

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 May 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 Document

Prosecution's Response to Mangenda's "Motion to require corrected English translations", ICC-01/05-01/13-1891

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. Introduction

1. Trial Chamber VII (“Chamber”) should reject Mangenda’s “Motion to require corrected English translations” (“Motion”).¹ *First*, the Motion advances no plausible basis for the Chamber to direct the Prosecution to correct English translations of ten transcripts which were never “formally submitted.” *Second*, as to the three formally submitted English translations² toward which the Motion is primarily directed³ (“Submitted Translations”), Mangenda’s cursory assertion that his Motion “is timely”⁴ is unavailing. Moreover, as concerns the Submitted Translations, the relief sought constitutes an inappropriate request for reconsideration. The Motion should be dismissed.

II. Submissions

A. There are no Grounds for the Correction of 10 Un-submitted English Translations

2. In so far as 10 of the 13 contested English translations were not submitted before the Chamber, the Motion presents no substantive basis for the requested relief. Mangenda’s contention that the correction of these ten un-submitted English translations is necessary “to the extent that the Trial Chamber may rely thereon”⁵ is at best speculative and, in any case, unfounded. There already exist in the trial record translations of the material in an official language of the Court to which the Chamber and Parties may reasonably and reliably resort.

3. The Chamber has before it both the original recordings underlying the translations at issue as well as French translations thereof the accuracy of which

¹ ICC-01/05-01/13-1891.

² CAR-OTP-0092-5469; CAR-OTP-0092-5477; and CAR-OTP-0080-0419.

³ ICC-01/05-01/13-1891, para. 2.

⁴ ICC-01/05-01/13-1891, para. 13.

⁵ ICC-01/05-01/13-1891, para. 2.

Mangenda does not contest. Thus, there is simply no need for the Chamber to rely on material that is not required under the Regulations of the Court,⁶ necessary, or formally before it,⁷ to accurately and fairly assess the trial evidence.

4. Further, as Lead Counsel for Mangenda is fully bilingual⁸ and his Co-Counsel French-speaking, no prejudice inheres to the Mangenda Defence because of any alleged inaccuracies in un-submitted English translations.

B. The Request to Correct Three “Formally Submitted” English Translations Fails

i. The Motion is untimely

5. As concerns the remaining three contested English translations — the Submitted Translations — the Motion similarly fails. Mangenda’s assertion that “[t]he present motion [...] is timely”⁹ on the basis that “[t]he last of the English translations that is addressed by the present motion was submitted as potential evidence just fourteen days ago”¹⁰ is unavailing.

6. *First*, Mangenda concedes, as he must, that two of the contested English translations (CAR-OTP-0092-5469 and CAR-OTP-0092-5477) were actually submitted more than a month ago, on 8 April 2016 through the Prosecution’s Sixth Request for Admission of Evidence from the Bar Table.¹¹ The Prosecution tendered the third

⁶ See Regulation 39(1) of the Regulations of the Court (“All documents and materials filed with the Registry shall be in English or French ... [i]f the original document is not in one of these languages, a participant shall attach a translation thereof.”).

⁷ Cf. ICC-01/05-01/13-1524, para. 7 (noting that, [i]n principle, the Chamber considers that recognising the formal submission of audio-visual material automatically includes recognising the formal submission of any associated transcripts or translations which were duly disclosed ... case irrespective of whether these transcripts/translations were on the list of evidence or formally submitted.”).

⁸ ICC-01/05-01/13-T-8-Red-ENG, p. 30, lns. 12-14.

⁹ ICC-01/05-01/13-1891, para. 13.

¹⁰ ICC-01/05-01/13-1891, para. 13.

¹¹ ICC-01/05-01/13-1891, paras. 1, 7 (*citing* ICC-01/05-01/13-1784-Conf-Anx A (“Sixth Bar Table Motion”) *referencing* CAR-OTP-0092-5469 and CAR-OTP-0092-5477).

(CAR-OTP-0080-0419) nearly a year ago, on 17 June 2015.¹² And, the Chamber recognised it as formally submitted nearly eight months ago, on 24 September 2015.¹³ *Second*, the Mangenda Defence was fully apprised of all three translations even before the Prosecution formally submitted them. Two of the English translations (CAR-OTP-0092-5469 and CAR-OTP-0092-5477) were disclosed to the Defence on 23 February 2016.¹⁴ The third (CAR-OTP-0080-0419), concerning an intercept disclosed on 28 February 2014,¹⁵ was disclosed to the Defence on 21 May 2014.¹⁶

7. With this notice, Mangenda challenged the accuracy of two English translations in his response to the Sixth Bar Table Motion¹⁷ failing to make any request for their correction at that time. He also failed to request any “official” revisions of the translations from the Registry’s Court Interpretation and Translation Section (“STIC”), or otherwise to obtain and submit his own competing translations. Notably, the Defence in this case was specifically advised by the Chamber on 24 April 2015 to avail itself of the services of the Registry in respect of any language or translation considerations arising in these proceedings.¹⁸ Yet, the Motion gives no indication that the Mangenda Defence ever sought to do so regarding the matters now belatedly raised in the Motion. To the contrary, every indication is that, having failed to engage the Registry’s assistance in a timely manner, the Mangenda Defence once again attempts to shift responsibility for its failings to the Prosecution.¹⁹

¹² See ICC-01/05-01/13-1013-Conf-AnxA, p. 10, row 124.

¹³ See ICC-01/05-01/13-1285

¹⁴ Trial INCR Package 43 23 February 2016; ICC-01/05-01/13-1652.

¹⁵ Pre-Confirmation INCR Package 5 28 February 2014; see ICC-01/05-01/13-417.

¹⁶ Pre-Confirmation INCRIM package 11 21 May 2014; see ICC-01/05-01/13-229.

¹⁷ ICC-01/05-01/13-1813-Conf, para. 9.

¹⁸ See ICC-01/05-01/13-T-8-Red-ENG, p. 25, lns. 14-22 and p. 26, lns. 2-4 (noting that, “as a matter of general direction Defence teams are to consult with the Registry or the OTP, as the case may be, as to the timing of Defence translation requirements” and that, “[b]eyond the foregoing, the Defence teams are also to consult with the Registrar for purposes of exploring other reasonable arrangements with a view to lasting or ad hoc solutions for language needs”), p. 79, ln. 14-p. 80, ln. 14 (the Chief of the Counsel Support Section inviting the Defence to address any language assistance requests).

¹⁹ See e.g. ICC-01/05-01/13-1850, paras. 2-16; ICC-01/05-01/13-1858, para. 57 (“The Chamber considers that the Prosecution makes some sound points in arguing that the Bemba and Mangenda Defence have not been sufficiently diligent in their efforts to obtain this recording.”).

8. The Motion does not even attempt to explain Mangenda's lapse in taking any positive actions until this extremely late stage, and should be rejected on that basis alone.

ii. The Motion constitutes an improper request for reconsideration

9. The Chamber has already considered and ruled on Mangenda's arguments and objections concerning the alleged inaccuracy of the Submitted Translations, by recognising them as "formally submitted" notwithstanding.²⁰

10. The Motion thus improperly attempts to circumvent the legal requirements for reconsideration,²¹ which it fails to meet.

iii. No prejudice arises from the challenged English translations

11. No unfair prejudice arises from any of the purported inaccuracies in the Submitted Translations or the 10 un-submitted English translations. The Chamber and the Parties have had access to the underlying recordings, transcriptions and French translations for a substantial period of time.

12. The Motion itself identifies precisely why no prejudice arises from the challenged translations, in particular, that "the Trial Chamber has recognised that translations, particularly of material that is already admitted in a more authentic form, are not to be treated as 'evidence' in the true sense of the word."²²

13. To the extent that Mangenda has accurate French translations of the audio material, which his Defence is well disposed to negotiate, corrected English translations are superfluous. Moreover, as the Motion points out, Mangenda is not without an appropriate procedural remedy — *i.e.*, the "right to challenge the

²⁰ ICC-01/05-01/13-1858, para. 48.

²¹ ICC-01/04-02/06-519, para. 12; ICC-01/04-01/06-2705, para. 18.

²² ICC-01/05-01/13-1891, para. 13, (*internal citation omitted*).

correctness of the Prosecution's translations"²³ in its final trial brief or in its oral closing submissions.

14. The requested relief is therefore, neither procedurally appropriate nor substantively required in the circumstances, particularly when balanced against the unnecessary expenditure of valuable resources and time on what amounts to in essence, a formalistic, non-evidentiary concern. Absent a substantiated showing that the Parties and Chamber do not have access to any accurate translation of the underlying audio recordings in full compliance with the Regulations of the Court, there is no need for the Chamber to grant the requested relief.

III. Relief Requested

15. For the foregoing reasons, the Motion should be denied in all respects.



Fatou Bensouda, Prosecutor

Dated this 18th Day of May 2016
At The Hague, The Netherlands

²³ ICC-01/05-01/13-1891, para. 13.