

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 29 June 2015

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuca
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***

Confidential

**Decision on the "Requête aux fins d'obtenir la communication des coordonnées des
témoins D-2 et D-3"**

Decision 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

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber VII (the '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 43(6) and 67(1) of the Rome Statute, renders this 'Decision on the "Requête aux fins d'obtenir la communication des coordonnées des témoins D-2 et D-3"'.

I. Procedural History and Submissions

1. On 28 April 2015, the Chamber issued the 'Decision on Babala Request to Obtain Contact Details of Witnesses' (the '28 April 2015 Decision')¹ ordering the Victims and Witnesses Unit (the 'VWU') to contact the fourteen witnesses who are alleged to be implicated in Article 70 offences in the case of the *Prosecutor v Jean-Pierre Bemba Gombo* and to enquire whether they consent to providing their contact information to the defence of Fidèle Babala Wandu (the 'Babala Defence'). In case the witnesses consent, the VWU 'shall conduct an assessment of any security impact that such disclosure would have on this witness'.²
2. On 8 June 2015 the defence of Aimé Kilolo Musamba (the 'Kilolo Defence') submitted the 'Requête aux fins d'obtenir la communication des coordonnées des témoins D-2 et D-3' (the 'Application') requesting that the Chamber order the VWU to contact witnesses D-2 and D-3 and enquire whether they consent that their contact details be shared with the Kilolo Defence.³
3. On 10 June 2015, the Office of the Prosecutor (the 'Prosecution') submitted the 'Prosecution's Response to the Kilolo Defence's Request 'aux fins d'obtenir la communication des coordonnées des témoins D-2 et D-3' (the Prosecution's

¹ ICC-01/05-01/13-924.

² ICC-01/05-01/13-924, para. 7.

³ ICC-01/05-01/13-987-Conf, paras 11 and 14.

Response')⁴ and deferred to the Chamber's discretion.⁵ However it highlighted that the two witnesses previously refused to be contacted by and to meet members of the Kilolo Defence.⁶

4. On 16 June 2015, the VWU, upon the Chamber's instruction,⁷ provided the 'Victims and Witnesses Unit' Observations on the "Requête aux fins d'obtenir la communication des coordonnées des témoins D-2 et D-3" (ICC-01/05-01/13-987-Conf)' (the 'VWU Observations'),⁸ confirming that the two witnesses concerned have already been approached on this matter in the context of implementing the 28 April 2015 Decision. The VWU confirmed that it asked the two witnesses 'if they would be willing to be contacted by the Defence of Mr. Babala and that they both answered negatively'.⁹ The VWU also submits, *inter alia*, that it may contact the witness again with a view to ascertaining whether the witnesses' negative answer pertains also in relation to the Kilolo Defence.¹⁰

II. Analysis

5. The Chamber notes that the two witnesses concerned expressly declined to share their contact details with and meet the Kilolo Defence and the Babala Defence.¹¹ Given that situation, the Chamber does not consider that consent of the witnesses concerned must be sought anew or that further enquiry of the VWU will lead to a different result. Accordingly, taking into account the decision of the witnesses concerned, the Chamber rejects the Application.

⁴ Prosecution's Response, ICC-01/05-01/13-993-Conf; a public redacted version is also available, ICC-01/05-01/13-993-Red.

⁵ Prosecution's Response, ICC-01/05-01/13-993-Red, para. 8.

⁶ Prosecution's Response, ICC-01/05-01/13-993-Conf, paras 2 and 5.

⁷ See Email from Legal Officer of the Chamber to the VWU on 10 June 2015 at 16:45.

⁸ VWU Observations, ICC-01/05-01/13-1012-Conf-Exp.

⁹ VWU Observations, ICC-01/05-01/13-1012-Conf-Exp, para. 3.

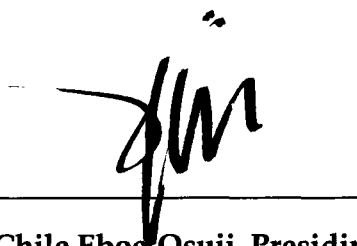
¹⁰ VWU Observations, ICC-01/05-01/13-1012-Conf-Exp, paras 6 and 9.

¹¹ VWU Observations, ICC-01/05-01/13-1012-Conf-Exp, para. 3; Prosecution's Response, ICC-01/05-01/13-993-Conf, paras 2 and 5; see also Prosecution's Response to the Babala Defence's Urgent Request '*aux fins d'obtenir de l'Unité aux victimes et aux témoins les coordonnées des témoins D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 et D-64 de l'affaire ICC-01/05-01/08*', 18 March 2015, ICC-01/05-01/13-852-Conf-Red, para. 4.

FOR THE FOREGOING REASONS THE CHAMBER HEREBY

REJECTS the Application.

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

A handwritten signature in black ink, appearing to be 'Chile Eboe-Osuji', written over a horizontal line.

Judge Chile Eboe-Osuji, Presiding

A handwritten signature in black ink, appearing to be 'Olga Herrera Carbuca', written over a horizontal line.

Judge Olga Herrera Carbuca

A handwritten signature in black ink, appearing to be 'Bertram Schmitt', written over a horizontal line.

Judge Bertram Schmitt

Dated 29 June 2015

At The Hague, The Netherlands