

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 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 sollicitant la reclassification publique de l’annexe confidentielle de la ‘Transmission des observations de la République démocratique du Congo sur la mise en liberté provisoire de M. Babala’ (ICC-01/05-01/13-512)” submitted by Mr Babala on 25 June 2014

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

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

States Representatives

REGISTRY

Registrar

Herman von Hebel

Detention Section

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

NOTING the “Décision sur la ‘Requête de la Défense sollicitant de la Chambre préliminaire II une nouvelle et urgente approche des autorités congolaises compétentes en vue d’obtenir une position précise et non-équivoque relativement à l’accueil de M. Fidèle Babala Wandu en République Démocratique du Congo en cas de son éventuelle mise en liberté provisoire’” dated 5 June 2014¹;

NOTING the “Transmission des observations de la République démocratique du Congo sur la mise en liberté provisoire de M. Babala ” dated 24 June 2014², whereby the Registrar submitted the observations received from the authorities of the Democratic Republic of the Congo (“DRC”; “Observations”) as confidential annex I thereto;

NOTING the “Requête URGENTE de la Défense sollicitant la reclassification publique de l’annexe confidentielle de la « Transmission des observations de la République démocratique du Congo sur la mise en liberté provisoire de M. Babala » (ICC-01/05-01/13-512)” dated 25 June 2014 (“Mr Babala’s Defence Request”)³, requesting that the Observations be reclassified as public;

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;

¹ ICC-01/05-01/13-463.

² ICC-01/05-01/13-512 with confidential Annex I.

³ ICC-01/05-01/13-515.

CONSIDERING that the principle of the publicity of the proceedings is one the staples of the right to a fair trial and that, accordingly, any and all exceptions thereto must be justified;

CONSIDERING that the Registrar simply submits that the Observations are filed as confidential “à la demande des autorités congolaises”, thereby failing to provide information either as to the substantive justification for such classification, or as to the circumstances under which, or by whom, such request was formulated;

CONSIDERING that no indication or request, whether explicitly formulated or otherwise inferable from their wording and content, to the effect that the Observations are meant to be confidential can be evinced from the letter containing them;

CONSIDERING that, to a large extent, the Observations reiterate arguments contained in the response by the DRC authorities submitted on 17 February 2014 for the purposes of the decision on Mr Babala’s initial request for interim release, which arguments have been referred to in the Single Judge’s (public) decision on that request dated 14 March 2014⁴;

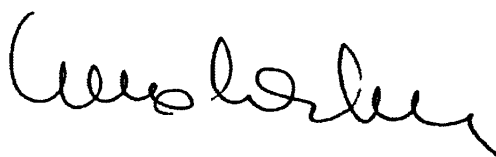
⁴ ICC-01/05-01/13-258.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS Mr Babala's Defence Request;

DECIDES that document ICC-01/05-01/13-512-AnxI-Conf shall be reclassified as public.

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



Judge Cuno Tarfusser

Single Judge

Dated this Thursday, 26 June 2014

The Hague, The Netherlands