



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

URGENT

**Public Redacted Version of Narcisse Arido's Request for Leave to Reply to the
"Prosecution's Response to Arido's Request for Interim Release" (ICC-01/05-01/13-
525-Conf) (ICC-01/05-01/13-535-Conf)**

Source: Counsel for Narcisse Arido

Document 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 M. 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 the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence
Xavier-Jean Keïta

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

I. INTRODUCTION

1. 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

2. 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

3. The Prosecution filed its response on 30 June 2014, opposing the interim release request (‘Prosecution’s Response’).⁴ At the time of writing, the observations of the Kingdom of the Netherlands and of the French Republic are yet to be received.

4. The Arido Defence hereby seeks leave to reply to specific parts of the Prosecution’s Response.

II. CLASSIFICATION

5. 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 relates to a filing of the same classification.

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.

III. APPLICABLE LAW

6. Pursuant to Regulation 24 (5) of the RoC, a party can reply to a response with the leave of the Chamber. Such leave will be granted upon “good cause” being shown by the requesting party.⁵

7. In the present case, the Single Judge has held that a party seeking leave to reply needs to demonstrate that good cause exist, such as when one or more issues arising from the response could not have been anticipated in its initial submissions,⁶ or when it would be beneficial for the Chamber to receive further submissions prior to its disposal of the matter under consideration.⁷ Other elements taken into account to determine good cause at the ICC have included the importance and potential effect of the issues raised,⁸ the fact that the response raises “a new question”,⁹ the fact that a reply would contribute to the legal debate,¹⁰ or more generally, that a reply would be in the interests of justice.¹¹

8. Under Article 64 (2) of the Statute, the Chamber must ensure that a trial is fair and expeditious, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.¹²

9. Regulation 34 (C) of the RoC provides that if leave to reply is granted, a reply shall be filed within 10 days of notification of the response. However, the Chamber can order a different time limit pursuant to the *chapeau* of this same Regulation.¹³

IV. SUBMISSIONS

A. Points on which the Arido Defence seeks leave to reply

10. The Arido Defence seeks leave to reply to the following new arguments contained in the Prosecution’s Response:

⁵ See e.g. ICC-01/05-01/13-112, p. 3; ICC-01/04-01/10-61, p. 4; ICC-01/05-01/08-294, para. 3.

⁶ ICC-01/05-01/13-112, p. 3; see also ICC-01/04-01/07-3279, para. 11.

⁷ ICC-01/05-01/13-112, p. 3.

⁸ ICC-01/04-01/10-61, p. 4.

⁹ ICC-01/04-01/07-3279, para. 11.

¹⁰ ICC- 01/04-01/07-104-tENG, p. 7.

¹¹ ICC-02/05-03/09-147, para. 5.

¹² It is widely accepted that such obligation extends to the Pre-Trial Chamber; see e.g. ICC-02/11-01/11-33, para. 5; ICC-01/09-02/11-30, para. 6; ICC-01/05-01/08-528, para. 10.

¹³ ICC-01/04-01/10-61, p. 4.

- a. That Mr. Arido “refus[ed] to surrender to the Court”;¹⁴
- b. That there is [REDACTED].¹⁵ The Arido Defence also wishes to reply to the Prosecution’s continued reliance on this argument throughout the Response, including by referring to Mr. Arido’s alleged “propensity to engage in fraudulent activity”;¹⁶
- c. That the claim by the Arido Defence that [REDACTED], Mr. Arido has no way to contact anyone in [REDACTED] is “disingenuous”;¹⁷
- d. That the Arido Defence contradicts itself by offering that Mr. Arido surrenders his passport and other travel documents to the French authorities as a condition for release while arguing that these documents are in the possession of OFPRA.¹⁸

11. The Arido Defence wishes to reply these specific aspects of the Prosecution’s Response in order to demonstrate that the Prosecution’s arguments are unsubstantiated, based on speculations and factually incorrect.

B. Good cause exists for granting leave to reply

12. First of all, it is the very first time that the Prosecution makes the above-mentioned arguments. They appear nowhere in the Prosecution’s request for the issuance of an arrest warrant¹⁹ or in any other filing by the Prosecution. As a result, they constitute new arguments that the Arido Defence could not have anticipated.

13. Secondly, a request for interim release touches upon some of the most fundamental rights of a suspect in criminal proceedings, namely the right to the presumption of innocence and the right to liberty. The Arido Defence recalls that it benefits from the right to have the last word - which has been extended to include written filings on substantive issues concerning the case, including during the pre-confirmation phase.²⁰ There is no doubt that the question of interim release falls with this category and therefore, leave to reply should be granted to protect

¹⁴ ICC-01/05-01/13-525-Conf, para. 7. The Arido defence notes the Prosecution fails to provide any support for this assertion.

¹⁵ ICC-01/05-01/13-525-Conf, paras 11-16.

¹⁶ *Ibid.*, paras 31-32, 35, 44.

¹⁷ *Ibid.*, para. 42. The Arido defence notes the Prosecution fails to provide any support for this assertion.

¹⁸ *Ibid.*, para. 47.

¹⁹ ICC-01/05-01/13-19-Conf.

²⁰ Rule 140 (2) (D) & 141 (2) of the Rules of Procedure and Evidence; *see also* ICC-01/05-01/13-364, p. 6; ICC-01/04-01/06-2722, para. 2; ICC-01/04-01/06-T-29-EN, pp. 26-27; ICC-01/05-01/08-T-13-ENG, pp. 7-8.

Mr. Arido's right to defend himself against the new arguments raised in the Prosecution's Response.

14. Thirdly, the potential impact of the Prosecution's new arguments - that interim release be rejected and Mr. Arido kept in pre-trial detention - provides further justification for the Defence to be permitted to address them directly and in details.²¹

15. Finally, the Arido Defence further submits that permitting it to reply is in the interests of justice,²² as its submissions will assist the Single Judge to make an informed decision in the determination of the request for interim release.

V. CONCLUSION

16. In light of the above, the Arido Defence respectfully requests the Single Judge to:

- i. Grant leave to reply to the Prosecution's arguments listed in paragraph 10 above; and,
- ii. Order that the 10 days deadline for the filing of a reply pursuant to Regulation 34 (C) of the RoC starts running from the date of notification of the decision granting leave to reply.

17. In addition, the Arido Defence respectfully requests that a decision be given on the present request prior to the Single Judge's decision on the interim release request.



Göran Sluiter, Counsel for Narcisse Arido

Dated this 16 July 2014

At Amsterdam, The Netherlands

²¹ See e.g. ICC-01/04-01/07-1004-tENG, para. 3; ICC-01/04-01/10-61, p. 4.

²² ICC-02/05-03/09-147, para. 5.