

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 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 "Demande très urgente en reconsidération de la décision ICC-01/05-01/13-443 du 28 mai 2014, en ordre subsidiaire demande de mise en liberté" submitted by the Defence for Jean-Jacques Mangenda on 30 May 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

**Victims Participation and
Reparations Section**

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

NOTING the “Demande très urgente en reconsidération de la décision ICC-01/05-01/13-443 du 28 mai 2014, en ordre subsidiaire demande de mise en liberté” dated 30 May 2014¹, whereby the Defence for Jean-Jacques Mangenda

- (I) submits *inter alia* that the “Decision amending the calendar for the confirmation of the charges” dated 28 May 2014 (“28 May 2014 Decision”) ² “prolonge indûment des délais déjà antérieurement prolongés et contient des erreurs de droit et de fait” and, accordingly,
- (II) requests the Chamber to (i) “[e]n ordre principal, reconsidérer la décision du 28 mai 2014 et maintenir le calendrier déterminé par décision du 14 mars 2014” and order the Prosecutor “à communiquer son acte d’accusation au plus tard le 2 juin 2014” and (ii) “[e]n ordre subsidiaire, ordonner la mise en liberté provisoire de Monsieur Jean Jacques KABONGO MANGENDA” (“Mr Mangenda’s Request”);

CONSIDERING, as repeatedly highlighted by the pre-trial chambers of the Court, including in this case, that the statutory instruments of the Court do not provide for such a broad procedural remedy as an unqualified “motion for reconsideration” of a decision and that, accordingly, Mr Mangenda’s request should be dismissed *in limine*;

CONSIDERING nevertheless that, in light of the content of Mr Mangenda’s Request and with a view to avoiding that erroneous statements of facts remain in

¹ ICC-01/05-01/13-445.

² ICC-01/05-01/13-443.

the record, it is appropriate for the Single Judge to recall relevant developments leading to the 28 May 2014 Decision and to correct such erroneous statements;

CONSIDERING that 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” dated 14 March 2014 (“First Amendment Decision”)³ identified the only good cause supporting the Prosecutor’s request for postponement in “the persisting unavailability of the final report by Independent Counsel”; accordingly, considered that “postponement should be strictly and precisely correlated with the need to ensure its availability to the Court and to the parties, in particular with a view to allowing the latter to peruse and include it, as appropriate, in the document containing the charges and in the other submissions to be prepared for the purposes of the confirmation of the charges” and modified the calendar for the confirmation of the charges;

CONSIDERING that the “first week of May” explicitly referred to in the First Amendment Decision as the time limit indicated by the Dutch authorities for the likely transmission of Independent Counsel’s Final Report to the Court was the week starting on April 28, 2014;

CONSIDERING that Independent Counsel’s third and final report, initially submitted on a confidential, ex parte basis (“Independent Counsel’s Third Report”)⁴, was reclassified and made available to the parties on 26 May 2014, which is exactly four weeks after the date of 28 April 2014 envisaged in the First Amendment Decision;

³ ICC-01/05-01/13-255.

⁴ ICC-01/05-01/13-421-Conf-Exp, with confidential ex parte annex, both reclassified as confidential on 26 May 2014.

CONSIDERING that, accordingly, contrary to what stated by the Defence for Mr Mangenda, it is not “inexact” to state, as done in the 28 May 2014 Decision, that Independent Counsel’s Third Report “was made available to the parties almost four weeks later than expected at the time of the First Amendment Decision”;

CONSIDERING further that, contrary to what stated by the Defence for Mr Mangenda, far from being “très succinct”, or to contain nothing more than “quelques pages”, or to be “une répétition en termes très généraux” of what had already been submitted by Independent Counsel in the previous reports, Independent Counsel’s Third Report consists of an annex numbering as many as 130 (one hundred and thirty) pages, relating to intercepts of communications not included in any of the reports previously submitted;

CONSIDERING that, accordingly, the statement by the Defence for Mr Mangenda, to the effect that the second postponement of the date set for the confirmation of the charges “doit ... être attribuée à la lenteur de la Cour même, et donc du [sic] système en place, qui n’est pas à même d’intégrer un rapport de quelques pages” is based on a gross misrepresentation of the relevant facts and background;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS Mr Mangenda’s Request.

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



Judge Cuno Tarfusser
Single Judge

Dated this Wednesday, 4 June 2014 at The Hague, The Netherlands