

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **11 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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

Public Redacted Document

Public Redacted version of "Prosecution's Response to Arido's Request for Interim Release", 30 June 2014, ICC-01/05-01/13-525-Conf

Source: The Office of the Prosecutor

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

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I. Introduction

1. The Office of the Prosecutor ("Prosecution") hereby opposes Narcisse Arido's request for interim release in its entirety ("Request"). The Request advances no cogent reasons for the granting of interim release, or in the alternative, temporary release for the purposes of Arido's asylum claim in France. First, [REDACTED]. Second, the reasons warranting Arido's continued detention are now more compelling than at the time of his arrest, pursuant to Articles 60(2) and 58(1) of the Rome Statute ("Statute").

2. The nature of the crimes for which Arido has been arrested – offences against the administration of justice – underscores why interim release is wholly inappropriate in the circumstances. Arido, who was a proposed Defence witness in *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Bemba case"), is alleged to have directly participated in a scheme to subvert the course of justice, together with Bemba and others. His alleged willing involvement in the corruption of witnesses and the presentation of false evidence in the *Bemba* case reflects his contempt for the integrity of the proceedings before this Court and its authority.

3. There is clear evidence [REDACTED]. In relation to this case, his alleged participation in the criminal activities undertaken during the *Bemba* Defence case was manifestly aimed at defeating the ends of justice, denying the Court and the victims of the serious crimes alleged the right to a fair adjudication of that case on its merits. Moreover, there is [REDACTED].

4. There is no doubt that Arido is capable of and willing to disregard this Court's legal framework, and to evade justice. His personal interest in the outcome of these proceedings gives him an even greater incentive to persist in the unlawful conduct for which he was arrested concerning the *Bemba* case.

5. As explained below, the continued detention of Arido is necessary as there are reasonable grounds to believe that, if released, Arido would not respect any related terms and conditions, would not appear voluntarily at future proceedings, would interfere with the ongoing proceedings, and would likely commit further offences in violation of Article 70 to secure his interests in this case. For these reasons, the Request should be denied and Arido should remain in custody.

II. Procedural history

6. On 19 November 2013, the Prosecution filed an application for a warrant of arrest (“Application”) against Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido (together, the “Suspects”) for alleged offences against the administration of justice pursuant to Article 70 of the Statute.¹

7. The Single Judge issued a warrant of arrest for the Suspects on 20 November 2013,² pursuant to which Arido was arrested in France on 23 November. He was transferred to the ICC Detention Centre on 18 March 2014, after refusing to surrender to the Court, and challenging his transfer before the French courts.

8. On 10 June 2014, Arido filed his Request in which he requested the Single Judge to render the decision before 18 June in order to attend an alleged meeting related to his asylum claim in France.³ On 12 June, the Single Judge noted the unfeasibility of rendering a decision within the time requested, and ordered the Prosecution and the relevant authorities of France and the Netherlands to submit their views by 30 June.⁴

¹ Prosecution’s Application for Warrant of Arrest (“AWA”) filed under seal, ICC-01/05-67-US-Exp. The AWA and its supporting materials were reclassified as confidential on 27 November 2013, ICC-01/05-67-Conf, Prosecution’s Application for Warrant of Arrest, 19 November 2013.

² [REDACTED]. The warrant of arrest was unsealed on 28 November 2013, ICC-01/05-01/13-1-Red2-tENG.

³ [REDACTED].

⁴ ICC-01/05-01/13-488-Corr.

III. Confidentiality

9. This filing is classified as “Confidential” as it refers to evidence classified as such.

IV. Submissions

10. The Request is based on Arido’s asylum application in France, in arguing that the criteria for his continued detention under Article 58(1) are not met,⁵ and alternatively, justifying his temporary release.⁶ [REDACTED].

A. There is evidence to suggest [REDACTED]

11. Evidence obtained since Arido’s arrest and detention includes.⁷ [REDACTED].⁸ [REDACTED],⁹ [REDACTED].¹⁰

12. This evidence contradicts Arido’s claim that his failure to appear before and testify before the Court in September 2012 was [REDACTED].¹¹

13. The Request conspicuously omits that [REDACTED].¹²

14. In addition to [REDACTED].¹³

⁵ Request, paras. 30-31, 34-6.

⁶ Request, paras. 61-67.

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

15. There is an indication that [REDACTED].¹⁴ [REDACTED]; ¹⁵ [REDACTED].

16. Given the evidence that [REDACTED], on top of the clear evidence of his involvement in criminal activities in this case, make Arido's interim release totally unwarranted.

B. Arido's continued detention is justified

17. The Request advances no compelling reasons for Arido's interim or temporary release in the circumstances. To the contrary, the criteria underpinning the necessity for his continued detention under Articles 58(1) and 60(2) are fulfilled.

18. As previously noted by the Single Judge in relation to interim release, where the conditions set down in Article 58(1) are met, "*the person shall continue to be detained*".¹⁶ In making its assessment, the Chamber looks into the existence of facts justifying detention and can be based on the same materials and factors as those underlying the warrant of arrest.¹⁷

19. In this case, the Single Judge found that arrest was necessary under all three prongs of Article 58(1)(b).¹⁸ Since the issuance of the warrant, additional information has been obtained, not known at the time the arrest warrant was requested, which further supports and strengthens the reasons necessitating Arido's continued detention.

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ ICC-01/05-01/13-261, pp. 6-7.

¹⁷ ICC-01/05-01/13-261, p. 7.

¹⁸ ICC-01/05-01/13-1-Red2-tENG, paras. 17, 21-23.

20. Like similar requests made by other Suspects in this case,¹⁹ the Request relies selectively on the fact that under human rights law suspects are presumed innocent and detention should be ordered only after the circumstances of the individual case are considered.²⁰ The Request ignores that there is ample evidence establishing that these conditions have been, and continue to be, met for all three purposes under Article 58(1)(b).²¹

i. Article 58(1)(a) – There are reasonable grounds to believe that Arido committed the crimes alleged

21. The Single Judge made clear factual findings regarding the basis for the arrest of each of the Suspects,²² including Arido. He properly determined that there existed reasonable grounds to believe that Arido had committed crimes against the administration of justice pursuant to Article 70, specifically that he: (i) received sums of money from Bemba's close associates, including Kilolo and Babala, around the date that he delivered the alleged false or forged documents to Kilolo; (ii) acted as an intermediary in respect of other money transfers to witnesses; and (iii) transferred money to Defence witnesses.²³

22. On the basis of these findings, the Single Judge found reasonable grounds to believe that Arido assisted in the criminal scheme to provide benefits to Defence witnesses in exchange for false testimony and the presentation of false or forged evidence in violation of Article 70(1)(b) and (c).²⁴

¹⁹ ICC-01/05-01/13-38-Corr, paras. 9-16 (Babala); ICC-01/05-01/13-42, paras. 45-49 (Kilolo); ICC-01/05-01/13-71, para. 11 (Mangenda).

²⁰ Request, paras. 13-16.

²¹ ICC-01/05-01/13-1-Red2-tENG, paras. 21-23.

²² ICC-01/05-01/13-1-Red2-tENG, paras. 13-20.

²³ ICC-01/05-01/13-1-Red2-tENG, para. 19.

²⁴ ICC-01/05-01/13-1-Red2-tENG, para. 13.

23. The concise factual findings in the arrest warrant were based on the detailed and precise evidence the Prosecution presented in its Application, and disclosed to the Suspects. When issuing the arrest warrant, the Single Judge referred to “numerous, objective, specific and detailed items of evidence” concerning the Suspects’ alleged criminal conduct, as well as a “considerable and indeed quite a remarkable quantity of items of evidence which furnish objective and incriminating information and details pertaining directly and specifically to the Prosecutor’s factual allegations.”²⁵

24. These facts hold true today. Moreover, there is now an even stronger basis to show that Arido committed the alleged crimes than at the time of the issuance of his arrest warrant. Since the issuance of the arrest warrant, additional evidence demonstrating Arido’s involvement in the provision of the false or forged documents presented, and his direct illicit coaching and solicitation of witnesses to give false testimony, in the *Bemba* case has come to light, and has been disclosed to the Suspects.

25. For example, in addition to the chain-of-custody submitted by the Defence to show that the documents alleged to be false or forged were provided by Arido,²⁶ Arido’s e-mails confirm that he sent Kilolo the documents,²⁷ as do [REDACTED].²⁸ This evidence underscores Arido’s false denials to the contrary.²⁹

26. Further, witness statements show that Arido told them they would get money and asylum in Europe if they falsely testified for the *Bemba* Defence.³⁰ Arido illicitly coached one such witness to lie, saying «[p]uisque tu ne connais rien de l’armée, tu vas te presenter à Kilolo comme un caporal».³¹ Arido also told a group of prospective

²⁵ ICC-01/05-01/13-1-Red2-tENG, para. 12.

²⁶ CAR-OTP-0077-1121.

²⁷ CAR-OTP-0075-0259.

²⁸ [REDACTED].

²⁹ CAR-OTP-0074-1065 at 1068-1069.

³⁰ CAR-OTP-0080-0021 at 0030-0031; CAR-OTP-0080-0043 at 0048-0050.

³¹ CAR-OTP-0078-0218 at 0225.

witnesses, «une fois que nous ayons témoigné, nous aurons la possibilité de rester là bas, parce que même si nous mentons dans notre déposition, nous serons assistés d'un avocat qui va nous défendre».³²

27. As the evidence showing that Arido committed the criminal acts alleged is even stronger now than at the time of the issuance of the arrest warrant, the basis underlying his continued detention is even more compelling.

ii. Article 58(1)(b) – Arido's Continued detention is necessary

28. The Appeals Chamber has held that the three conditions listed in Article 58(1)(b) are “in the alternative”, meaning that “fulfilment of one of them [is] sufficient to negate the need to address the remaining conditions”.³³ Further, when determining the existence of one or more of the risks set down in this provision, the “question revolves around the possibility, not the inevitability, of a future occurrence”.³⁴

a. Article 58(1)(b)(i) Arido is likely to abscond if released from detention

29. Arido is unlikely to appear for trial voluntarily if released. He has an objective and compelling personal interest in avoiding justice in this case. First, Arido's personal liberty is at stake; his conduct comprises numerous offences under Article 70 and, if convicted, he faces a serious sentence with a penalty of up to five years imprisonment for each such crime prescribed by the Statute. Second, because the evidence demonstrating his involvement in the crimes charged is strong, direct and compelling, there is a substantial likelihood of his conviction. Third, by his acts and conduct, Arido has demonstrated his propensity to subvert the course of justice in the *Bemba* case, and is likely to do so again here.

³² CAR-OTP-0078-0218 at 0234.

³³ ICC-01/05-01/13-261, para. 23, referring to ICC-01/04-01/06-824, para. 139.

³⁴ ICC-01/05-01/13-261, para. 23, quoting ICC-01/04-01/07-572, para. 21.

30. Arido's claim that he is unwilling or unable to travel is irrelevant. As noted by the Single Judge, "a suspect's commitment to appear cannot be considered as *per se* decisive for the purposes of determining whether one or more of the conditions listed in article 58(1)(b) are met."³⁵ Moreover, his arguments in support of this assertion fail to substantiate this claim.

31. First, Arido asserts that absconding would "negatively impact his ability to seek refugee status in France, or elsewhere".³⁶ However, as previously noted, [REDACTED].³⁷

32. Second, Arido claims that there is no risk of his return to [REDACTED] as he left the country out of fear for his life.³⁸ [REDACTED];³⁹ therefore, any assertions in regard to his purported safety in [REDACTED] must be regarded with the utmost scepticism.

33. Third, Arido's suggestion that his travel document is currently in the possession of the French Office for the Protection of Refugees and Stateless Persons ("OFPRA") is insignificant as regards whether he is a flight risk.⁴⁰ As noted by the Single Judge, movement "within the Schengen area can by large occur without the need that any document be shown."⁴¹

34. Fourth, Arido denies being part of Bemba's network,⁴² despite evidence of his role alongside the other Suspects in the plan to defend Bemba through the commission of crimes against the administration of justice in the *Bemba* case. Particularly, Arido facilitated meetings between Kilolo and witnesses that Arido had

³⁵ ICC-01/05-01/13-261, para. 26.

³⁶ Request, para. 34.

³⁷ [REDACTED].

³⁸ Request, para. 34.

³⁹ [REDACTED].

⁴⁰ Request, para. 35.

⁴¹ ICC-01/05-01/13-261, para. 26.

⁴² Request, para. 40.

approached to testify falsely, as well as providing false or forged documents to the *Bemba* Defence team.⁴³ Arido was closely and directly involved with individuals' part of a network that could provide "the financial resources to readily abscond the jurisdiction of the Court".⁴⁴ Moreover, his alleged involvement in the plan to assist Bemba's defence case through the commission of crimes would bring him within Bemba's "broad network and hence the possible beneficiary of the resources available to the network as a whole."⁴⁵ The existence of a network of supporters behind a suspect, particularly the direct or indirect availability of financial means, is a relevant factor when determining the existence of a flight risk.⁴⁶

35. The Request suggests that Arido's asylum application in France is a "guarantee" that he will appear at trial.⁴⁷ However, given (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED], and (iv) his demonstrated propensity to engage in fraudulent activity, it is clear that Arido is not a suitable candidate for interim release and that his assurances otherwise are inconsequential.

36. Arido suggests that even if convicted, it is "unlikely that the maximum sentence" provided for under Article 70(3) will be imposed.⁴⁸ However, Arido's conduct comprises a number of distinct violations of Article 70, each of which carry a penalty of up to five years under the Statute. Further, Article 78 provides for the imposition of a joint sentence where an accused is convicted of more than one offence, in order to reflect the extent of an accused's culpability.⁴⁹ The Single Judge has also previously noted that offences against the administration of justice "are of the utmost gravity, even more so when proceedings relating to crimes as grave as those within the

⁴³ See, e.g., CAR-OTP-0078-0184 at 0189-0190; CAR-OTP-0078-0206 at 0210, 0213-0214; CAR-OTP-0078-0218 at 0221-0226; CAR-OTP-0075-0259; CAR-OTP-0080-1138 at 1249.

⁴⁴ ICC-01/05-01/13-261, para. 26.

⁴⁵ ICC-01/05-01/13-261, para. 29.

⁴⁶ ICC-01/05-01/13-261, para. 29, referring to ICC-01/04-02/06-147, para. 55.

⁴⁷ Request, para. 31.

⁴⁸ Request, para. 56.

⁴⁹ See Article 78(3) of the Statute.

jurisdiction of the Court are at stake.”⁵⁰ Given the likelihood of Arido’s conviction based on the volume and extent of the evidence showing his direct and indirect involvement in corruptly influencing witnesses and the presentation of false evidence across multiple counts, there is a strong likelihood of his substantial imprisonment, heightening the risk of his absconding if released.

37. To ensure his appearance at trial, Arido must remain in custody; no less stringent measure is available or appropriate in the circumstances.

b. Article 58(1)(b)(ii) Detention is necessary to ensure that Arido does not obstruct the proceedings

38. There is a high risk that, if released, Arido would obstruct and endanger the investigation or the Court proceedings regarding the crimes for which he was arrested. Arido has already demonstrated his willingness to unlawfully interfere with witnesses and there is no reason to suspect that he will not do so again, now that his personal liberty is at stake.

39. Regarding the alleged criminal conduct in this case, the Request selectively refers only to the records of money transfers⁵¹ showing the payments Arido received from other Suspects, a fraction of the evidence supporting the allegations against him. It fails to refer to evidence that Arido directly solicited false testimony from prospective witnesses in the *Bemba* case,⁵² or the evidence that Arido provided false or forged documents for presentation in the *Bemba* case.⁵³

⁵⁰ ICC-01/05-01/13-261, para. 25.

⁵¹ Request, para. 43.

⁵² CAR-OTP-0080-0021 at 0030-0031; CAR-OTP-0080-0043 at 0048-0050; CAR-OTP-0078-0218 at 0225; CAR-OTP-0078-0218 at 0234.

⁵³ CAR-OTP-0080-1138 at 1249.

40. Arido's direct role in the illicit coaching of witnesses to give false testimony means that he knows the identity of potential witnesses in this case. Further, because of the information which has been disclosed since the issuance of the warrant, Arido is now in a better position to obstruct or endanger the investigation of this case.

41. Moreover, as further material becomes available to the Prosecution, so too does the potential for further investigation. Given Arido's knowledge of the Prosecution's case, through the disclosure that has occurred, there is a risk that related crimes may be committed jeopardising any future investigations if he is released.

42. While the possibility for Arido to influence and corrupt witnesses in this case exists from the Detention Centre even in a monitored environment, there is no effective means of curtailing his communications and ability to act against witnesses if released. Arido's suggestion that without access to a specific e-mail account and phone he has no way to contact anyone in [REDACTED] is disingenuous, at best.⁵⁴

c. Article 58(1)(b)(iii) Detention is necessary to prevent continuation of the alleged crimes

43. The Single Judge has previously noted that the nature of the Article 70 crimes at issue involves an overlap between the risk of obstruction of the investigation or the proceedings and the risk of the further commission of crimes or related crimes.⁵⁵ Consequently, the arguments contained in the previous section are also relevant to this section. As further noted by the Single Judge, the risk of the commission of related crimes, is such as to make it impossible to detail what the nature of such crimes may be, or the context of their potential commission.⁵⁶

44. However, given Arido's demonstrated propensity to engage in fraudulent activity, as well as additional evidence supporting the allegations against him and

⁵⁴ Request, para. 49.

⁵⁵ ICC-01/05-01/13-261, para. 36.

⁵⁶ ICC-01/05-01/13-261, para. 36.

his increased knowledge of the Prosecution's case, there are "specific and concrete elements"⁵⁷ establishing the risk of his possible commission of further crimes if released.

C. No conditions are sufficient to safeguard against the risks in Article 58(1)(b)

45. Because of the strength of the evidence that Arido was part of a criminal plan which involved communication between the Suspects, individuals assisting the Suspects in their activities and witnesses in the *Bemba* case – including through the abuse of the Court's communication system – none of the conditions suggested by Arido are sufficient to prevent the risk of conduct frustrating Article 58(1)(b).⁵⁸

46. As stated by the Single Judge, because of the nature of the alleged criminal conduct in this case, "it is difficult to conceive of measures which might effectively counteract the risks associated with the suspect's communications with the external world."⁵⁹

47. Further, Arido's suggestion that he will surrender his passport and other travel documents to the French authorities as a condition for release,⁶⁰ contradicts his submission that he is not at risk of absconding because his travel document is currently in the possession of OFPRA.⁶¹

D. Temporary release is also inappropriate

48. All of the reasons which make interim release inappropriate in Arido's case apply equally to his alternative request for temporary release to attend an alleged

⁵⁷ ICC-01/05-01/13-261, para. 23.

⁵⁸ Request, para. 59.

⁵⁹ ICC-01/05-01/13-261, para. 41.

⁶⁰ Request, para. 59.

⁶¹ Request, para. 35.

meeting related to his asylum claim in France. Arido provides no confirmation of the meeting's rescheduling. However, even had he done so, the potential for such a meeting does not justify his release.

E. Conclusion

49. None of the elements advanced in the Request affect the conclusion reached by the Single Judge upon the issuance of the warrant. Indeed, the intervening period since the warrant's issuance has yielded highly incriminating evidence regarding all Defence teams, of which they are aware through the attendant disclosure, providing Arido with greater knowledge of the Prosecution case. Arido's alleged conduct in the *Bemba* case demonstrates his contempt for the administration of justice before this Court, and in light of the evidence that [REDACTED] – Arido's continued detention is absolutely necessary.

V. Requested Relief

50. For the foregoing reasons, the Prosecution respectfully requests that the Chamber deny the Request in its entirety and order Arido's continued detention.



Fatou Bensouda, Prosecutor

Dated this 11th Day of July 2014
At The Hague, The Netherlands