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**International
Criminal
Court**



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Date: 26 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***

Confidential Document

**Prosecution's Response to Mangenda's "Request for Leave to Reply to
Prosecution's Consolidated Response to Defence Motions Seeking Exclusion of
Evidence under Article 69(7) of the Statute (ICC-01/05-01/13-1833-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") opposes Mangenda's "Request for Leave to Reply to Prosecution's Consolidated Response to Defence Motions Seeking Exclusion of Evidence under Article 69(7) of the Statute") ("Request").¹ The Request fails to justify the relief sought. A "reply" should not be used as a vehicle for Mangenda to advance substantive arguments available to him when he filed his "Request to Exclude Evidence Pursuant to Article 69(7)" ("Motion"),² or to supplement submissions that have already been made. Doing so would not only sanction the circumvention of the Court's procedural framework, but would be deleterious to a fair process.

II. Confidentiality

2. This response is filed as "*Confidential*" because it responds to a filing of the same designation. The Prosecution will file a "*Public Redacted*" version following the Defence's filing of the same.

III. Submissions

3. The procedural history of this case belies Mangenda's assertion that the "[t]he present situation [...] is exceptional".³ Rather, Mangenda's request for leave to reply is true to his well-worn practice.⁴ He has sought leave to reply in respect of almost every Prosecution response concerning the legality of collected evidence.⁵

¹ ICC-01/05-01/13-1835-Conf.

² ICC-01/05-01/13-1791-Conf-Corr.

³ Request, para. 3.

⁴ The current Request marks the tenth time the Mangenda Defence has sought leave to reply: ICC-01/05-01/13-923-Conf; ICC-01/05-01/13-1192-Conf; ICC-01/05-01/13-1194-Conf; ICC-01/05-01/13-1267; ICC-01/05-01/13-1351-Conf; ICC-01/05-01/13-1352-Red; ICC-01/05-01/13-1467-Conf; ICC-01/05-01/13-1545; ICC-01/05-01/13-1730-Conf.

⁵ See fn. 4, *above*.

4. Further, contrary to Mangenda's contentions, every issue he now seeks to raise could have been anticipated or elaborated in his Motion.

5. *First*, although Mangenda's Motion depends on his showing that the alleged impropriety in collecting the screened Western Union documents affected the collection and transmission of intercepted materials from the Dutch authorities,⁶ he only now seeks to substantiate that link;⁷ the propriety of information given to the Austrian court;⁸ and the information provided to the Pre-Trial Judge when granting the Prosecution's request to seek the intercepted materials from the Dutch authorities.⁹

6. *Second*, the Mangenda Defence has already argued why it considers the Prosecution investigators' conduct "wilful and knowing", and thus neither inadvertent nor in good faith.¹⁰ Anticipating the Prosecution's response, Mangenda also advanced his position as to what weight to be afforded to Peter Seda's statement¹¹ and Prosecution investigator reports.¹² The Prosecution's response, that Mangenda's arguments are spurious and lack any evidential basis,¹³ can hardly have been unanticipated. Mangenda is not entitled to a "reply" to remedy deficiencies in his argument.

7. *Third*, Mangenda had ample notice of the Prosecution arguments concerning Professor Lagodny, given the litigation preceding his testimony. For example, the Prosecution sought Professor Lagodny's exclusion, noting that "questions of

⁶ ICC-01/05-01/13-1791-Conf-Corr, para. 49. Mangenda admits as much in his prior filings. *See* ICC-01/05-01/13-1621-Conf, para. 9 ("None of the payments received by Mr. Mangenda, as the Prosecution now concedes (but contrary to its submissions to Judge Tarfusser) indicate any impropriety. The lawfulness of the Prosecution investigators' conduct in obtaining the financial information in Austria is nevertheless relevant to whether it was proper for those records to have been used at all in support of the request for telephone surveillance, as well as the nature of the Prosecution's conduct as a whole in obtaining authorization for that surveillance.").

⁷ Request, para. 1(ii).

⁸ Request, para. 1(iv).

⁹ Request, para. 1(v).

¹⁰ ICC-01/05-01/13-1791-Conf-Corr, para. 43. *Contra* Request, para. 2(v), (vi), (vii), and (viii).

¹¹ ICC-01/05-01/13-1791-Conf-Corr, fn. 60. *Contra* Request, para. 2(iii).

¹² ICC-01/05-01/13-1791-Conf-Corr, fn. 60. *Contra* Request, para. 2(iv).

¹³ ICC-01/05-01/13-1833-Conf, paras. 6, 70.

Austrian law are expressly those of Austria's sovereign jurisdiction.”¹⁴ The Prosecution also previously argued that “The burden of excluding evidence under article 69(7) ... is on the Defence.”¹⁵ Moreover, it has maintained its position concerning the legality of the Western Union records and intercepted communications.¹⁶ Mangenda's suggestion that these issues are new or unanticipated is untenable.

8. *Finally*, a “reply” is not needed to address the Prosecution's assertion that Mangenda “deliberately manipul[at]ed” Professor Lagodny's testimony.¹⁷ The record speaks for itself. The Chamber is readily capable of discerning the extent to which the Defence's references to Professor Lagodny's testimony were selective¹⁸ and to draw any appropriate inferences for itself.

IV. Relief Requested

9. For the foregoing reasons, the Request should be denied.



Fatou Bensouda, Prosecutor

Dated this 26th Day of April 2016
At The Hague, The Netherlands

¹⁴ ICC-01/05-01/13-1605. *Contra* Request, para. 1(i).

¹⁵ ICC-01/05-01/13-1786-Conf-Anx4, p. 9. *Contra* Request, paras. 2(i) and (ii).

¹⁶ ICC-01/05-01/13-1013-Conf, paras. 25-26, 47-51.

¹⁷ Request, para. 1(iii).

¹⁸ ICC-01/05-01/13-1833-Conf, para. 18.