

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: French

No. ICC-01/05-01/13

Date: 26 April 2016

**TRIAL CHAMBER VII**

**Before: Judge Bertram Schmitt, Presiding Judge  
Judge Marc Perrin de Brichambaut  
Judge Raul Pangalangan**

**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**

**Response of the Defence team for Mr Fidèle Babala Wandu to the “Joint Defence Request for addition of one item onto the list of evidence” (ICC-01/05-01/13-1831)**

**Source: Defence for Mr Fidèle Babala Wandu**

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

Ms Fatou Bensouda

Mr James Stewart

Mr KwekuVanderpuye

**Counsel for the Defence of Mr Babala**

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Azama Shalie Rodoma

**Counsel for the Defence of Mr Jean-Pierre****Bemba Gombo**

Ms Melinda Taylor

**Counsel for the Defence of Mr Kilolo**

Mr Paul Djunga Mudimbi

Mr Steven Sacha Powles

**Counsel for the Defence of Mr Mangenda**

Mr Christopher Gosnell

Mr Arthur Vercken De Vreuschmen

**Counsel for the Defence of Mr Narcisse Arido**

Mr Charles A. Taku

Ms Beth Suzan Lyons

**Legal Representatives of Victims****Unrepresented victims****Office of Public Counsel for Victims****States' Representatives****Legal Representatives of Applicants****Unrepresented Applicants for  
participation/reparation****Office of Public Counsel for the Defence**

Mr Jean-Xavier Keita

**Amicus Curiae****REGISTRY****The Registrar**

Mr Herman von Hebel

**Counsel Support Section****Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations Section****Other**

## I. PROCEDURAL HISTORY

1. On 21 January 2016, the Defence teams submitted their lists of evidence, in accordance with the “Directions on Defence Presentation of Evidence”<sup>1</sup> and the “Further directions on the Conduct of the Proceedings in 2016”.<sup>2</sup>
2. The Defence for Mr Babala expressly pointed out, when submitting its own list of evidence, that it reserved the right to rely on any evidence included in the list of evidence of any other party.<sup>3</sup>
3. On 22 April 2016, the Defence teams for Mr Mangenda and Mr Bemba submitted a joint request (“the Request”)<sup>4</sup> for leave to add evidence to their respective lists and to submit to the record of the case the recording of a telephone call at the Detention Centre between Mr Mangenda and Mr Bemba, provided by the Registry on 22 April 2016.<sup>5</sup>
4. On the basis of regulation 24(1) of the Regulations of the Court, the Defence for Mr Fidèle Babala Wandu (“the Defence”) wishes to respond to this Request in support of the Request of the Defence teams for Mr Mangenda and Mr Bemba.

## II. SUBMISSIONS

5. The fact that Mr Babala has been charged in case ICC-01/05-01/13 is largely due to recordings of telephone conversations at the Detention Centre. The Defence has always made it a point of honour to highlight the pitfalls surrounding these conversations, in terms both of form and content. For the Defence, these conversations cannot be admitted as evidence and cannot therefore be added to the record of the case. The main reason is the lack of relevance and probative

---

<sup>1</sup> ICC-01/05-01/13-1450.

<sup>2</sup> ICC-01/05-01/13-1518.

<sup>3</sup> ICC-01/05-01/13-1558, para.10.

<sup>4</sup> ICC-01/05-01/13-1831.

<sup>5</sup> CAR-D20-0006-5010.

- value of the recordings as well as the harm that their admission to the record would cause to the right of privacy of the individuals charged.
6. Accordingly, any evidence that might demonstrate the unreliability of the telephone conversations coming from the Detention Centre is obviously of interest to the Defence for Mr Babala.
  7. The admission of the audio recording made at the Detention Centre would allow it to be compared with the recording of the same conversation originating from the Dutch authorities, as a result of Mr Jean-Jacques Mangenda's telephone calls being monitored. The differences in synchronisation are considerable and become flagrantly and objectively clear when the two recordings<sup>6</sup> are compared, as was revealed by the expert report of D20-01.<sup>7</sup>
  8. The truth can be determined out only on the basis of reliable evidence. The Request supported in this submission would undoubtedly allow for (a) the unreliability of crucial evidence on which the Prosecution is basing its theory to be demonstrated, as corroborated by an expert report,<sup>8</sup> and (b) the failure of the Prosecution to meet its investigative and disclosure obligations to be reiterated.
  9. In conclusion, the Defence considers that the above-mentioned joint Request of the Defence for Mr Mangenda and Mr Bemba of 22 April 2016 must be allowed in the interest of the proper administration of justice. The Defence therefore fully endorses the arguments set out in that Request.

---

<sup>6</sup> Request, paras. 3 and 20.

<sup>7</sup> CAR-D20-0006-1244.

<sup>8</sup> *Ibid.*

**FOR THESE REASONS,**

**MAY IT PLEASE TRIAL CHAMBER VII TO:**

**ALLOW** the joint Request ICC-01/05-01/13-1831 and admit into the record of the case item of evidence CAR-D20-0006-5010.

**AND JUSTICE SHALL BE DONE.**

**RESPECTFULLY SUBMITTED.**

**[signed]**

**Mr Jean-Pierre Kilenda Kakengi Basila  
Lead Counsel for Mr Fidèle Babala Wandu**

Dated this 26 April 2016.

At Brussels.