

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 April 2015

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

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 the request of Mr Babala related to telephone surveillance

Order 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

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* ('Bemba et al. case'), having regard to Article 64(10) of the Rome Statute ('Statute'), issues the following 'Decision on the request of Mr Babala related to telephone surveillance'.

1. On 16 March 2015, the defence for Mr Babala (the 'Babala Defence'), submitted a request seeking the Chamber to order the Office of the Prosecutor (the 'Prosecution') to confirm whether it is monitoring Mr Babala's telephone and if so, to stop this 'illegal measure' or receive notification of any *ex parte* decision of the Chamber in this regard (the 'Request').¹ The Babala Defence submits that it has received information that such monitoring is ongoing and in its view, this surveillance, if confirmed, is a violation to Articles 54(1)(c) and 69(7) of the Statute, which require the Prosecution to respect internationally recognised human rights, including the right to privacy and privileged communications.² It therefore submits that no provision authorises the Prosecution to engage in such telephone surveillance.³
2. On 31 March 2015, the Prosecution filed its observations on the Request (the 'Response'), submitting that the Request as speculative and failed in law.⁴

¹ Requête de la Défense de M. Fidèle Babala Wandu aux fins d'obtenir injonction au Bureau du Procureur en vue de confirmer ou d'infirmer la mise sous surveillance des écoutes téléphoniques de M. Babala et, le cas échéant, d'ordonner l'arrêt de cette mesure illégale, ICC-01/05-01/13-846. An addendum was filed on 17 March 2015 (ICC-01/05-01/13-848). As the addendum also includes the same submissions of the original Request, the Chamber will therefore solely to the addendum.

² Request, ICC-01/05-01/13-848, paras 6-13, 18-20.

³ Request, ICC-01/05-01/13-848, para.14.

⁴ Prosecution's Response to « Requête de la Défense de M. Fidèle Babala Wandu aux fins d'obtenir injonction au Bureau du Procureur en vue de confirmer ou d'infirmer la mise sous surveillance des écoutes téléphoniques de M. Babala et, le cas échéant, d'ordonner l'arrêt de cette mesure illégale » [ICC-01/05-01/13-846] and its Addendum [ICC-01/05-01/13-848], ICC-01/05-01/13-883.

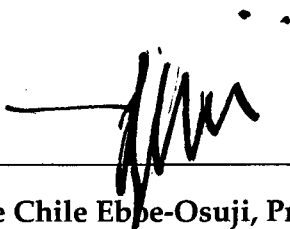
The Prosecution confirms that it is not monitoring the communications of Mr Babala and thus the Request is moot.⁵

3. The Chamber considers that, given the information from the Prosecution, the Request is moot.

FOR THE FOREGOING REASONS THE CHAMBER HEREBY

DISMISSES the Request as moot.

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



Judge Chile Ebbe-Osuji, Presiding

Judge Olga Herrera Carbuccia

Judge Bertram Schmitt

Dated 20 April 2015

At The Hague, The Netherlands

⁵ Response, ICC-01/05-01/13-883, para. 5.