



Original: English

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

Date: 6 April 2016

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding
Judge Marc Perrin de Brichambaut
Judge Raul C. 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

**Decision on 'Jean-Jacques Mangenda's Request for the Admission of Evidence
from the Bar Table'**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims **The Office of Public Counsel for the Defence**

States Representatives

Others

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Trial Chamber VII ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Articles 64(2), 64(9), 69 and 74(2) of the Rome Statute ('Statute') and Rules 63 and 64 of the Rules of Procedure and Evidence issues the following 'Decision on "Jean-Jacques Mangenda's Request for the Admissibility of Evidence from the Bar Table"'

I. Procedural History and Submissions

1. On 26 February 2016, the defence for Mr Mangenda ('Mangenda Defence') filed a request for the admission of 108 items ('Materials') into evidence from the bar table, pursuant to Article 69(4) of the Statute on the grounds that they are relevant and hold probative value ('Request').¹ The items are detailed in Annex A to the Request.² The Mangenda Defence argues that the items are, *inter alia*, essential to illustrate the practice of the Office of the Prosecutor ('Prosecution') with regards to payments to witnesses³ and to demonstrate that such payments were necessary and reasonable in the circumstances of the case.⁴ Further, it is argued that such payments are not *prima facie* indicative of any impropriety or criminality and that awareness of such payments is similarly not indicative of

¹ Jean-Jacques Mangenda's Request for the Admission of Evidence from the Bar Table, ICC-01/05-01/13-1665, with its confidential annex ICC-01/05-01/13-1665-Conf-AnxA.

² The items fall into the following categories: A. Documents indicative of the propriety of purchasing and providing telephones to witnesses; B. Documents indicative of the propriety of purchasing and providing telephone credit to witnesses; C. Documents showing the extent of payments to P-245 (relevant to P-245's credibility and/or permissible scope of payments to witnesses); D. Documents showing the extent of payments to P-260 (relevant to P-260's credibility and/or permissible scope of payments to witnesses); E. Documents discussing payments to both P-245 and P-260 (relevant to witnesses' credibility and/or permissible scope of payments to witnesses); F. Payment to other witnesses, showing the scope of proper payments to witnesses; G. Debit card records proving Mr Mangenda's presence in The Hague; H. Documents relevant to the legality of prosecution investigations in Austria; I. Documents showing Mr Mangenda's practice of highlighting transcripts of relevance; J. Submissions demonstrating the significance, or lack thereof, of the questions formally submitted by the legal representative of the victims; K. Documents showing Mr Mangenda's family status; L. Corrected transcriptions and translations of telephone intercepts; M. Video; and N. Affidavit.

³ Request, ICC-01/05-01/13-1665, para. 11.

⁴ Request, ICC-01/05-01/13-1665, para. 11.

any impropriety.⁵ The Mangenda Defence maintains that most of the items concerned were both generated and disclosed by the Prosecution and bear *prima facie* indicia of reliability - containing signatures, stamps and letterheads.⁶

2. On 14 March 2016, the Prosecution filed its response ('Response'),⁷ opposing the Request on the grounds that the items identified therein are irrelevant to the charges in the case,⁸ speculative,⁹ and/or lack probative value.¹⁰
3. On 18 March 2016, the Mangenda Defence filed a request for leave to reply to the Response ('Reply Request').¹¹
4. On 23 March 2016, the Prosecution filed a response to the Reply Request praying the Chamber to dismiss the request ('Motion to strike').¹²
5. On 29 March 2016, the Mangenda Defence filed a submission requesting that the 'Motion to strike' be disregarded or rejected on its merits ('Further Request').¹³

⁵ Request, ICC-01/05-01/13-1665, para. 11.

⁶ Request, ICC-01/05-01/13-1665, para. 2.

⁷ Prosecution's Response to Mangenda's Request for the Admission of Evidence from the Bar Table, ICC-01/05-01/13-1720-Conf.

⁸ Categories A, B and F (see Response, paras 4-8); Category I (see Response, paras 11-18); and Category J (see Response, paras 19-21).

⁹ Categories C, D and E (see Response, paras 9-10).

¹⁰ Category L (see Response paras 22-26); Category M (see Response paras 27-30); and Category N (see Response paras 31-32).

¹¹ Request for Leave to Reply to 'Prosecution's Response to Mangenda's Request for the Admission of Evidence from the Bar Table' (ICC-01/05-01/13-1720-Conf), ICC-01/05-01/13-1730-Conf.

¹² Prosecution's Motion to Strike, or in the Alternative, a Response to Mangenda's "Request for Leave to Reply to 'Prosecution's Response to Mangenda's Request for the Admission of Evidence from the Bar Table' (ICC-01/05-01/13-1720-Conf)", ICC-01/05-01/13-1743-Conf.

¹³ Response to "Prosecution's Motion to Strike, or in the Alternative, a Response to Mangenda's 'Request for Leave to Reply to 'Prosecution's Response to Mangenda's Request for the Admission of Evidence from the Bar Table' (ICC-01/05-01/13-1720-Conf)' ICC-01/05-01/13-1720-Conf' ICC-01/05-01/13-1743-Conf", ICC-01/05-01/13-1759-Conf.

II. Analysis

6. At the outset the Chamber notes that there have been numerous submissions before it following the Response. Irrespective of any questions as to their admissibility, the Chamber is of the view that it has all the necessary information to rule on the Request and, accordingly, dismisses those submissions.
7. The Chamber furthermore recalls its previous decisions taken pursuant to Article 69 of the Statute on the admissibility of evidence, to the effect that it will generally defer consideration of questions of admissibility of evidence until deliberation of its judgement pursuant to Article 74(2) of the Statute.¹⁴
8. In line with its approach taken hitherto, the Chamber, in the present case, recognises the Materials as having been formally submitted and will address any relevance and/or admissibility of the 108 items, as the case may be, in its judgment pursuant to Article 74(2) of the Statute.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DISMISSES the Reply Request, Motion to Strike and Further Request;

RECOGNISES the Materials as ‘submitted’;

ORDERS the Registry to ensure that the e-court metadata reflects the Materials as having been formally submitted to the Chamber; and

¹⁴ Decision on Prosecution Requests for Admission of Documentary Evidence (ICC-01/05-01/13-Red, ICC-01/05-01/13-1113-Red, ICC-01/05-01/13-1170-Conf), 24 September 2015, ICC-01/05-01/13-1285, (‘Decision of 24 September 2015’), paras 9-13; Decision on ‘Prosecution’s Fourth Request for the Admission of Evidence from the Bar Table’, 12 November 2015, ICC-01/05-01/13-1480 para. 3; and Decision on ‘Prosecution’s Fifth Request for the Admission of Evidence from the Bar Table’, 14 December 2015, ICC-01/05-01/13-1524, para. 3.

ORDERS the parties to prepare and submit public redacted versions of their respective filings (excluding annexes) if they have not already done so, or request reclassification thereof, within fourteen days of notification of the present decision.

Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt, Presiding



Judge Marc Perrin de Brichambaut



Judge Raul C. Pangalangan

Dated 6 April 2016

At The Hague, The Netherlands