

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 August 2015

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Single Judge

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 Redacted Document

Public redacted version of "Prosecution's Response to the Babala Defence's Urgent Request on the Interpretation of the Decision Regarding Interim Release, and Addendum (ICC-01/05-01/13-1159-Conf and ICC-01/05-01/13-1160-Conf)", 21 August 2015, ICC-01/05-01/13-1169-Conf

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the Regulations of the**Court to:****The Office of the Prosecutor**

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I. Introduction

1. The Prosecution opposes the Babala Defence's Request¹ insofar as it seeks that the Chamber “[d]onner l’interprétation du paragraphe 28 de Sa ‘Decision regarding Interim Release’ au regard de l’existence des relations professionnelles entre messieurs Babala et [REDACTED].”²

2. The relevant paragraph of the Chamber's 17 August Decision³ — a condition of the release, directing that the Accused “[n]ot contact any Prosecution witness in this case or the Main Case, either directly or indirectly, except through counsel authorised to represent them before this Court”⁴ (“No-contact Directive”) — is unambiguous and requires no further elaboration or interpretation.

3. Alternatively, the Request may be understood as seeking a limited exception to the specific “No-contact Directive” due to Babala's employer-employee relationship to P-0272. So construed, and in view of the extenuating circumstances concerning the witness' livelihood as advanced in the Request, a limited exception to the No-contact Directive may be appropriate. In this respect, the Prosecution defers to the Chamber's discretion.

II. Confidentiality

4. This Response is filed “Confidentially” as it responds to a document of the same designation. A public redacted version will be filed.

¹ ICC-01/05-01/13-1159-Conf and addendum, ICC-01/05-01/13-1160-Conf (together, “Request”).

² ICC-01/05-01/13-1160-Conf, p.8.

³ ICC-01/05-01/13-1151, para.28 (iv).

III. Submissions

5. The Chamber's No-contact Directive as a condition of release set out at paragraph 28 of the 17 August Decision is clear, and provides:

“... as conditions of their release, the Four Accused are to:

(iv) Not contact any Prosecution witness in this case or the Main Case, either directly or indirectly, except through counsel authorised to represent them before this Court”.

6. The condition mitigates the risk of the Accused's potential interference or collusion with witnesses while on provisional release. In view of the alleged offences and their manner of commission, the Chamber reasonably determined that the No-contact Directive was an appropriate condition, among others “to ensure that nothing happens which would be prejudicial to the ongoing proceedings or bring the Court into disrepute.”⁵

7. It is neither appropriate nor necessary to revisit the clear language of the No-contact Directive. And, any objection to its scope must be raised through the proper and available procedural mechanisms of the Court. Notably, the 17 August Decision was taken, in view of Babala's 6 July filing noting the relationship between himself and P-0272.⁶

8. Nevertheless, to the extent the Request is confined to Babala's and P-0272's professional relationship and substantiates the potentially detrimental impact on the livelihood of the latter as a consequence of the No-contact Directive, the Prosecution considers that the Request may reasonably be characterised as an application for an exception to the condition.

⁵ ICC-01/05-01/13-1151, para.28.

⁶ ICC-01/05-01/13-1160-Conf, para.10 *citing* ICC-01/05-01/13-1058-Conf, para.53.

9. Considered as such, the Prosecution defers to the Chamber, noting that Babala has in any case been in contact with the witness either directly or indirectly during the pendency of the case, at least through the issuance of the 17 August Decision.

10. Should the Chamber be inclined to allow Babala an exception to the No-contact Directive however, this should not be absolute. Rather, the Prosecution considers that the necessary modification to the condition should apply only in respect of contacts between this particular witness and Babala. Further, any such modification should proscribe Babala's discussion with P-0272 about *any* aspect of this case or of the Main Case. In this way, the stated purposes of the No-contact Directive will be preserved as to all other affected witnesses and all of the other Accused.

IV. Relief Requested

11. For the foregoing reasons, the Prosecution opposes the Babala Defence's Request and defers to the Chamber's discretion, should the Chamber treat the Request as an application for a limited exception to the No-contact Directive concerning Babala and Witness P-0272.



Fatou Bensouda, Prosecutor

Dated this 28th Day of August 2015
At The Hague, The Netherlands