

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 12 June 2014

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, 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 the “Requête urgente de la Défense de Monsieur Fidèle Babala Wandu sollicitant de la Chambre préliminaire II d’ordonner au Conseil indépendant et/ou au Greffe de lui communiquer l’intégralité des conversations téléphoniques intervenues entre M. Babala et les autres suspects de l’affaire en cours ” dated 4 June 2014 and related filings

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Nicholas Kaufman

Counsel for Aimé Kilolo Musamba

Ghislain Mabanga

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Göran Sluiter

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

Others

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

I, Judge Cuno Tarfusser, having been designated as Single Judge of Pre-Trial Chamber II of the International Criminal Court;

NOTING the “Requête urgente de la Défense de Monsieur Fidèle Babala Wandu sollicitant de la Chambre préliminaire II d’ordonner au Conseil indépendant et/ou au Greffe de lui communiquer l’intégralité des conversations téléphoniques intervenues entre M. Babala et les autres suspects de l’affaire en cours ” dated 4 June 2014 (“Mr Babala’s Request”)¹;

NOTING the Single Judge’s Decision ICC-01/05-01/13-461 dated 5 June 2014, shortening the time limits for the responses to Mr Babala’s Request and ordering Independent Counsel to submit observations thereon on a confidential, ex parte basis by 10 June 2014;

NOTING the “Réponse à la requête du 4 juin 2014 de la défense de Monsieur Fidèle Babala ICC-01/05-01/13-459, Requête connexe” dated 5 June 2014², whereby the Defence for Mr Mangenda (i) supports Mr Babala’s Request and (ii) requests the Single Judge to order “la transcription de toutes les conversations enregistrées tel qu’ordonné par la décision du 29 juillet 2013, ainsi que leur traduction dans une des langues de travail de la Cour utilisées dans la présente procédure” (“Mr Mangenda’s Related Request ”);

NOTING the “Defence response to Fidèle Babala’s filing: ICC-01/05-01/13-459-Conf” dated 7 June 2014³, and the “Defence response to Fidèle Babala’s filing: ICC-01/05-01/13-459-Conf” dated 10 June 2014⁴, whereby respectively the

¹ ICC-01/05-01/13-459.

² ICC-01/05-01/13-465.

³ ICC-01/05-01/13-469.

⁴ ICC-01/05-01/13-479.

Defence for Mr Bemba and the Defence for Mr Kilolo both support Mr Babala's Request;

NOTING the "Observations suivant la decision n° ICC-01/05-01/13-461" dated 9 June 2014⁵, whereby Independent Counsel submits *inter alia* that, to the best of Independent Counsel's knowledge, (i) "aucune transcription des conversations et/ou SMS enregistrés par les autorités néerlandaises n'a été établie"; (ii) "les autorités néerlandaises ont remis à la Cour l'intégralité des enregistrements sélectionnés"; (iii) "les autorités néerlandaises conservent l'intégralité de l'ensemble des conversations et SMS enregistrés dans le cadre de leur coopération avec la Cour dans la présente affaire", and (iv) "[l]es enregistrements qui n'ont pas été sélectionnés par le Conseil Indépendant n'ont cependant pas été remis à la Cour";

NOTING the "Prosecution's Observations on the Babala Defence's Request for access to all phone conversations involving Babala reviewed by the Independent Counsel and the Bemba Defence's Response to the Babala Request" dated 10 June 2014 ("Prosecutor's Observations")⁶, submitting *inter alia* that Mr Babala's Request "is not before the correct forum", since "[t]he requested material is not within the custody and control of the Independent Counsel or the Court";

NOTING articles 57(3)(c) and 67 of the Statute, rules 15, 43, 81 and 121 of the Rules of Procedure and Evidence ("Rules"), regulation 23bis of the Regulations of the Court ("Regulations") and regulation 25 of the Regulations of the Registry;

CONSIDERING that no information of a confidential nature is included in the Prosecutor's Observations;

⁵ ICC-01/05-01/13-472-Conf-Exp.

⁶ ICC-01/05-01/13-482-Conf.

NOTING article 57(3)(b), 96(2) of the Statute and rule 116(1) of the Rules;

CONSIDERING that all the intercepts made available to the Court by the Dutch judicial authorities have been communicated to the parties in these proceedings and that, as stated by the Prosecutor and confirmed by Independent Counsel, the material requested by the Defence for Mr Babala is not in the possession of the Court;

CONSIDERING that, accordingly, the Dutch authorities are the proper addressees of Mr Babala's Request;

CONSIDERING that Mr Mangenda's Related Request is likewise premised on the incorrect assumption that the requested material is in the possession of the Court and/or Independent Counsel;

CONSIDERING further that, as already stated in these proceedings⁷, the availability of the audio files of the intercepted communications adequately meets the Prosecutor's disclosure obligations *vis-à-vis* the Defence teams and that to hold otherwise (ie, by requiring the indiscriminate "transcription and translation" of all of the communications intercepted by the Dutch authorities pursuant to the "Decision on the Prosecutor's 'Request for a judicial order to obtain evidence for investigation under Article 70'" dated 29 July 2013⁸) would be tantamount to bringing these proceedings to a halt;

CONSIDERING that this is obviously without prejudice to the fact that a concrete need for the transcription and, as appropriate, translation of specifically

⁷ ICC-01/05-01/13-80-Conf.

⁸ ICC-01/05-52-Red2.

identified communications may arise and that, in that event, the Chamber may order for such transcription and/or translation to be provided;

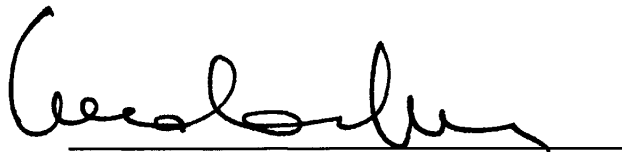
FOR THESE REASONS, THE SINGLE JUDGE HEREBY

DECIDES that the Prosecutor's Observations shall be reclassified as public;

REJECTS Mr Babala's Request;

REJECTS Mr Mangenda's Related Request.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', is written over a horizontal line.

**Judge Cuno Tarfusser
Single Judge**

Dated this Thursday, 12 June 2014

The Hague, The Netherlands