

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/13
Date: 20 October 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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

Confidential Document

Prosecution's Response to "Demande URGENTE 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"

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 Pre-Trial Chamber II (“Chamber”) to disregard the Democratic Republic of the Congo (“DRC”)’s 15 October 2014 Observations¹ on Babala’s interim release (“Request”).² The Request is without merit and should be dismissed.

II. Confidentiality

2. This filing is classified as “Confidential” as it responds to a filing of the same designation. The Prosecution does not object to the reclassification of this filing as public should the Chamber grant the Babala Defence’s request for reclassification.³

III. Submissions

3. The Request is premised on the unsubstantiated assertion that the DRC Observations are politically motivated,⁴ specifically that they are “*en réalité dictées par des mobiles politiques visant l’exclusion de M. Babala du jeu politique en RDC*”.⁵

4. Notably, the Defence previously raised this argument seeking the Chamber’s intervention with the DRC authorities “*en vue de connaître les motivations juridiques du refus deux fois clairement opposé à l’accueil de Monsieur Fidèle Babala dans le pays dont il est ressortissant en cas de sa remise éventuelle en liberté provisoire par la Cour pénale internationale*”.⁶ The Chamber rightly rejected this request, finding that “there is no appropriate legal basis for the Court to take a position as to the merits of the legal

¹ ICC-01/05-01/13-694-Conf-Anx3 (“Observations”).

² ICC-01/05-01/13-696-Conf.

³ Request, p. 5.

⁴ Request, para. 2.

⁵ Request, para. 2.

⁶ ICC-01/05-01/13-676, pp. 12-13.

and constitutional provisions of the Democratic Republic of the Congo, or otherwise to engage in a debate with a State as to the reasons underlying its position as regards the release of one of its citizens".⁷

5. To the extent the Request is predicated on the same unsubstantiated claim regarding the Observations previously advanced by the Defence, it should be rejected. The Request demonstrates no valid basis for the Chamber to second guess the DRC's position, let alone to disregard it.

6. Instead, the Observations of the DRC concerning the prospective implementation of conditions of release on its territory are objectively reasonable and squarely within its competence. Specifically, the DRC reiterates that its position "*reste inchangée*" because it would not be able to guarantee, at the current stage of the proceedings, Babala's compliance with Rule 119(1) conditions including those listed under subdivisions (c) and (d), namely, that the person released must not contact directly or indirectly victims or witnesses and that the person must not engage in certain professional activities.⁸ As the sole authority competent to guarantee the observance of these conditions of release on its territory, it is difficult to see how the Chamber could disregard the Observations.

7. While the Observations may lack detailed reasoning for the DRC's inability to guarantee the enforcement of certain prospective conditions of release,⁹ the reiteration of the DRC's previous position implies the same underlying rationale. In any event, the DRC was neither requested nor required to justify its position concerning Babala's potential release.

⁷ ICC-01/05-01/13-683, p. 4.

⁸ ICC-01/05-01/13-694-Conf-Anx3, p. 3.

⁹ Request, para. 4.

8. Finally, by requesting the Chamber to disregard the Observations, it is unclear whether the Defence seeks that the Chamber order Babala's conditional release to the DRC despite the DRC's express position, or whether the Defence seeks the Chamber's engagement in a debate with the DRC authorities on the reasons underlying its position. The former is unwarranted and defeats the purpose of conditional release, and the latter has already been rejected by the Chamber.¹⁰

IV. Requested Relief

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



Fatou Bensouda, Prosecutor

Dated this 20th Day of October 2014
At The Hague, The Netherlands

¹⁰ ICC-01/05-01/13-683, p. 4.