspondence with the Dutch
Authorities**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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Introduction

1. The Defence for Mr. Jean-Pierre Bemba respectfully requests the Trial Chamber to order the Prosecution to disclose specific correspondence and records concerning the Prosecution's request for the Dutch authorities to monitor the following Dutch number of Mr. Kilolo: [REDACTED] ("the Requested Documents").
2. The Requested Documents fall directly within the scope of the Trial Chamber's ruling concerning the Prosecution's obligation to disclose documentation that pertains to the legality of the collection of evidence.
3. In its official Requests for Assistance (RFAs) directed to the Dutch authorities, the Prosecution has also confirmed the existence of such documentation. Since the correspondence emanated from the Prosecution or was directed to it, it is also in the Prosecution's custody.
4. The Defence intends to use this documentation to conduct follow up investigative steps. Given the urgent nature of this request, the Defence invites the Trial Chamber to shorten the deadline for the Prosecution's response.

Submissions

The Requested Documents concern the legality of the monitoring of Mr. Kilolo's Dutch mobile number, are in the custody of the Prosecution, and have not been disclosed

5. On 6 August 2013, the Prosecution submitted a RFA to the Dutch authorities, which requested them to monitor the following numbers of Mr. Kilolo: [REDACTED].¹

6. On 16 August 2013, the Prosecution wrote to the Dutch authorities to confirm that Mr. Kilolo and Mr. Mangenda should be considered to be suspects.² The letter further refers to,³

[REDACTED].

7. On 22 August 2013, the Prosecution submitted a further RFA, which requested the Dutch authorities to monitor the following Belgian numbers of Mr. Kilolo: [REDACTED].⁴

8. On 25 September 2013, the Prosecution submitted a further RFA, in which the Prosecution requested the Dutch authorities to extend the monitoring of its interception of Mr. Kilolo's numbers from 1 -31 October 2013.⁵

9. The numbers listed include, for the **first time**, the number [REDACTED].⁶ The accompanying justification for the intercepts nonetheless refers to the contents

¹ CAR-OTP-0090-1922 at 1924.

² CAR-OTP-0090-1927.

³ CAR-OTP-0090-1927.

⁴ CAR-OTP-0090-1928.

⁵ CAR-OTP-0090-1937.

⁶ CAR-OTP-0090-1937 at 1939.

of monitoring communications concerning [REDACTED]. In particular, the Prosecution refers to alleged contacts between [REDACTED] and Defence witnesses in August 2013.⁷

10. On 11 October 2013, the Prosecution submitted a RFA, which noted that the Prosecution had failed to include [REDACTED] in any RFAs pertaining to the period of 30 August -30 September 2013 due to an “oversight”.⁸ The Prosecution nonetheless posited that,⁹

[REDACTED].

11. The Prosecution noted in this regard that,¹⁰

[REDACTED].

12. The Prosecution therefore submitted its formal request that the Dutch authorities intercept and record this number on a “post hoc” basis.¹¹

13. On 7 December 2015, the Defence for Mr. Bemba requested the Prosecution to disclose the correspondence and any records of meetings referred to in the Prosecution’s Request for Assistance dated 11 October 2013 (CAR-OTP-0090-1941 at 1943).¹² The Prosecution responded on that,¹³

[REDACTED].

14. The Prosecution therefore refused to disclose the Requested Documentation.

⁷ CAR-OTP-0090-1937 at 1938

⁸ CAR-OTP-0090-1941 at 1943.

⁹ CAR-OTP-0090-1941 at 1943.

¹⁰ CAR-OTP-0090-1941 at 1943.

¹¹ CAR-OTP-0090-1941 at 1943.

¹² Annex A.

¹³ Annex A.

The Requested Documentation

15. On 14 August 2015, the Trial Chamber ruled in connection with the request of the Mangenda Defence to receive information concerning the Dutch proceedings that ¹⁴

[REDACTED].

16. The notion of ‘material’ is broad, and encompasses any information irrespective of its format. It therefore covers both formal and informal correspondence concerning the collection of evidence from national authorities. This is consistent with the oral ruling of the Trial Chamber concerning the disclosure of email correspondence between the Prosecution and Mr. Smetana, in relation to the collection of information from Western Union.¹⁵

17. The Prosecution’s assertion that it does need to disclose the Requested Documents because the information is allegedly captured elsewhere is misconceived. The Appeals Chamber has ruled that the fact that information is duplicative is not in itself grounds to refuse disclosure.¹⁶

18. The disclosed information also does not capture sufficient information to ascertain the nature, and content of the requests set out in the Prosecution’s informal verbal and email communications, or the manner in which these specific informal communications were considered and handled by the Dutch authorities. It therefore does not allow a full consideration of the legality by which information was intercepted or transmitted.

¹⁴ ICC-01/05-01/13-1148-Conf, para. 10.

¹⁵ ICC-01/05-01/13-T-33-ENG, p. 15.

¹⁶ ICC-02/05-03/09-501, para. 40.

19. This is of particular importance given that firstly, the CDRs corresponding to this number appear to have been transmitted several months prior to the inclusion of this number in a formal RFA, and secondly, post-facto interception is not permitted under Dutch law.¹⁷

20. The Requested Documents therefore fall squarely within the parameters of both Rule 77 and the Trial Chamber's multiple rulings on this issue. It should therefore be disclosed forthwith.

Relief Sought

21. For the reasons set out above, the Defence for Mr. Bemba requests the Trial Chamber to order the Prosecution to disclose the Requested Documents.

Respectfully submitted,



Melinda Taylor
Counsel of Mr. Jean-Pierre Bemba

Dated this 12th day of January 2016

The Hague, The Netherlands

¹⁷ Article 126m (3) of the Dutch Code of Criminal Procedure (*Wetboek van Strafvordering*).