

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **16 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, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA
WANDU AND NARCISSE ARIDO**

PUBLIC

**Public Redacted Version of Narcisse Arido's Reply to the "Prosecution's Response to
Arido's Request for Interim Release" (ICC-01/05-01/13-525-Conf)**

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. The Arido Defence hereby files its reply to the Prosecution's Response to its interim release request.

II. PROCEDURAL HISTORY

2. On 10 June 2014, the Arido Defence filed a request for interim release (hereinafter 'interim release request').¹ Alternatively, it requested the temporary release of Mr. Arido to attend a 27 June 2014 interview with the French Office for the Protection of Refugees and Stateless Persons ('OFPRA'), and asked the Single Judge to render his decision before 18 June 2014 so as to permit Mr. Arido to take the necessary measures to attend the interview, in the event that interim or temporary release was granted.²

3. On 12 June 2014, the Single Judge stated that in light of the obligation for the Pre-Trial Chamber to seek the observations from the host State and from the State to which the person seeks to be released, it was not possible for the Chamber to render its decision by the requested date. He rejected Mr. Arido's alternative request for temporary release and ordered the Prosecution, the relevant authorities of the Kingdom of the Netherlands and those of the French Republic to submit their views on the interim release request by Monday 30 June 2014.³

4. The Prosecution filed its response on 30 June 2014, opposing the interim release request ('Prosecution's Response').⁴ The observations of the Kingdom of the Netherlands and those of the French Republic were transmitted to the Arido Defence by the Registry on 4 July 2014.⁵

5. On 4 July 2014, the Arido Defence requested leave to reply to the Prosecution's Response, in order to address a number of new arguments contained therein.⁶

6. On 8 July 2014, the Single Judge considered that the Defence had demonstrated the existence of good cause to obtain authorisation to file the sought reply and that the information which Mr. Arido will provide in respect of those issues might assist the Chamber in its

¹ ICC-01/05-01/13-477-Conf. A public redacted version was filed on 17 June 2014 (ICC-01/05-01/13-477-Red).

² *Ibid.*

³ ICC-01/05-01/13-488-Corr.

⁴ ICC-01/05-01/13-525-Conf.

⁵ ICC-01/05-01/13-537; ICC-01/05-01/13-537-Conf-AnxI; ICC-01/05-01/13-537-Conf-AnxII.

⁶ ICC-01/05-01/13-535-Conf.

determination of the interim release request. For these reasons, the Single Judge decided, on the basis of regulation 24 (5) of the Regulations of the Court, to grant the Arido Defence leave to reply. He further granted the Arido Defence's request that the 10-day time limit for the filing of the reply shall run from the notification of the decision.⁷ The Single Judge also ordered the Prosecution to file a public redacted version of its Response, and the Arido Defence to file a public redacted version of its request for leave to reply as well as of its reply, in case it was filed as confidential.⁸

7. The Prosecution filed the public redacted version of its Response on 11 July 2014.⁹

III. CLASSIFICATION

8. Pursuant to Regulation 23*bis* (2) of the Regulations of the Court ('RoC') and Regulation 24 of the Regulations of the Registry ('RoR'), this request is submitted confidentially as it discusses private and confidential information. A public redacted version will be filed shortly.

IV. SUBMISSIONS

A. The alleged "refusal" of Mr. Arido to surrender to the ICC

9. In paragraph 7 of its Response, the Prosecution alleged that Arido "refused to surrender to the Court and challenged his transfer before the French courts".¹⁰

10. First of all, the Arido Defence wishes to point out that the Prosecution fails to substantiate this claim with reference to evidence. Secondly, the Arido Defence notes that contrarily to what the Prosecution argues, Mr. Arido has fully cooperated with the French authorities regarding his arrest and detention relating to the present case, as explained in paragraph 33 of its request for interim release which, unlike the Prosecution's allegations in its Response, is supported by evidence.¹¹ Finally, Mr. Arido's use of his right to challenge his arrest and detention in France and/or his transfer to the ICC through legitimate judicial procedures is not a factor relevant in consideration of a request for interim release.

⁷ ICC-01/05-01/13-543, p. 4.

⁸ Ibid.

⁹ ICC-01/05-01/13-525-Red.

¹⁰ ICC-01/05-01/13-525-Conf, para. 7.

¹¹ ICC-01/05-01/13-477-Conf, para. 33.

B. [REDACTED]

11. In paragraphs 11 to 16 of its Response, the Prosecution contends that “strong” circumstantial evidences demonstrate that [REDACTED].¹² It refers to [REDACTED] which, the Prosecution submits all along its Response, show the general “propensity” of Mr. Arido for “dishonesty and contempt for authority” and to “engage in the creation and use of false and forged documents”.¹³

12. First of all, [REDACTED] unrelated to the present procedure and to Mr. Arido’s asylum request before the French authorities. The Prosecution itself recognises that it does not have access to [REDACTED]. [REDACTED],¹⁴ [REDACTED]. [REDACTED].¹⁵ Therefore, unlike what the Prosecution attempts to argue, [REDACTED]. The Prosecution’s arguments should therefore be disregarded.

13. The Arido Defence however wishes to point out that despite the strong wording used, the Prosecution’s arguments are based on nothing but speculation. [REDACTED]. [REDACTED].¹⁶ In other words, the Prosecution takes the position that [REDACTED]. [REDACTED]¹⁷ [REDACTED].¹⁸ Circumstantial evidence does not and shall not equate speculation based on the Prosecution’s own narrative.

14. Finally, the Prosecution’s allegation that [REDACTED] contradicts Arido’s claim that he failed to appear before the ICC as a result of his fears [REDACTED]¹⁹ is, in addition to being unsubstantiated, overly simplistic. The Arido Defence refers to the arguments contained in paragraph 30 of its interim release request, as well as to the numerous news articles discussing the security concerns faced by CAR refugees in [REDACTED]²⁰ for detailed and substantiated explanations as to why Mr. Arido did not testify before the ICC.

¹² ICC-01/05-01/13-525-Conf, paras 11-16.

¹³ ICC-01/05-01/13-525-Conf, paras 15, 16, 35, 44.

¹⁴ ICC-01/05-01/13-570-Conf-AnxA.

¹⁵ [REDACTED].

¹⁶ ICC-01/05-01/13-525-Conf, fn. 14.

¹⁷ [REDACTED]

¹⁸ [REDACTED]

¹⁹ ICC-01/05-01/13-525-Conf, para. 12.

²⁰ See e.g. CAR-D24-0001-0009; CAR-D24-0001-0016; CAR-D24-0001-0018; CAR-D24-0001-0023; CAR-D24-0001-0028.

C. The “disingenuous” claim that Mr. Arido could not contact anyone in [REDACTED]

15. In paragraph 42 of its Response, the Prosecution states that “Arido’s suggestion that without access [REDACTED] he has no way to contact anyone [REDACTED] is disingenuous, at best”.²¹

16. As many of the other arguments contained in the Response, this claim is unsubstantiated. The Prosecution fails to explain why and how Mr. Arido would still be able to access email addresses, phone numbers and/or any other contact information of persons of his alleged “contacts” in [REDACTED]. [REDACTED].

D. Clarification regarding the travel documents

17. In paragraph 47 of its Response, the Prosecution states that “Arido’s suggestion that he will surrender his passport and other travel documents to the French authorities as a condition for release, contradicts his submission that he is not at risk of absconding because his travel document is currently in the possession of OFPRA”.²²

18. The Arido Defence wishes to clarify Mr. Arido does not own a passport. As a refugee, he was given a “*titre de voyage*” by UNHCR in [REDACTED],²³ which is currently in the possession of OFPRA.²⁴ Mr. Arido is not in possession of this document. Should Mr. Arido be granted interim release and should OFPRA give him back the document, he would immediately surrender it to the French authorities.

²¹ ICC-01/05-01/13-525-Conf, para. 42.

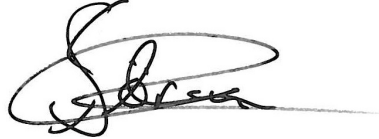
²² *Ibid.*, para. 47.

²³ [REDACTED].

²⁴ Confidential Annex A, p. 8.

V. CONCLUSION

19. In light of the above, the Arido Defence respectfully requests the Single Judge to reject the Prosecution's arguments and grant the request for interim release.

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

Göran Sluiter, Counsel for Narcisse Arido

Dated this 16 July 2014

At Amsterdam, The Netherlands