

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 April 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 document

**Decision on the requests to amend the calendar for the confirmation of charges
proceedings filed by the Defence of Narcisse Arido on 22 April 2014 and by
the Defence of Jean-Jacques Mangenda on 23 April 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

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

States Representatives

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

I, Judge Cuno Tarfusser, Single Judge of Pre-Trial Chamber II of the International Criminal Court responsible for the present case;

NOTING the “Decision on the ‘Prosecution’s request for variation of time limits pursuant to regulation 35 of the Regulations of the Court concerning the confirmation of charges’ dated 3 March 2014”,¹ filed on 14 March 2014, whereby the Single Judge set the following calendar for the confirmation of charges proceedings in writing in the present case: (i) 30 May 2014, for the Prosecutor’s filing of her document containing the charges and list of evidence; (ii) 30 June 2014, for the Prosecutor and the Defence teams’ filing of their written submissions in lieu of the hearing; (iii) 7 July 2014, for the Prosecutor’s filing of her reply to the written submissions of the Defence teams; and (iv) 14 July 2014, for the Defence teams’ filing of their reply to the Prosecutor’s written submissions;

NOTING “Narcisse Arido’s Request to Amend the 14 March 2014 Scheduling Order (ICC-01/0-01/13-255) and for Permission to File its Written Submissions in Lieu of Oral Hearing after those of the Prosecution”,² dated 22 April 2014 (“Mr Arido’s Request”), whereby the Defence of Mr Arido requests the Single Judge to amend the calendar for the confirmation proceedings in order to permit the Defence to file its written submissions in lieu of the oral hearing 3 weeks after those of the Prosecutor (i.e. on 21 July 2014 rather than on 30 June 2014) and to adjust the rest of the calendar accordingly;

NOTING the response to Mr Arido’s Request filed by the Defence of Mr Bemba, whereby Mr Bemba opposes Mr Arido’s Request stating that he “believes that the existing scheduling order provides adequate safeguard to his final right of

¹ ICC-01/05-01/13-255.

² ICC-01/05-01/13-351.

reply”,³ as well as the response by the Defence of Mr Mangenda, whereby Mr Mangenda opposes to the amendment of the calendar for the confirmation proceedings proposed in Mr Arido’s Request, but requests that the calendar be in any case modified to the effect that the Prosecutor be ordered to provide her written submissions in lieu of the confirmation hearing together with the document containing the charges and list of evidence, i.e. on 30 May 2014 rather than on 30 June 2014 (Mr Mangenda’s Request);

NOTING articles 61 and 67 of the Statute and rule 121 of the Rules of Procedure and Evidence;

NOTING that Mr Arido’s Request essentially rests on the following three main arguments: (i) within the Court’s statutory system, “the role of the Defence may be confined to mere opposition to the position and arguments of the Prosecution – which can only be done effectively if the Prosecution’s arguments are known to the Defence” and requesting the Defence “to submit its written submissions prior to knowing the Prosecution’s arguments amounts to [...] put[ting] the onus of rebuttal on the Defence”; (ii) the Court’s current practice shows that the Defence arguments on the confirmation of charges are always presented after those of the Prosecutor; and (iii) the guiding principle is the one that grants the Defence the right to have the last word;

CONSIDERING unpersuasive Mr Arido’s assertions revolving around the contention that without an amendment of the calendar for the confirmation proceedings the Defence would be requested to provide its submissions without knowing the arguments of the Prosecutor, thereby prejudicing the suspect’s rights under article 61(6) of the Statute;

³ ICC-01/05-01/13-354.

NOTING indeed that, to the contrary, the current calendar provides, as required by the Statute and the Rules, that the document containing the charges be filed by the Prosecutor prior to the Defence filing of its written submissions;

CONSIDERING that the document containing the charges has precisely the function of formulating the charges that the Prosecutor has decided to bring against the suspect (charges which must identify with sufficient precision the facts underlying the alleged crime(s) and their legal characterization), and explains how the evidence submitted (as detailed in the list of evidence) relates to and support the charges proffered;

CONSIDERING therefore that, on the basis of the document containing the charges, which constitutes the document setting out the Prosecutor's case in respect of the charges for which confirmation is sought, and in light of the Prosecutor's list of evidence (both documents to be filed 30 days before the Defence written submissions), the Defence will be in a position to fully exercise its rights under article 61(6) of the Statute, namely to object to the charges (which are formulated and explained in the document containing the charges), challenge the Prosecutor's evidence (which is itemized in the Prosecutor's list of evidence and the relevance of which to the charges is elucidated in the document containing the charges) and present evidence (which must be detailed in the Defence list of evidence to be filed, in accordance with rule 121(6) of the Rules, before the parties' submissions for the purposes of the confirmation of charges, only on the basis of the document containing the charges and the list of evidence);

CONSIDERING equally unpersuasive Mr Arido's reference to the current practice of the Court in that it does not take into account that previous confirmation of charges have unfolded orally (confirmation of charges in writing

being only permitted for alleged offences under article 70 of the Statute and the present case being the only one so far having reached the present procedural stage), as well as the fact that, whilst oral submissions cannot concurrently be provided by more than one person at a time, the unfolding of confirmation hearings has been such that effectively the Prosecutor and the Defence were requested to provide their submissions simultaneously in that they were presented consecutively in the course of hearings never adjourned in order to give time to the Defence to prepare its submissions in reply of the Prosecutor's oral submissions at the hearing;

NOTING also that Mr Arido primarily relies on the Court's practice to set the time limit for the Defence final written submissions after the Prosecutor's ones;

CONSIDERING that the same practice is already being followed in the present case given that the current calendar for the confirmation proceedings already gives the Defence the final right of reply in its final written submissions after the Prosecutor's ones;

CONSIDERING that by allowing the Defence to file its final written submissions after the Prosecutor's final submissions, the current calendar for the confirmation proceedings already conforms with rule 122(8) of the Rules (which indeed speaks of "final observations") and give the Defence the last word prior to the Chamber's determination of whether the charges should or should not be confirmed;

CONSIDERING, therefore, that in the present circumstances, the arguments advanced by Mr Arido do not warrant that the calendar for the confirmation of charges proceedings be amended;

NOTING that Mr Mangenda's Request to order the Prosecutor to provide her written submissions in lieu of the confirmation hearing together with the

document containing the charges and list of evidence rests on the argument that that the Prosecutor "*est parfaitement en mesure de déposer son argumentation en même temps que son acte d'accusation*";

CONSIDERING that acceding to Mr Mangenda's Request would be incompatible with rule 121(6), which provides that the Defence list of evidence, if any, shall be presented no later than 15 days before the confirmation of charges hearing;

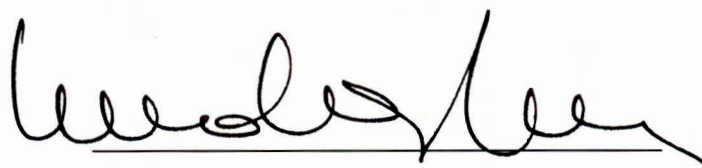
CONSIDERING therefore that, contrary to Mr Mangenda's assumption, the fact that the calendar for the confirmation proceedings requires the Prosecutor to present her written submissions on 30 June 2014 does not depend on the fact that she would not be in a position to file these submissions before, but on the Court's own procedural system which mandates that after the document containing the charges and before the Prosecutor's oral submissions at the hearing (and therefore, in the present case, her written submissions in lieu of the oral ones) there must be the intermediate procedural steps of the Defence filing of its list of evidence, if any;

CONSIDERING, accordingly, that Mr Mangenda's Request cannot be granted;

FOR THESE REASONS

REJECT Mr Arido's Request and Mr Mangenda's Request.

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

A handwritten signature in black ink, appearing to be 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser
Single Judge