



Original: **English**

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

Date: 21 October 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 ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda
Kabongo, Fidèle Babala Wandu and Narcisse Arido**

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 the “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” dated 26 September 2014 (“26 September 2014 Decision”)²;

NOTING the “Transmission of the observations submitted by the Belgian, Dutch, French and British authorities on the ‘Decision requesting observations from States for the purpose of the review of the detention of the suspects pursuant to regulation 51 of the Regulations of the Court’” dated 10 October 2014³;

NOTING the “Requête très urgente d’octroi de plus amples informations au Royaume Uni dans le cadre de la norme 51 du règlement de la Cour ainsi que de la tenue d’une audience” submitted by the Defence for Jean-Jacques Mangenda on 13 October 2014 (“Mr Mangenda’s Request”)⁴;

NOTING the “Transmission of the observations submitted by the Congolese authorities on the ‘Decision requesting observations from States for the purpose of the review of the detention of the suspects pursuant to regulation 51 of the Regulations of the Court’” dated 15 October 2014⁵;

NOTING the “Decision seeking the views of the Prosecutor for the purposes of the review of the detention of the suspects pursuant to rule 119(3) of the Rules of Procedure and Evidence” dated 16 October 2014⁶;

NOTING the “Prosecution’s views for the purposes of the review of the detention of the Suspects pursuant to rule 119(3) of the Rules of Procedure and Evidence” dated 20 October 2014⁷, requesting that the suspects be held in detention;

¹ ICC-01/05-01/13-1-Red2-tENG.

² ICC-01/05-01/13-683.

³ ICC-01/05-01/13-691+Conf-Anxs.

⁴ ICC-01/05-01/13-692-Conf.

⁵ ICC-01/05-01/13-694+Anxs.

⁶ ICC-01/05-01/13-697.

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

CONSIDERING that – apart from Jean-Pierre Bemba, who was already detained at the Detention Centre of the Court in connection with ongoing proceedings in case ICC-01/05-01/08 – the other four suspects in this case (Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido) have been detained since their arrest on 23 November 2013;

CONSIDERING that, as stated in the 26 September 2014 Decision, the paramount need to ensure that the duration of pre-trial detention – as enshrined *inter alia* in article 60(4) of the Statute - shall not be unreasonable makes it now necessary for the Chamber to review such detention *motu proprio* and without delay, also in light of the advanced stage reached by these proceedings, the documentary nature of the relevant evidence and the fact that such evidence has by now been acquired in the record, all of which - contrary to what stated by the Prosecutor – also result in reducing the risks that these proceedings or the investigations might be obstructed or endangered, that the alleged crimes be continued or related offences be committed;

CONSIDERING, more specifically, that the reasonableness of the duration of the detention has to be balanced *inter alia* against the statutory penalties applicable to the offences at stake in these proceedings and that, accordingly, the further extension of the period of the pre-trial detention would result in making its duration disproportionate;

CONSIDERING that a number of procedural developments – first and foremost, the time required by the Dutch authorities to make their and Independent Counsel’s final reports on the intercepted communications available to the Court - made it twice necessary to amend the calendar originally set for the completion of pre-trial proceedings, which completion has accordingly been delayed⁸;

⁷ ICC-01/05-01/13-699-Conf.

⁸ ICC-01/05-01/13-255; ICC-01/05-01/13-443.

CONSIDERING that the fact that the duration of the detention of the Suspects' is not due to the Prosecutor's inexcusable delay does not relieve the Chamber of its "distinct and independent obligation... to ensure that a person is not detained for an unreasonable period prior to trial under article 60(4) of the Statute", which obligation is a corollary of the fundamental right of an accused to a fair and expeditious trial, as also stated by the Appeals Chamber⁹;

CONSIDERING that, accordingly, it is now necessary to order the release of the four suspects whose detention is only connected to the offences at stake in these proceedings, namely Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido (collectively, "Released Persons");

CONSIDERING that, by the same token, it is necessary to adopt measures suitable to ensure that the Released Persons will appear at trial, or otherwise before the Court when summoned;

CONSIDERING that all of the Released Persons, within the context of their requests for interim release, have formally stated their commitment to promptly appear before the Court whenever summoned¹⁰;

CONSIDERING that the Chamber is satisfied that the need to ensure the Released Persons' appearance before the Court at trial, or whenever otherwise required, is adequately met by making their release conditional upon the signing of a personal commitment to that effect and that, accordingly, detention is no longer necessary for the purposes of article 58(1)(b)(i) of the Statute;

CONSIDERING that all of the Released Persons are the legitimate holders of documents entitling them to return to the countries of which they are nationals, or where they were residing at the time of their arrest, as follows:

- i. Aimé Kilolo Musamba is a national of the Kingdom of Belgium¹¹, where he was arrested and where he seeks to be released;

⁹ ICC-01/04-01/06-824, para. 98.

¹⁰ ICC-01/05-01/13-42, para. 64; ICC-01/05-01/13-71, para. 21; ICC-01/05-01/13-38-Corr, para. 64; ICC-01/05-01/13-477-Conf, paras 58-9.

¹¹ ICC-01/05-01/13-42; ICC-01/05-01/13-528-Conf-Exp.

- ii. Jean-Jacques Mangenda Kabongo, a national of the Democratic Republic of the Congo¹², is the holder of a visa expiring in August 2015 for the United Kingdom, where his family resides¹³ and where he seeks to be released¹⁴;
- iii. Fidèle Babala Wandu is a national of the Democratic Republic of the Congo, where he was arrested and where he seeks to be released¹⁵;
- iv. Narcisse Arido, a national of the Central African Republic, appears to be the holder of a “document provisoire de séjour” of the French Republic¹⁶, where he was arrested and where he seeks to be released¹⁷;

CONSIDERING that, accordingly, since no additional conditions are imposed to the release, there is no need for the Chamber to further consult with the relevant States, whether in writing or by way of a hearing;

CONSIDERING that, for the same reasons, the inability of the authorities of the Democratic Republic of the Congo (“DRC”) to enforce the conditions set forth under rule 119 (1)(c) and (d) is not an obstacle to the release of Fidèle Babala Wandu to the territory of the DRC;

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS Mr Mangenda’s Request;

ORDERS that **Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu** and **Narcisse Arido** shall be released, subject to the following order;

ORDERS the Registrar to ensure that, prior to their leaving the Detention Centre of the Court, each of the Released Persons sign an individual declaration (i) stating their commitment to appear at trial, or whenever summoned by the Court, and (ii) indicating the address at which they will be staying;

¹² ICC-01/05-67-Conf.

¹³ ICC-01/05-01/13-692-Conf.

¹⁴ ICC-01/05-01/13-523-Conf.

¹⁵ ICC-01/05-01/13-38-Corr; ICC-01/05-01/13-524 ; ICC-01/05-01/13-684.

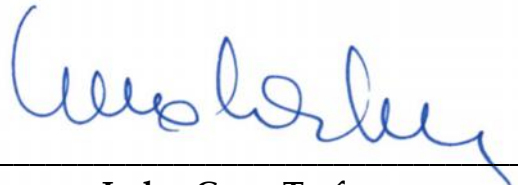
¹⁶ ICC-01/05-01/13-477-Conf-AnxA.

¹⁷ ICC-01/05-01/13-477-Conf.

ORDERS the Registrar to file the signed declarations in the record of the case;

ORDERS the Registrar to promptly make all the practical arrangements which are necessary and appropriate for the purposes of the enforcement of this decision.

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



Judge Cuno Tarfusser
Single Judge

Dated this Tuesday, 21 October 2014

The Hague, The Netherlands