

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 4 November 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 “Réquête de la Défense de M. Fidèle BABALA WANDU en vue de solliciter la reclassification de ICC-01/05-01/13-694-Conf-Anx3 et ICC-01/05-01/13-696-Conf” submitted by Mr Babala on 27 October 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

Paul Djunga Mudimbi

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

Competent authorities of the
Democratic Republic of the Congo

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 “Transmission of the observations submitted by the Congolese authorities on the ‘Decision requesting observations from States for the purpose of the review of the detention of the suspects pursuant to regulation 51 of the Regulations of the Court’” dated 15 October 2014 (“Registrar’s Transmission”)¹ informing *inter alia* that the authorities of the Democratic Republic of the Congo (“DRC”) requested to classify their observations, attached as Annex 3 to the Transmission (“Observations”) as confidential, since they “are of a judicial nature” and should “not be used for political purposes”;

NOTING the “Demande URGENTE de la Défense de non-prise en considération des observations de la République Démocratique du Congo sur la mise en liberté provisoire de Monsieur Fidèle Babala Wandu (ICC-01/05-01/13-694-Conf-Anx3) et Demande de reclassification desdites observations et de la présente écriture” submitted on 16 October 2014 (“Mr Babala’s First Request”)²;

NOTING the “Réquête de la Défense de M. Fidèle BABALA WANDU en vue de solliciter la reclassification de ICC-01/05-01/13-694-Conf-Anx3 et ICC-01/05-01/13-696-Conf”, dated 27 October 2014 (“Mr Babala’s Second Request”)³, whereby the Defence for Mr Babala reiterates his request that the Observations be reclassified as public, as well as Mr Babala’s First and Second Requests;

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 23*bis* of the Regulations of the Court (“Regulations”) and regulation 25 of the Regulations of the Registry;

¹ ICC-01/05-01/13-694, with public Annexes 1 and 2 and confidential Annex 3.

² ICC-01/05-01/13-696-Conf.

³ ICC-01/05-01/13-721-Conf.

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 reasons provided by the DRC authorities for the classification of their Observations as confidential are too generic in content and nature so as to justify the departure from the principle of publicity of the proceedings;

CONSIDERING furthermore that, to a large extent, the Observations reiterate some of the arguments already contained in the response submitted by the DRC authorities on 25 June 2014 for the purposes of the first review of Mr Babala's detention, which response was reclassified as public on 26 June 2014⁴, and, to the remaining extent, refer to the hypothetical scenario of Mr Babala's conditional release, which scenario has not materialised;

CONSIDERING that there is no reason justifying the classification of either the First or the Second Request as confidential;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS Mr Babala's First and Second Requests;

DECIDES that documents ICC-01/05-01/13-694-Conf-Anx3; ICC-01/05-01/13-696-Conf; and ICC-01/05-01/13-721-Conf shall be reclassified as public.

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



Judge Cuno Tarfusser
Single Judge

Dated this Tuesday, 4 November 2014 at The Hague, The Netherlands

⁴ ICC-01/05-01/13-518.