

**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**

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**Registrar**

Herman von Hebel

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**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 2014<sup>1</sup>;

**NOTING** the “Transmission des observations de la République démocratique du Congo sur la mise en liberté provisoire de M. Babala ” dated 24 June 2014<sup>2</sup>, 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”)<sup>3</sup>, 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;

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<sup>1</sup> ICC-01/05-01/13-463.

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

<sup>3</sup> 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 2014<sup>4</sup>;

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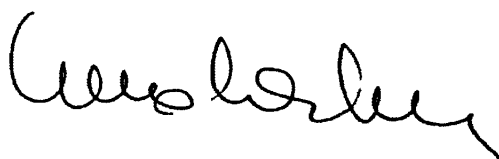
<sup>4</sup> ICC-01/05-01/13-258.

**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.



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**Judge Cuno Tarfusser**

**Single Judge**

Dated this Thursday, 26 June 2014

The Hague, The Netherlands