

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 15 July 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 “Narcisse Arido’s Request for an Order Rejecting the Prosecution’s Document Containing the Charges (ICC-01/05-01/13-526-AnxB1) and for an Order to the Prosecution to File an Amended and Corrected Document Containing the Charges”

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

Florence Darques Lane

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**

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

States Representatives

Others

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

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, Fidèle Babala Wandu and Narcisse Arido” issued on 20 November 2013 (the “Warrant of Arrest”),¹ according to which Narcisse Arido bears criminally responsibility, as an accessory pursuant to article 25(3)(c) of the Rome Statute (the “Statute”), “for several offences against the administration of justice”, namely those set out in article 70(1)(b) and (c) of the Statute;²

NOTING the “Document Containing the Charges” dated 30 June 2014 (the “DCC”),³ wherein the Prosecutor charges Mr Arido under article 25(3)(a)-(d) of the Statute for the offences against the administration of justice set out in article 70(1)(a)-(c) of the Statute;⁴

NOTING “Narcisse Arido’s Request for an Order Rejecting the Prosecution’s Document Containing the Charges (ICC-01/05-01/13-526-AnxB1) and for an Order to the Prosecution to File an Amended and Corrected Document Containing the Charges” dated 9 July 2014 (the “Request”) ⁵, whereby the (I) Defence for Mr Arido

- (i) objects to the DCC as it contains “one new charge (Article 70(1)(a) of the Statute), three new modes of liability (Article 25(3)(a), (b) and (d)) as well as two new alleged courses of conduct” all of which go beyond the Warrant of Arrest;

¹ ICC-01/05-01/13-1-Red2-tENG.

² ICC-01/05-01/13-1-Red2-tENG.

³ ICC-01/05-01/13-526-AnxB1-Red.

⁴ ICC-01/05-01/13-526-AnxB1-Red.

⁵ ICC-01/05-01/13-551.

(ii) states that the inclusion of these additional elements to the DCC seven months after the issuance of the Warrant of Arrest generally violates his right to a fair trial and adding a new offence under article 70(1)(a) of the Statute violates the rule of speciality embodied in article 101 of the Statute;

(iii) challenges the validity of the DCC due to its alleged lack of precision, and accordingly, considers that his right to be promptly informed of the nature, cause, and content of the charges against him, as well as his right to have adequate time to challenge the charges against him has been violated;

and, accordingly (II) requests the Single Judge to:

- (i) reject the DCC and to order the filing of an amended version after excising all the added elements;
- (ii) order that the deadline for the filing of the list of evidence and the written submissions on the confirmation of charges start running as of the time of submission of the updated document containing the charges;
- (iii) alternatively, provide Mr Arido with an extension of 60 days “from the dates set in the Single Judge’s decision ICC-01/05-01/13-255” to prepare its list of evidence and written submissions on the basis of the new charges contained in the DCC;

NOTING articles 21(1)(a), (2) and (3), 61(3) and (4), 67(1), 70(1)(a)-(c), (2) and 101 of the Statute, rules 121(3) and (4), 163, 165(3) of the Rules of Procedure and Evidence (the “Rules”), and regulation 52 of the Regulations of the Court;

CONSIDERING that the core of the first part of the Request to reject the DCC is no more than a challenge to the Court’s existing legal framework, which provides the Prosecutor with the discretion to frame the charges according to the

facts and circumstances underlying the particular case and according to the evidence available before her, and as such, it is not the duty of the Chamber to interfere with the Prosecutor's choice of the charges to be presented nor the timing for its submission to the Chamber as long as this is supported by the Court's statutory documents;

NOTING further that article 61(4) of the Statute, together with rule 121(4) of the Rules provide that in case of amendment of the charges the person shall be notified "no later than 15 days before the date of the hearing of the amended charges together with a list of evidence that the Prosecutor intends to bring in support of those charges at the hearing";

CONSIDERING that the Prosecutor presented her DCC including the alleged new offence and the three alternative modes of liability within the timeframe specified in rule 121(3), as well as that provided in rule 121(4) of the Rules;

CONSIDERING, as regards the alleged violation by the Prosecutor of the rule of speciality, that wording of article 101 of the Statute ("[a] person surrendered to the Court...shall not be proceeded against, punished or detained for any conduct... other than the conduct or course of conduct which forms the basis of the crimes for which that person has been surrendered") was deliberately chosen by the drafters of the Statute to be more generic, and as such, the usage of this term restricts the scope of application of the rule of speciality before the Court in the sense that its operation is linked to the underlying facts rather than the legal qualification of the suspect's behaviour;

CONSIDERING that charging Mr Arido in the DCC under article 70(1)(a) of the Statute is based on the same set of facts presented in the Warrant of Arrest, and thus, it is deemed as part of the course of conduct which forms the crimes for which he has been surrendered;

CONSIDERING therefore, that Mr Arido's claim that the rule of speciality has been violated is without merit;⁶

CONSIDERING further that in a more recent decision, the Single Judge made clear that the "procedural framework of the proceedings leading to the confirmation of charges does not provide for a remedy consisting of an 'objection' to the DCC other than in the context of the procedural strategies [...] [performed by the Defence] pursuant to article 61(6) of the Statute";⁷

CONSIDERING however, that even by reviewing the relevant parts of the DCC relating to the charges brought against Mr Arido including the criminal responsibility attributed thereto, there is no apparent deficiency or lack of precision in informing Mr Arido of the nature, cause and content of the charges against him;⁸

CONSIDERING in light of the foregoing that there is no reason to request the Prosecutor to submit an updated document containing the charges together with a new list of evidence; and accordingly, that the request that the deadline for the filing of the list of evidence and the written submissions on the confirmation of

⁶ See also, *The Prosecutor v. Callixte Mbarushimana*, "Decision on the confirmation of charges", 16 December 2011, ICC-01/04-01/10-465-Red, para. 91 (considering that "the rule of speciality is not, in principle, violated by the inclusion in the DCC of one or more crimes, which were not explicitly described or legally characterised in the warrant of arrest, but are otherwise implicit in the description of the course of conduct underlying the crimes in relation to which a 'concise statement of the facts', in accordance with article 58(2)(c) of the Statute, has been provided by the Prosecution").

⁷ "Decision on the 'Defence objection to the form of the document containing the charges' submitted by the Defence for Mr Bemba on 2 July 2014 and on the 'Requête urgente de la Défense tendant à obtenir de la Chambre préliminaire II l'autorisation d'accès aux Aimexes confidentielles du document ICC-01/05-01/08-346-Conf dans l'affaire le Procureur c. Jean-Pierre Bemba Gotrho' submitted by the Defence for Mr Babala on 7 July 2014", ICC-01/05-01/13-561, p. 3.

⁸ ICC-01/05-01/13-526-AnxB1-Red, paras 20, 22, 27, 33-35, 38, 42, 66-68, 74, 75, 80, 110-113, 117, 130-134, 139, and 141-147.

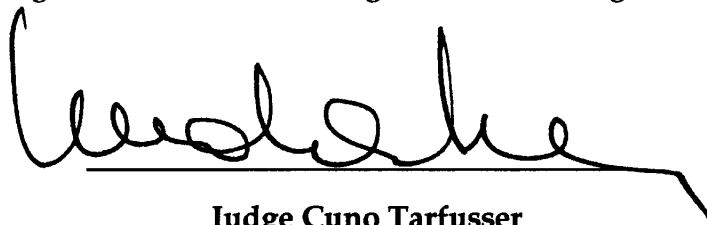
charges start running as of the time of submission of the updated document containing the charges becomes moot;

CONSIDERING finally in relation to the third part of the Request that since the DCC is based on almost the same set of facts presented in the Warrant of Arrest, and given that the time allotted to Mr Arido to submit his final written submissions and list of evidence is envisaged and supported by the Court's legal framework as set out in rule 121(3) of the Rules, the Single Judge deems the deadline of 30 July 2014 sufficient for the preparation of his defence;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request.

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this Tuesday, 15 July 2014

The Hague, The Netherlands