

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 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***

Confidential

**Decision on various filings and requests relating to four mobile phones seized
from Narcisse Arido**

**(ICC-01/05-01/13-304-Conf; ICC-01/05-01/13-324-Conf; ICC-01/05-01/13-369-Conf;
ICC-01/05-01/13-377-Conf and ICC-01/05-01/13-401-Conf)**

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

NOTING the “Registry submissions pursuant to Regulation 24*bis* of the Regulations of the Court related to the processing of the material seized in the proceedings and placed in the custody of the Registry”¹ and related Annex 1², dated 27 March 2014, whereby the Registry informs, *inter alia*, that the processing of four seized items, consisting in as many mobile phones pertaining to Aimé Arido, was outsourced to the Netherlands Forensic Institute (“NFI”) and was not finalised, as follows:

- CAR-ICC-0001-0009 (“First Mobile Phone”);
- CAR-ICC-0001-0008 (“Second Mobile Phone”);
- CAR-ICC-001-0007 (“Third Mobile Phone”);
- CAR-ICC-001-0006 (“Fourth Mobile Phone”) (collectively, “Four Mobile Phones”);

NOTING the “Addendum to Registry submissions ICC-01/05-01/13-299-Conf and request for guidance”, dated 31 March 2014³ (“Registry First Addendum”), whereby the Registry (i) informs the Single Judge about the results of the NFI investigations on the First and the Second Mobile Phones; and (ii) requests the Single Judge’s guidance on the next steps to be taken in light of the recommendations submitted by the NFI;

NOTING that, in its report dated 26 March 2014⁴, the NFI informed *inter alia* that (i) all data was successfully extracted from the First Mobile Phone, and (ii) only

¹ ICC-01/05-01/13-299-Conf.

² ICC-01/05-01/13-299-Conf-Anx1.

³ ICC-01/05-01/13-304-Conf.

⁴ ICC-01/05-01/13-304-Conf-Anx1.

part of the data was successfully extracted from the Second Mobile Phone and, accordingly, proposed additional investigative options which might be pursued;

NOTING that, in his “Narcisse Arido’s Response to Registry Submission and the Netherlands Forensic Institute Report”⁵ dated 9 April 2014, the Defence for Mr Arido (I) alleges that the seizure and custody of the Four Mobile Phones inter alia is in violation of relevant provisions of Dutch Law, including the “Dutch Cooperation Act” and, accordingly, (II) requests the Single Judge (i) to “adjudge and declare” that continuing custody over and investigations into the Four Mobile Phones are unlawful, and (ii) to exclude from evidence in the case “all results of the unlawful investigations” (“Mr Arido’s First Request”);

NOTING the “Second Addendum to Registry submissions ICC-01/05-01/13-299-Conf”⁶ dated 30 April 2014, whereby the Registrar informs the Single Judge on the results of the NFI investigations on the Third and the Fourth Mobile Phones, according to which (i) “it is ... very likely that all the data has been extracted” from the Third Mobile Phone, and (ii) no physical extraction had been performed on the Fourth Mobile Phone, for which a number of additional investigative options are proposed;

NOTING the “Prosecution Response to the Registry’s 30 April 2014 Second Addendum to its Report on Seized Material”⁷ dated 6 May 2014;

NOTING the “Narcisse Arido Request for stay of investigation by the NFI and response to Second Addendum to Registry Submissions ICC-01/05-01/13-299-

⁵ ICC-01/05-01/13-324-Conf.

⁶ ICC-01/05-01/13-369-Conf.

⁷ ICC-01/05-01/13-377-Conf.

Conf (ICC-01/05-01/13-369-Conf)"⁸ dated 15 May 2014 ("Mr Arido's Second Request"), whereby the Defence for Narcisse Arido *inter alia* (I) informs being "in the process of initiating civil proceedings in the Netherlands regarding the custody and investigation" of the Four Mobile Phones by the NFI and, accordingly, (II) requests the Single Judge to "stay the proceedings" insofar as they relate to the investigation of Mr Arido's property by the NFI or, alternatively, formulates a number of requests relating to the investigative options proposed by the NFI; and (III) requests that the totality of the data extracted from the Four Mobile Phones be disclosed to the Arido Defence;

NOTING that in her "Corrected version of 'Prosecution's Response to the Arido Defence's Request for Stay of Investigation by the NFI and Response to Second Addendum to Registry Submissions ICC-01/05-01/13-299-Conf (ICC-01/05-01/13-369-Conf)', 21 May 2014, ICC-01/05-01/13-416-Conf"⁹ dated 22 May 2014, the Prosecutor opposes Mr Arido's request for a stay of the NFI's investigation of the Four Mobile Phones, as well as the other requests contained in Mr Arido's Second Request;

NOTING article 57(3)(b) and (c) of the Statute;

CONSIDERING that, at this stage of the proceedings, it is not appropriate to address the issue of the lawfulness of the custody and investigation into the Four Mobile Phones and that the Defence will have all opportunities to raise issues relating to the admissibility of the evidence in the context of its submissions for the purpose of the confirmation of the charges;

⁸ ICC-01/05-01/13-401-Conf.

⁹ ICC-01/05-01/13-416-Conf-Corr.

CONSIDERING that, as already stated in the “Decision on the requests submitted by the Defence for Mr Kilolo and the Defence for Mr Babala relating to the forensic acquisition and return of material seized in the proceedings”¹⁰, once the acquisition is completed, the seized items shall be promptly returned to their owner;

CONSIDERING that the extraction of data from the First and the Third Mobile Phones has been completed and that, therefore, they shall be returned to Mr Arido;

CONSIDERING, as regards the Second Mobile Phone, that, although only part of its data were successfully extracted, no specific additional observation or request have been submitted by the Prosecutor, and that, accordingly, it is appropriate to consider its investigation as concluded;

CONSIDERING, as regards the Fourth Mobile Phone, that it is appropriate to proceed so as to allow for additional non-destructive investigation, pursuant to option 3 listed on page 3 of the NFI report dated 22 April 2014¹¹;

CONSIDERING that no issue of potentially privileged material arises in respect of the contents of the Four Mobile Phones, and that, accordingly, it is necessary and appropriate that, once retrieved, such contents be made available to all parties in the proceedings;

FOR THESE REASONS, THE SINGLE JUDGE.

REJECTS Mr Arido's First Request;

¹⁰ ICC-01/05-01/13-103.

¹¹ ICC-01/05-01/13-369-Conf-Anx1, page 18.

DECIDES that the First, the Second and the Third Mobile Phones (items CAR-ICC-0001-0009, CAR-ICC-0001-0008 and CAR-ICC-0001-0007) shall be promptly returned to Narcisse Arido and, accordingly, **ORDERS** the Registry to promptly liaise with the NFI with a view to securing their return to the Court ;

GRANTS Mr Arido's request to proceed with a non-destructive investigation on the Fourth Mobile Phone (item CAR-ICC-0001-0006) and, accordingly, **ORDERS** the Registry to request the NFI to proceed with additional non-destructive investigation thereon, pursuant to option 3 listed on page 3 of the NFI report dated 22 April 2014;

ORDERS that, as soon as the additional investigation on the Fourth Mobile Phone (item CAR-ICC-0001-0006) is concluded, it shall be promptly returned to Mr Arido;

DECIDES that the data extracted from the Four Mobile Phones shall be made available to all the parties to this Case on a confidential basis .

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser

Single Judge

Dated this Tuesday, 3 June 2014

The Hague, The Netherlands