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

Date: **5 August 2014**

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Cuno Tarfusser
Judge Christine Van den Wyngaert

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

Urgent

**Narcisse Arido's Response to "Prosecution Request for Variation of Time Limit for
Confirmation Response" (ICC-01/05-01/13-608)**

Source: Counsel for Narcisse Arido

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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I. INTRODUCTION

1. On 5 August 2014, the Prosecution filed an urgent request for variation of the time limit to file its response to the suspects' confirmation of charges submissions, until 21 August 2014, at least.¹ The Arido Defence opposes the request for the reasons presented below.

II. PROCEDURAL HISTORY

2. On 28 May 2014, the Single Judge set the schedule for the confirmation of charges, which was as follows:²

- i. 30 June 2014: Prosecution to file its Document Containing the Charges ('DCC');
- ii. 15 July 2014: Defence teams to file their respective Lists of Evidence;
- iii. 30 July 2014: Prosecution and Defence teams to file their respective submissions on the confirmation of charges;
- iv. 7 August 2014: Prosecution to file its reply to the written submissions of the Defence teams;
- v. 14 August 2014: Defence teams to file their reply to the Prosecution' written submissions.

III. APPLICABLE LAW

3. Regulation 35 (2) of the Regulations of the Court ('RoC') provides that a time limit can be extended "if good cause is shown".

IV. SUBMISSIONS

4. The Prosecution's request is premised on the length of the Defence teams' submissions and the fact that as a result, the Prosecution does not have enough time to address them. The Arido Defence submits that the Prosecution fails to show good cause in its request, and further

¹ ICC-01/05-01/13-608.

² ICC-01/05-01/13-443.

submits that granting the Prosecution's request would have a detrimental effect on the proceedings and the rights of the suspects.

5. The Arido Defence also wishes to express its concern on the lateness of the Prosecution's request, as it should have been filed at the earliest opportunity and not a mere two days before its deadline is set to expire. The Prosecution's request is solely based on the length of the Defence teams' submissions, a fact that the Prosecution was aware of since it received the Defence submissions on the evening of Wednesday 30 July 2014.

A. The Prosecution fails to show good cause

6. The Prosecution's request is based on the "length and complexity of the filings" of the Defence teams in the present case. The Prosecution also states that "the five Defence teams raise issues particular to their client"³ and that "the Defence submissions differ from the Prosecution's confirmation submissions both on the facts and on the applicable law".⁴ The Prosecution argues that it could not have "reasonably anticipated" that the submissions presented by the Defence would be so long and that therefore, the seven days allotted to the Prosecution "are not sufficient to critically read, analyse, and frame a cogent, concise, response".⁵ The Arido Defence disagrees and submits that the Prosecution fails to show good cause for the significant extension of time requested.

7. First of all, the Prosecution itself recognises that the deadline was imposed "some time ago" – it was on 28 May 2014. It was always the case that the Prosecution was going to have 7 days to respond to the Defence teams' submissions. The Prosecution also notes that the imposed deadline significantly differs from the normal circumstances of 21 days for 20 pages filings planned for by the Rules.⁶ Again, this was an issue that the Prosecution was fully aware of by 28 May 2014, and which does not constitute good cause within the meaning of Regulation 35 of the RoC.

8. Secondly, the Arido Defence notes that the Prosecution's DCC is 82 pages long and refers to 310 documents.⁷ The list of evidence submitted by the Prosecution contains 1,424

³ ICC-01/05-01/13-608, para. 4.

⁴ ICC-01/05-01/13-608, para. 5.

⁵ ICC-01/05-01/13-608, paras 1, 4, 5.

⁶ ICC-01/05-01/13-608, para. 3.

⁷ ICC-01/05-01/13-526-Conf-AnxD.

documents.⁸ Pursuant to Article 61 (6) of the Statute, the role of the Defence during the confirmation of charges is to object to the charges, challenge the evidence presented by the Prosecutor, and present evidence. Surely, the Prosecution is familiar with the number of documents contained in its DCC and its List of Evidence, and knows that the role of the Defence during the confirmation of charges proceedings is to show that the Prosecution fails to establish substantial grounds to believe that the suspect committed the alleged crimes.

9. The Arido Defence further notes that its submissions, and that of the other Defence teams it appears, are relying on documents that the Prosecution is already familiar with, since most of the documents analysed and cited therein are documents referred to in the Prosecution's DCC. Other documents cited are documents which had been disclosed by the Prosecution. The Arido Defence further notes that the Prosecution has been informed of all documents that the Defence teams were going to use in the confirmation of charges submissions by 15 July 2014, in accordance with the deadline set by the Single Judge.⁹ Therefore, none of the documents analysed in the Arido Defence submissions are new to the Prosecution, which was fully aware that the Arido Defence was going to rely on them since 15 July 2014.

10. Similarly, the Prosecution's statements that "the five Defence teams raise issues particular to their client"¹⁰ and that "the Defence submissions differ from the Prosecution's confirmation submissions both on the facts and on the applicable law"¹¹ appears to show at best, a clear misunderstanding of the role of the Defence during the confirmation of charges proceedings. It is unclear what the Prosecution was expecting from the Defence submissions if not raising issues related to each individual suspect, and having a content that is different from the Prosecution's case.

11. The Prosecution also submits that an extension of two weeks would permit it to "better formulate a limited, focused, response on important law that has not yet been addressed at this Court".¹² The Arido Defence notes that the Prosecution has been investigating the case since June 2012.¹³ It is fully aware that this is the first Article 70 case at the ICC, and that as a result, a

⁸ ICC-01/05-01/13-526-Conf-AnxE. (emphasis added)

⁹ Bemba List of Evidence (12 documents): ICC-01/05-01/13-569-Conf-AnxA; Babala List of Evidence (1 document): ICC-01/05-01/13-574-Conf-AnxA; Kilolo List of Evidence (164 docs): ICC-01/05-01/13-571-Conf-Anx-Corr; Arido List of Evidence (86 documents, 64 of those coming from Prosecution's disclosures): ICC-01/05-01/13-570-Conf-AnxA-Corr; The Mangenda Defence did not file a list of evidence.

¹⁰ ICC-01/05-01/13-608, para. 4.

¹¹ ICC-01/05-01/13-608, para.5.

¹² ICC-01/05-01/13-608, para. 5.

¹³ ICC-01/05-01/13-597, paras 22-27.

significant number of new issues might arise as a result. The Arido Defence further recalls that the Prosecution has the burden of proof – this includes that the Prosecution should have already thought about the various legal and factual issues which can arise as a result of the proceedings. It is worrisome that the Prosecution appears not to have thought about the elements of Article 70 crimes or the applicable modes of liability. Such analysis should have already been contained in its submissions in its 30 July 2014 submissions on the confirmation of charges. The Prosecution should not be permitted to “fill in” gaps in its case in the response to the Defence teams.

12. The Arido Defence also wishes to point out to the fact that – unlike Defence teams under the Article 70 case which have to work with half of the budget normally granted to defence teams at the confirmation stage – the Prosecution has significant material, financial and human resources. The Prosecution being a sole entity, unlike again, the Defence, it can easily mobilise resources from one part to another.

13. Finally, the Arido Defence notes that the cases cited by the Prosecution in support of its request in footnote 8 do not in fact support the Prosecution’s showing of good cause. One refers to a situation where an extension of time was granted pending a decision from the Appeals Chamber on the exact same issue,¹⁴ while the other relates to an extension of time being granted until the provision of a French translation of a filing.¹⁵

B. Any extension of time would have an adverse impact on the defence

14. The Prosecution further argues that the requested extension would not unduly prolong the proceedings “because the Prosecution should be permitted a reasonable timeframe within which to file a considered and meaningful response to the Defence’s submissions”.¹⁶ As stated above, the Prosecution was aware of the set schedule for several months already, and therefore this does not constitute good cause. In addition, granting the Prosecution’s request would significantly impact the expeditiousness of the proceedings and the rights of the suspects, as it would delay the whole proceedings for a further 4 weeks. The Prosecution would have had 3 weeks to respond to the Defence teams’ submissions, and as a result, the Defence team should also be granted an additional 2 weeks to respond to the Prosecution’s. This means that the Defence teams’ response to the Prosecution submissions would be filed by 11 September 2014 instead of 14 August 2014. That is nearly one month delay.

¹⁴ ICC-02/11-01/11-576.

¹⁵ ICC-01/05-01/08-3071.

¹⁶ ICC-01/05-01/13-608, para. 6.

15. The Prosecution is incorrect in stating that the requested extension would not prejudice the Defence, which would still have “the last word”.¹⁷ Fundamental rights other than this right will be significantly affected should the Prosecution’s be granted.

16. Mr. Arido and his co-suspects have been held in pre-trial detention for more than 8 months as of today, since their arrest in late November 2013. All of their requests for interim release have been refused, and it appears likely that any future one will never be granted. As a result, any delay in the proceedings will have a significant impact on the suspects’ rights to liberty.

17. In addition, the Prosecution’s request would have for result to change the date for which the confirmation of charge decision would be rendered. Indeed, pursuant to Regulation 53 of the RoC, the Pre-Trial Chamber must render a decision on the confirmation or not of the charges within 60 days “from the date the confirmation hearing ends”. Since in the present case, the proceedings take place in writing, this can be understood to mean 60 days from the last confirmation of charges filing. Pursuant to the Prosecution’s request, this would delay such decision from 14 October 2014 to 11 November 2014, at least. By that date, the suspects (other than Mr. Bemba) would have spend nearly 1 year in pre-trial detention, that is 1/5 of the maximum sentence for Article 70’s crimes.¹⁸ This is inconsistent with the rights to liberty of the suspects. In addition, their right to be tried without undue delay, as protected by Article 67 (1) (c) of the Statute, will also be significantly impacted. It must be noted that the confirmation of stage proceedings are supposed to be a short-term process and not a mini-trial, and as a result should be limited in time.

18. The Arido Defence submits that when jointly tried, a suspect should be accorded the same rights as if tried individually.¹⁹ Granting the Prosecution’s request would violate this right, as it is premised on the number of pages submitted by the Defence teams.

¹⁷ ICC-01/05-01/13-608, para. 6.

¹⁸ Article 70 (3) of the Statute.

¹⁹ Rule 136 (2) RPE.

V. CONCLUSION

19. Pursuant to Article 64 (2) of the Statute, the Pre-Trial Chamber has the duty to ensure that the proceedings are fair and expeditious, with full respects of the rights of the Accused and due regard for the protection of victims and witnesses.²⁰ As a result, the Arido Defence respectfully requests the Pre-Trial Chamber to reject the Prosecution's request.

A handwritten signature in black ink, appearing to read 'Göran Sluiter', with a long horizontal line extending to the right.

Göran Sluiter, Counsel for Mr. Arido

Dated this 5th Day of August 2014

At Amsterdam, The Netherlands

²⁰ See e.g. ICC-02/11-01/11-33, para. 5; ICC-01/09-02/11-30, para. 6; ICC-01/05-01/08-528, para. 10.