



Original: English

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

Date: 26 September 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 requesting observations from States for the purposes of the review of the detention of the suspects pursuant to regulation 51 of the Regulations of the Court

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

States Representatives

Competent authorities of:

The Kingdom of the Netherlands

The Democratic Republic of the Congo

The Kingdom of Belgium

The French Republic

The United Kingdom of Great Britain
and Northern Ireland

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel, Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

Patrick Craig

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

NOTING the “Warrant of arrest for Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidele Babala Wandu and Narcisse Arido” issued on 20 November 2013¹;

NOTING articles 21, 58(1), 60(3), 60(4) and 67(1) of the Statute, rules 118(1), (2) and (3), 119(1) of the Rules of Procedure and Evidence and regulation 51 of the Regulations of the Court;

CONSIDERING that the duration of the state of detention of the suspects makes it necessary for the Chamber to proceed *motu proprio* without delay to the review of such state of detention, in particular in light of the statutory penalties applicable to the offences at stake in these proceedings and of the paramount need to ensure that the duration of pre-trial detention shall not be unreasonable;

CONSIDERING that this review will be performed with a view to determining the feasibility and the appropriateness of their conditional release;

CONSIDERING that, in light of the Appeals Chamber’s case-law, before granting conditional release it is necessary for a Chamber “to specify the appropriate conditions that make conditional release feasible, identify the State to which [the suspect] would be released and whether that State would be able to enforce the conditions imposed by the Court”²;

CONSIDERING that, accordingly, it is necessary that all requested States provide their observations both as to their availability to accept the suspects on their territory and as to which conditions restricting liberty they would be able to enforce, should they be set by the Chamber;

CONSIDERING that it is therefore necessary for the Chamber to receive specific observations from each of the requested States as to their ability to enforce the conditions restricting liberty listed in letters (a) to (h) of rule 119(1) of the Rules;

¹ ICC-01/05-01/13-1-Red2-tENG.

² ICC-01/05-01/08-631-Red, para 2.

NOTING that Aimé Kilolo Musamba seeks to be released to the Kingdom of Belgium³;

NOTING that Jean-Jacques Mangenda seeks to be released to the United Kingdom or, alternatively, to Belgium⁴;

NOTING that Narcisse Arido seeks to be released to the French Republic⁵;

NOTING that, whilst Fidèle Babala seeks to be released to the Democratic Republic of the Congo⁶, the authorities of such State have twice⁷ stated that they are not in a position to accept him on their territory;

NOTING the “Requête urgente de la Défense sollicitant de la Chambre préliminaire l’approche des autorités compétentes de la République Démocratique du Congo aux fins de connaître les motivations juridiques du refus de l’application à M. Fidèle Babala Wandu des dispositions constitutionnelles et législatives en vigueur relativement à son accueil dans son pays en cas de mise en liberté provisoire” dated 15 September 2014 (“Mr Babala’s Request ”)⁸ ;

CONSIDERING that there is no appropriate legal basis for the Court to take a position as to the merits of the legal 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 and that, accordingly, the relief sought by Fidèle Babala by means of his Request should be pursued before the competent and appropriate authorities of the Democratic Republic of the Congo;

CONSIDERING that, accordingly, it is appropriate that Fidèle Babala be provided with the opportunity to indicate an alternative State where he would seek to be released, in the event that the authorities of the Democratic Republic of the Congo were to reiterate their unavailability to accept him on their territory;

³ ICC-01/05-01/13-42; ICC-01/05-01/13-528-Conf-Exp.

⁴ ICC-01/05-01/13-523-Conf.

⁵ ICC-01/05-01/13-477-Conf.

⁶ ICC-01/05-01/13-38; ICC-01/05-01/13-524

⁷ ICC-01/05-01/13-206-Conf-Anx1; ICC-01/05-01/13-512-Anx1.

⁸ ICC-01/05-01/13-676.

FOR THESE REASONS, THE SINGLE JUDGE

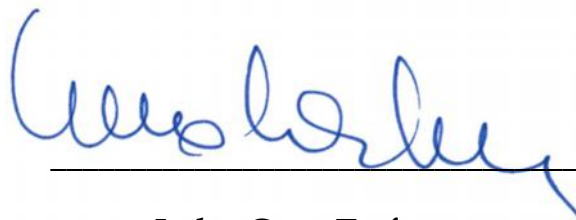
DISMISSES Mr Babala's Request;

ORDERS the Defence for Mr Fidèle Babala to indicate, no later than **Wednesday 1 October 2014**, an alternative State where he would seek to be released, in the event that the Democratic Republic of the Congo were to reiterate their unavailability to accept him on their territory;

DECIDES that the relevant authorities of the Kingdom of the Netherlands; the Democratic Republic of the Congo; the Kingdom of Belgium; the French Republic and the United Kingdom of Great Britain and Northern Ireland shall, no later than **Friday 10 October 2014**, submit their observations on

- (i) the possible conditional release of the suspects to their territory, and
- (ii) their ability to enforce the conditions restricting liberty listed in letters (a) to (h) of rule 119(1) of the Rules.

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



Judge Cuno Tarfusser

Single Judge

Dated this Friday, 26 September 2014

The Hague, The Netherlands