

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05-01/13**
Date: **22 November 2016**

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, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA WANDU
and NARCISSE ARIDO***

Public

**Decision on Babala Defence Request for Delayed Disclosure of Document for
Sentencing**

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

Detention Section

Victims Participation and Reparations Section

Others

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) of the International Criminal Court ('Court'), issues the following 'Decision on Babala Defence Request for Delayed Disclosure of Document for Sentencing', 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 Regulation 35 of the Regulations of the Court.

1. On 20 October 2016, the Single Judge set a deadline of 23 November 2016 for the disclosure and submission of any additional materials for sentencing.¹
2. On 21 November 2016, the defence for Mr Babala ('Babala Defence') requested an extension of this deadline to 28 November 2016 for a single document which it was not able to acquire in time due to delays in receiving it from '*l'administration communale*' in the Democratic Republic of the Congo.²
3. On 22 November 2016, the Office of the Prosecutor indicated by email that it did not oppose this request.³
4. For the reasons provided by the Babala Defence, the request is granted.
5. However, the Single Judge also notes that, in the same filing containing this request, the Babala Defence also provides three items on an *ex parte*, Babala Defence only basis.⁴ The justification given is that these items relate to Mr Babala's private life.⁵ The Single Judge considers that Mr Babala cannot put such information into evidence for sentencing without exposing it to the scrutiny of the other parties.⁶ For reasons of procedural fairness, the Chamber will not consider information for

¹ Sentencing Calendar, ICC-01/05-01/13-1990.

² *Soumission de la Défense de M. Fidèle Babala Wandu de sa liste des éléments de preuves en vue de la fixation de la peine*, ICC-01/05-01/13-2040 (with one confidential annex and one confidential *ex parte* annex).

³ Email from the Prosecution to the other parties and Chamber at 11:47.

⁴ ICC-01/05-01/13-2040-Conf-Exp-AnxB.

⁵ ICC-01/05-01/13-2040, para. 5.

⁶ It is recalled that, for purposes of sentencing, the items identified for purposes of the 23 November deadline are also submitted. *See* ICC-01/05-01/13-1990, para. 2(ii) ('Aside from witnesses, the parties must both disclose and formally submit any additional evidence to be considered for sentencing by 23 November 2016').

sentencing which the other parties cannot access. The Babala Defence must either withdraw these items or make them accessible to the other parties. If access is being given, the Babala Defence may apply redactions in accordance with the Chamber's redaction protocol – with the consequence that any redacted portions will likewise not be considered.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Babala Defence request and

ORDERS the Babala Defence, in accordance with paragraph 5 above, to withdraw or make accessible to the other parties the items in ICC-01/05-01/13-2040-Conf-Exp-AnxB by 28 November 2016.

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



Judge Bertram Schmitt, Presiding Judge

Dated 22 November 2016

At The Hague, The Netherlands