

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 16 March 2015

TRIAL CHAMBER VII

**Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Robert Fremr**

**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 Document

Application by the Defence for Mr Fidèle Babala Wandu seeking an order that the Office of the Prosecutor confirm or deny the monitoring of Mr Babala's telephone conversations and, if need be, put an end to the unlawful measure

Source: Defence for Mr Fidèle Babala Wandu

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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Mr James Stewart

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

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Defence**

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REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. BRIEF PROCEDURAL BACKGROUND

1. On 20 November 2013, Pre-Trial Chamber II of the International Criminal Court (“the Pre-Trial Chamber” and “the Court” or “the ICC”) issued a warrant of arrest under seal for Mr Fidèle Babala (“Mr Babala” or “the Accused”), and for Messrs Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo and Narcisse Arido.¹
2. On 21 October 2014, the Pre-Trial Chamber ordered the interim release of Mr Babala, in particular, on condition that he undertake to appear at trial and whenever summoned by the Court.²
3. It has come to the attention of the Accused, however, through several concurring sources, that his telephone calls are allegedly being monitored on the instructions of the Office of the Prosecutor (“the Prosecutor” or “the Prosecution”).
4. The Defence therefore wishes to bring this matter to the kind attention of the Chamber so that the Prosecutor might be questioned as to the truth, the lawfulness, the propriety and the necessity of that measure and, as appropriate, be ordered to put an end to it once and for all.

II. APPLICABLE LAW

5. The fact alleged, should it prove to be true, constitutes a violation of articles 54(1)(c) and 69(7) of the Statute. Under article 54(1)(c), the Prosecutor must fully respect the rights of persons arising under the Statute. Furthermore, article 69(7) provides that evidence obtained by means of a violation of the Statute or internationally recognised human rights is inadmissible.
6. In accordance with international human rights law, which, under article 21 of the Statute, forms part of the applicable law of the Court, article 12 of the Universal Declaration of Human Rights and article 8 of the European Convention on Human Rights safeguard the right to respect for private life.
7. In a landmark judgment of the European Court of Human Rights in *Huwig and Kruslin v. France*, it was found that France had violated the right to private life. The European Court allowed the use of telephone tapping only on condition that it was based on a law that was accessible, precise, clear and intelligible.³

¹ ICC-01/05-01/13-1-Red2-tENG.

² ICC-01/05-01/13-703.

³ ECHR, *Huwig and Kruslin v. France*, 24 April 1990.

III. SUBMISSION

8. Since there is no law that allows the Prosecutor, *proprio motu*, to monitor the Accused's telephone calls, the Defence respectfully requests that the Chamber order the Prosecutor to confirm or deny the fact alleged and, if need be, put an end to the unlawful measure.

AND JUSTICE WILL BE DONE.

RESPECTFULLY SUBMITTED.

[signed]

Jean-Pierre Kilenda Kakengi Basila
Counsel for Fidèle Babala Wandu

Done this 16 March 2015
At Brussels