

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 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 Babala Request to Obtain Contact Details of Witnesses

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

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

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Others

Trial Chamber VII (the ‘Chamber’) of the International Criminal Court (the ‘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 Article 67(1)(b) and 68(1) of the Rome Statute, Rule 17 and 18 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 24(5) of the Regulations of the Court, issues the following ‘Decision on Babala Request to Obtain Contact Details of Witnesses’ (‘Decision’).

I. Procedural history and submissions

1. On 9 March 2015, the defence for Mr Babala (‘Babala Defence’) requested that the Chamber order the Victims and Witnesses Unit (‘VWU’) to provide the Babala Defence with the contact details of the fourteen witnesses (the ‘Witnesses’) who are alleged to be implicated in Article 70 offences in case ICC-01/05-01/08 (the ‘Request’).¹ The Babala Defence intends to interview the Witnesses in order to assess if it should call any of them as defence witnesses.²
2. On 18 March 2015, the Office of the Prosecutor filed its response (the ‘Response’) submitting that it leaves the decision on the Request to the Chamber.³ However, it suggests that the decision to order the VWU to disclose the contact information of the Witnesses should be contingent on the Witnesses’ prior consent and a security assessment by the VWU.⁴ The Prosecution submits that

¹ Requête URGENTE de la Défense de M. Fidèle Babala Wandu aux fins d’obtenir de l’Unité d’aide 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, 9 March 2015, ICC-01/050-01/13-835-Conf-Exo, available to the Babala Defence and Registry only. The Request was reclassified as confidential on the same day, ICC-01/05-01/13-835-Conf.

² Request, ICC-01/05-01/13-835-conf, para. 5.

³ Prosecution’s Response to the Babala Defence’s Urgent Request « aux fins d’obtenir de l’Unité d’aide 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 », ICC-01/05-01/13-852-Conf-Exp, available to the Prosecution and VWU only. A confidential redacted version was filed on the same day, ICC-01/05-01/13-852-Conf-Red.

⁴ Response, ICC-01/05-01/13-852-Conf-Red, para. 2.

the VWU's evaluation should take into account that some of the Witnesses, on prior occasions, have refused to talk to another defence.⁵

3. On 20 March 2015, the Babala Defence filed a request for leave to reply, seeking to react to part of the Prosecution's submission that the VWU is to include a prior refusal by any of the Witnesses to be contacted by another defence.⁶
4. On 30 March 2015, the VWU filed its observations (the 'Observations').⁷ It informs the Chamber that, while it is in possession of contact details for all the Witnesses, it cannot guarantee that they are still accurate⁸ and that, due to confidentiality it cannot share the contact details without prior consent of the Witnesses.⁹ Additionally, the VWU proposes that, should the Chamber grant the Request, the VWU may assess the impact of the disclosure of the contact details on the Witnesses' security before communicating them to the Defence.¹⁰ In a more general manner, the VWU expresses concerns as to its appearance as a neutral organ towards the Witnesses if it is to act on behalf of one of the parties.¹¹

II. Analysis

5. As a preliminary matter, the Chamber considers that it has all the necessary information to rule on the Request. Accordingly, it rejects the Request for Leave to Reply.
6. Although the VWU has concerns regarding its role as an impartial actor, the Chamber does not consider that conveying such a request from one of the

⁵ Response, ICC-01/05-01/13-852-Conf-Red, para. 2.

⁶ Demande d'autorisation de répliquer à la version confidentielle expurgée de « Prosecution's Response to the Babala Defence's Urgent Request « aux fins d'obtenir de l'Unité d'aide 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 » », 17 March 2015, ICC-01/05-01/13-852-Conf-Red, ICC-01/05-01/13-862-Conf.

⁷ Victims and Witnesses Unit's observations on the "Requête URGENTE de la Défense de M. Fidèle Babala Wandu aux fins d'obtenir de l'Unité d'aide 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 », ICC-01/05-01/13-882-Conf, the filing was notified 31 March 2015.

⁸ Observations, ICC-01/05-01/13-882-Conf, para. 4.

⁹ Observations, ICC-01/05-01/13-882-Conf, para. 5.

¹⁰ Observations, ICC-01/05-01/13-882-Conf, para. 9.

¹¹ Observations, ICC-01/05-01/13-882-Conf, para. 7.

parties conflicts with the VWU role as a neutral organ of the Court or its responsibilities under the statutory framework.

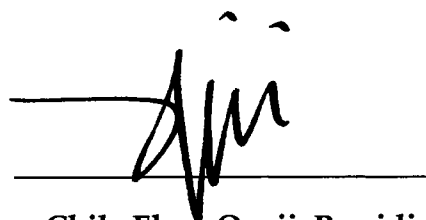
7. Accordingly, the VWU shall enquire with the Witnesses whether they consent to providing their contact information to the Babala Defence for the purpose of an interview by the Babala Defence. The VWU is to explain to the Witnesses that whether or not to grant the consent is a decision solely for the Witness to make. In case any of the Witnesses consents to providing the contact details, the VWU shall conduct an assessment of any security impact that such disclosure would have on this witness.
8. The VWU is to include any relevant factor in the evaluation of security risks. A prior refusal of any of the Witnesses regarding contact with another defence is only to be included in the assessment if it has an implication on the security situation.
9. After having conducted the assessment, should the VWU be of the view that the contact information may be made available without any security risk for the witness in question, it is to provide the Babala Defence with the contact details. In case the VWU is of the view that there are overriding security concerns, it is to inform the Babala Defence of its conclusion not to disclose the information, providing as much specific reasoning for its decision as possible.
10. The VWU is to contact all Witnesses and conduct the security assessments, if necessary, as expeditiously as possible. Upon completion, the VWU is to inform the Babala Defence of the decision of the Witnesses to provide their contact information or not or, should the case be, the existence of conflicting security concerns.
11. The Chamber takes note of the VWU's submission that the contact details in its possession might not be updated. It is not the role of the VWU to carry out investigative activities for any of the parties. Therefore, should the contact

information for any of the Witnesses prove to be outdated, the VWU is to indicate this to the Babala Defence without taking any further steps to contact the witness.

FOR THE FOREGOING REASONS THE CHAMBER HEREBY

DIRECTS the VWU to contact the Witnesses, enquiring if they consent to providing their contact information to the Babala Defence in accordance with the procedure set out in paragraphs 7-11 of this Decision.

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



Judge Chile Eboe-Osuji, Presiding



Judge Olga Herrera Carbuccion



Judge Bertram Schmitt

Dated 28 April 2015

At The Hague, The Netherlands