

**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 “Requête aux fins d’audition de témoins de la Défense à l’audience de confirmation des charges” filed by the Defence of Aimé Kilolo Musamba

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 “Requête aux fins d’audition de témoins de la Défense à l’audience de confirmation des charges” dated 15 April 2014 (the “Request”), whereby the Defence of Mr Kilolo requests the Single Judge to authorise it to call four witnesses to provide *viva voce* testimony for the purposes of the confirmation of charges hearing, and to amend the calendar for the confirmation proceedings accordingly;¹

NOTING article 61 of the Statute and rules 121 and 122 of the Rules of Procedure and Evidence;

CONSIDERING that the present decision does not relate to the question of whether the Defence shall be authorised the present evidence emanating from the identified witnesses (which is in its rights under article 61(6)(c) of the Statute), but solely whether this evidence shall be elicited through the oral questioning of such witnesses at the confirmation hearing, as opposed to the presentation of written witness statements;

NOTING that, with respect to this question, the Request rests solely on the contention that “*l’intérêt de l’audition des intéressés gît dans ce que, par le débat contradictoire qui jaillira de leurs interrogatoires et contre-interrogatoires respectifs, la religion de la Chambre sera suffisamment éclairée sur l’existence ou non*” of sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged;

CONSIDERING, in light of the information provided in the confidential *ex parte* annex to the Request in respect of each of the prospective witnesses whom Mr Kilolo proposes to call to testify live, that oral testimony of these witnesses at the

¹ ICC-01/05-01/13-339.

confirmation of charges hearing – as opposed to the presentation of their written statements – is not necessary for the proper elucidation of the facts for the purpose of the Chamber’s final decision under article 61(7) of the Statute;

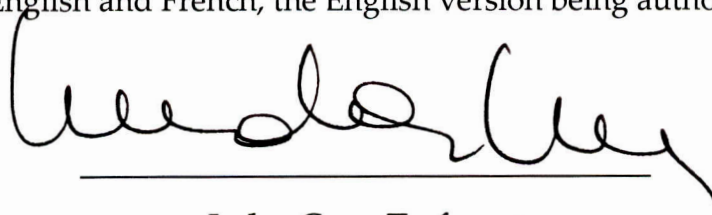
CONSIDERING, indeed, in light of the object and purpose of the confirmation of charges, that absent compelling reasons to the contrary, presentation of evidence in documentary form is the preferred modality by which evidence is introduced at the stage of the confirmation of charges proceedings;

CONSIDERING, furthermore, that, as previously held by this Chamber, “nothing in the Court’s statutory provisions give precedence to the principle of orality at the pre-trial stage”² and the “witnesses’ testimonies [...] introduced in writing into the record of the case [...] are not *a priori* to be accorded a lesser probative value” than those obtained through oral questioning at the confirmation of charges hearing,³ and that, therefore, no discernible prejudice to the suspect’s rights results from the fact that the Defence be required to rely on witnesses’ statements only in writing, to be submitted within the relevant time limit set out in rule 121(6) of the Rules;

FOR THESE REASONS

REJECT the Request.

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



Judge Cuno Tarfusser
Single Judge

² ICC-01/09-02/11-226, para. 18.

³ ICC-01/09-01/11-221, para. 14.