

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 22 September 2014

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Cuno Tarfusser
Judge Christine Van den Wyngaert

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF
THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO

Public

Prosecution's Response to Document ICC-01/05-01/13-676

Source: The Office of the Prosecutor

Document to be notified in accordance with Regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) opposes the Babala Defence’s request for the Pre-Trial Chamber II (“Chamber”) to seek further clarifications from the authorities of the Democratic Republic of the Congo (“DRC”) regarding their observations on Babala’s interim release (“Request”).¹ The Request is without merit and should be dismissed.

II. Submissions

2. Neither Babala’s characterisation of the DRC’s observations regarding his interim release as “politically motivated”,² nor his claim that the DRC’s actions infringe his right to return to his country of nationality,³ justifies the Chamber’s intervention.

A. The Request is unwarranted

3. In determining an application for interim release, the Pre-Trial Chamber must, *inter alia*, request observations from the State to which the person seeks to be released.⁴ Such State must be willing and able to enforce the conditions imposed by the Chamber with respect to interim release.⁵ In case of ambiguity, a Chamber may seek further clarification from the State, as this Chamber has already done in Babala’s case.⁶ As a State is best placed to determine the security, logistical, financial, political or other interests which may affect its ability and/or willingness to enforce the conditions of release a Chamber may require, once a State provides the Chamber an

¹ ICC-01/05-01/13-676.

² Request, para. 24.

³ Request, paras. 1, 2, 24, 32.

⁴ See Regulation 51 of the Regulations of the Court.

⁵ ICC-01/05-01/08-631-Red OA2, paras. 104, 108-109; ICC-01/05-01/08-1626-Red OA7, para. 54.

⁶ ICC-01/05-01/13-463.

unequivocal position, no further investigation of the State's intentions or motivation is necessary.

4. Importantly, the Request advances no cogent reason for the Chamber to intercede in this inherently internal domestic process. Although Babala claims to be aggrieved by the outcome, the Request does not allege or establish the absence of an available recourse before the DRC authorities, or demonstrate Babala's attempt to avail himself thereof. In the circumstances, any available recourse in the DRC should minimally have been pursued and exhausted by the Babala Defence before seeking what amounts to this Chamber's judicial review of the domestic process.

B. Babala's right to return to his country has not been violated

5. Babala's contention that the DRC's position regarding his interim release infringes his right to return to his country of nationality is incorrect and misinterprets the DRC's observations. As the Appeals Chamber has pointed out, "[t]he Parquet Général's Observations of 17 February 2014 do not state that Mr Babala cannot return to the DRC. Instead, they point out the difficulties the DRC authorities would be facing if Mr Babala were to return to the DRC."⁷ The Request alleges nothing new.

C. The Request is speculative and unsubstantiated

6. Babala's claim that the DRC's position is politically motivated, based on the "*revirement de position de Madame le Ministre de la Justice et des Droits Humains*",⁸ is not only unsubstantiated, but has been already litigated and rejected before the Court.

⁷ ICC-01/05-01/13-559, para. 98.

⁸ Request, para. 24.

7. First, the Single Judge invited the relevant authorities to provide further observations⁹ on the Defence's previous request alleging inconsistencies in the DRC's prior submissions.¹⁰ These further observations, provided on 26 June 2014, confirmed the difficulties presented to the DRC associated with Babala's potential interim release.¹¹

8. Second, on the basis of the DRC's 26 June 2014 observations, the Single Judge found:

no need [...] to analyse the reasons underlying Mr Babala's disagreement with the submissions made by the DRC [...] this disagreement is based to a large extent on considerations related to the ongoing political debate in the DRC (none of which appear in the DRC submissions) and that, as appropriately stated by the Defence for Mr Babala, "[l]a CPI n'est pas l'arène de confrontation entre adversaire politiques congolais".¹²

9. Third, the Appeals Chamber correctly determined that there is no incompatibility among the observations provided by the DRC.¹³ The Appeals Chamber noted that "the DRC Authorities' Observations of 9 January 2014 merely indicated that the DRC would defer to the Court's appreciation of Mr Babala's Application for Interim Release and that, being a Congolese citizen, he could return to his country if released."¹⁴ Further, as stated above, the DRC's 17 February

⁹ ICC-01/05-01/13-463. The prior DRC submissions comprise a 9 January 2014 letter from the Ministry of Justice and Human Rights, and the 17 February 2014 observations from the Office of the Prosecutor General.

¹⁰ ICC-01/05-01/13-414.

¹¹ ICC-01/05-01/13-512-AnxI.

¹² ICC-01/05-01/13-538, para. 20 (footnotes omitted).

¹³ ICC-01/05-01/13-559, para. 97.

¹⁴ ICC-01/05-01/13-559, para. 98.

observations do not prohibit Babala's return to his country, but instead indicate the serious consequences associated with that possibility.¹⁵

10. The Request advances several other contentions concerning the DRC observations that are devoid of evidentiary support, such as: they are based on "*les motivations politiques fallacieuses*" or "*les intentions mensongères*"; and that "*Monsieur Babala fait les frais de ses convictions politiques et est victime de la part des plus hautes instances politiques de la RDC de tentatives éhontées de le maintenir hors du territoire pour des raisons de basse politique.*"¹⁶

11. Contrary to the Request, and particularly absent substantiation of the claims advanced by the Defence, the DRC should be presumed to have acted in good faith.¹⁷ Nothing in the Request rebuts this presumption, and the relief sought is thus unjustified and unwarranted.

III. Requested Relief

12. For the foregoing reasons, the Prosecution respectfully requests the Chamber to dismiss the Request.



Fatou Bensouda, Prosecutor

Dated this 22nd Day of September 2014
At The Hague, The Netherlands

¹⁵ ICC-01/05-01/13-559, paras. 97, 98.

¹⁶ Request, para. 24.

¹⁷ The presumption of good faith is recognised as a principle of international law. See ICC-01/09-01/11-1186-Anx, para. 15 which also cites to Norwegian Claims Case (1922) [Permanent Court of Arbitration], XI RIAA 309 at p. 324 ['As the Tribunal is of opinion that the good faith of the United States Emergency Fleet Corporation is to be presumed ...']; Mavrommatis Jerusalem Concessions Case (1925) [Permanent Court of International Justice], A5 at p. 43 ['it seems hardly permissible to doubt that the British Government... will loyally take steps to ensure that its promise is respected ...']; Lighthouses Case (1934) [International Court of Justice], Separate Opinion of Judge Séfériadès A/B 62 at p. 47.