

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 6 April 2016

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

Public Redacted Document

**Public redacted version of "Prosecution's Response to Mangenda's Second
Request for Disclosure of Information from Dutch Authorities", 24 March 2016,
ICC-01/05-01/13-1747-Conf**

Source: The Office of the Prosecutor

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

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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) submits its observations on the Mangenda Defence’s Second Request for Disclosure of Information from Dutch Authorities.¹ The Prosecution takes no position on the Request and defers to Trial Chamber VII’s (“Chamber”) discretion.

2. Nevertheless, the Prosecution notes that (i) it does not possess, nor has it ever possessed, the Dutch records that Mangenda seeks (“Records”); (ii) the Request is dilatory, given that the Mangenda Defence has known about the existence of the Records and of the fact that the Prosecution did not possess them for a substantial period of time;² and (iii) the Prosecution’s actions and alleged omissions have no bearing on this delay.

II. Confidentiality

3. This filing is classified as “*Confidential*” as it responds to a filing of the same designation. The Prosecution does not object to its reclassification as “*Public*”.

III. Submissions

A. The Prosecution has disclosed materials in its possession in accordance with the relevant law and the Chamber’s orders

4. The Prosecution does not possess, nor has it ever possessed, the Records that Mangenda identifies.³ The Prosecution made this clear on 10 September 2015.⁴

¹ ICC-01/05-01/13-1727-Conf.

² ICC-01/05-01/13-1082-Conf-Corr, 14 July 2015.

³ Request, paras. 2, 21.

⁴ ICC-01/05-01/13-1233-Conf, para. 9.

5. The Request asserts that the Prosecution “has not assisted” the efforts, “by various means”, to obtain the disclosure of the “key decisions” of the Dutch Investigating Magistrate, and that it “has adopted the narrowest possible interpretation of its disclosure obligations and the Trial Chamber’s decision”.⁵ This assertion, attempting as it does to link together the history of the Prosecution’s disclosure in this case and the Defence’s still-ongoing search for the so-called “key decisions”, is flawed. *First*, the Prosecution does not have the Records. Therefore, its approach to disclosure of the materials in its possession cannot in anyway be linked to the Defence’s lack of success in obtaining them. *Second*, the Prosecution is not, nor has it ever been, required to obtain the Records from the Dutch authorities.

B. The Defence’s Request is dilatory

6. The Request is late, presented almost at the end of trial, and more than six months after all of the relevant facts were made known to the Defence. The Mangenda Defence excuses for its lateness, to the extent that they can be discerned, are inapposite.

7. *First*, from the beginning of the proceedings before The Hague District Court in which Mangenda was involved, the road was open to him to inquire with his Dutch counsel, Mr van Straalen,⁶ about his access to the relevant Records. This became an even more obvious step to take (i) after the Prosecution notified the Chamber and the Parties that it did not have the Records, and (ii) given the Chamber’s 14 August 2015 invitation to the Defence to seize the Chamber again if unable to obtain the materials from the Prosecution.⁷ Yet, the Mangenda Defence fails to explain why it waited until

⁵ Request, para. 18.

⁶ The Prosecution itself suggested this possibility to the Mangenda Defence. See ICC-01/05-01/13-1727-Conf-AnxD, and below para. 8.

⁷ ICC-01/05-01/13-1148-Conf, para. 12: “The Mangenda Defence should first seek to obtain these documents in accordance with Rule 77 of the Rules before seeking the assistance of the Chamber. After having received the

January 2016 to request the Records from Mr van Straalen.⁸ *Second*, the Mangenda Defence – by its own admission – knew about the existence of at least four out of five of the sought records even as it requested them from the Prosecution on 17 June 2015, and subsequently from the Dutch Ministry of Security and Justice on 19 June 2015.⁹

8. For these reasons, it is not possible to connect Mangenda’s delay in contacting Mr van Straalen to any alleged or implied uncertainties in what the Prosecution’s disclosure would uncover in this respect. Indeed, it was the Prosecution that suggested to the Mangenda Defence, in its letter to the Defence one day *before* the latter wrote to the Dutch Ministry, that it contact Mr van Straalen.¹⁰ Again, inexplicably, the Defence failed to pursue this avenue until January 2016.

9. The Dutch Investigating Magistrate’s 18 February 2016 letter to Mr van Straalen removed any doubt that [REDACTED].¹¹ Although Mangenda may suggest that his inability to obtain the Records through Mr van Straalen justifies the Request at this late stage, this clarification could have been obtained months ago.

10. *Third*, whether the Prosecution had “mistakenly assumed”¹² that Mr van Straalen had access to the relevant documents, is likewise an irrelevant consideration for justifying the Request’s lateness. The Mangenda Defence’s attempt to blame the Prosecution here merely deflects from its seeming lack of diligence in pursuing a readily available and viable line of inquiry for the past seven months.

11. *Fourth*, the requests made by the Bemba Defence to obtain communications between the Prosecution and the Dutch authorities bear no relation at all to the

relevant material from the Prosecution, it is still open to the Mangenda Defence to submit further applications, should it deem it necessary.” (footnote omitted)

⁸ Request, para. 12.

⁹ Request, paras. 2-3, ICC-01/05-01/13-1727-Conf-AnxC, ICC-01/05-01/13-1727-Conf-AnxE.

¹⁰ See ICC-01/05-01/13-1727-Conf-AnxD.

¹¹ ICC-01/05-01/13-1727-Conf-AnxB, p. 4.

¹² Request, para. 18.

Mangenda Defence's request for Records, which seem to be solely in the possession of the Dutch authorities. Accordingly, the fact that this other litigation was taking place — not concurrently to Mangenda's efforts as the Defence states,¹³ but since December 2015¹⁴ — is irrelevant.

12. Although the Prosecution defers to the Chamber in the disposition of the Request, Mangenda's apparent lack of diligence or otherwise unexplained delay in its filing is a significant factor the Chamber should consider, given its obligation to ensure the fair and expeditious conduct of these proceedings.

IV. Relief Requested

13. For the foregoing reasons, the Prosecution defers to the Chamber's exercise of its discretion in deciding on the Request.



Fatou Bensouda, Prosecutor

Dated this 6th Day of April 2016
At The Hague, The Netherlands

¹³ Request, para. 12.

¹⁴ ICC-01/05-01/13-1233-Conf; ICC-01/05-01/13-1525-Conf.