

**Cour
Pénale
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**International
Criminal
Court**

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

Date: **22 October 2014**

APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka

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

**Narcisse Arido's Response to the Prosecution's Urgent Request for Suspensive Effect
of its Notice of Appeal Against the Single Judge's Interim Release Decision of
21 October 2014
(ICC-01/05-01/13-706 OA9)**

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. Earlier today, the Prosecution filed an urgent request for a suspensive effect of the Single Judge's decision to release Mr. Kilolo, Mr. Babala, Mr. Mangenda and Mr. Arido ('Prosecution's Request').¹
2. The Arido Defence opposes the Prosecution's Request for the reasons listed below.

II. PROCEDURAL HISTORY

3. On 21 October 2014, the Single Judge ordered the immediate release of Mr. Narcisse Arido as well as his co-suspects, other than Mr. Bemba, on the basis of the lengthy period of pre-trial detention to which they were subjected.² He ordered the released persons to sign an individual declaration stating their commitment to appear at trial or whenever summoned by the Court, and indicating the address at which they will be staying. He further ordered the Registrar to promptly make all the practical arrangements as necessary and appropriate to enforce the decision.³
4. On the same day, the Prosecution filed an urgent request asking the Pre-Trial Chamber to stay the execution of the Single Judge's decision, pending resolution of the Appeals Chamber of its request for suspensive effect of its appeal ('Prosecution's Request').⁴
5. On 22 October 2014, the Prosecution filed its notice of appeal pursuant to Article 82 (1) (b) of the Statute, Rule 154 (1) of the Rules of Procedure and Evidence ('RPE') and 64 (1) of the Regulations of the Court ('RoC') on 22 October 2014.⁵ It also requested the Appeals Chamber to order the suspension of the execution of the Single Judge's Decision pursuant to Article 83 (3) of the Statute and Rule 156 (5) of the RPE.⁶
6. On 22 October 2014 at 13h10, the Arido Defence was notified of a decision by the Appeals Chamber ordering the Defence to file a response to the Prosecution's Request by 15h the same day.⁷

¹ ICC-01/05-01/13-705, related to ICC-01/05-01/13-703.

² ICC-01/05-01/13-703.

³ *Ibid.*, p. 7.

⁴ ICC-01/05-01/13-705.

⁵ ICC-01/05-01/13-706 OA6.

⁶ *Ibid.*

⁷ ICC-01/05-01/13-709 OA9.

III. SUBMISSIONS

7. As a preliminary note, the Arido Defence wishes to express its concern regarding the deadline imposed by the Appeals Chamber for the response to the Prosecution's Request. While it is grateful for the Appeals Chamber to act as expeditiously as possible, it submits that the deadline imposed - a mere 1h30, is quite unreasonable, and amounts to a denial of the Defence's right to response enshrined in Regulation 24 of the RoC. It also frustrates the Defence's right to have the last word.⁸ This is particularly important in light of the fact that the issue at stake is the liberty of the suspects, a fundamental right. As a result of the Appeals Chamber's imposed deadline, and while it has mobilised all its meager resources to the present response, the Arido Defence is unable to effectively represent the interests of Mr. Arido.

8. The Arido Defence recalls that Article 82 (3) of the Statute provides that by default, an appeal does not have suspensive effect, but that it can be requested by a Party, pursuant to Rule 156 (5) of the RPE. When deciding upon a request for a suspensive effect, the Appeals Chamber has full discretion, and will consider the specific circumstances of the case as well as the factors it considers relevant for the exercise of its discretion.⁹ In particular, the Appeals Chamber must consider whether the implementation of the decision under appeal would:

- i. Create an irreversible situation that could not be corrected even if the AC eventually were to find in favour of the appellant;
- ii. Lead to consequences that would be very difficult to correct and may be irreversible, or,
- iii. Could potentially defeat the purpose of the appeal.¹⁰

9. The Arido Defence submits that the situation at stake does not fall within the specific circumstances where a suspensive effect is required.

A. The execution of the Single Judge's Decision is not irreversible

10. First of all, the interim release of Mr. Arido is in no way irreversible, unlike what the Prosecution purports to present.¹¹ The Prosecution's argument that there are "no guarantee the suspects could be arrested again", and that it may be impossible to bring them back to Court, and

⁸ See Rule 140 (2) (d) and Rule 141 (2) of the Rules; *see also* 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.

⁹ ICC-01/09-01/11-862, para. 6; ICC-01/04-01/06-1290, para. 7; ICC-01/05-01/08-499 (OA 2), para. 11; ICC-01/04-02/12-12 (OA), para. 18.

¹⁰ ICC-01/09-01/11-862, para. 6.

¹¹ ICC-01/05-01/13-706 OA6, para. 2.

that “there is no guarantee that any such co-operation will be forthcoming should the suspects abscond”¹² does not stand.

11. The Arido Defence recalls that Mr. Arido is to be released on the territory of France, a country that has been one of the driving forces behind the adoption of the Rome Statute and a long-standing State Party, which has demonstrated its willingness and ability to cooperate with the Court on multiple occasions. In particular, France already arrested Mr. Arido back in November 2013 – an arrest which Mr. Arido did not resist,¹³ and is bound to enforce any request for arrest made by the Court pursuant to Article 89.

12. As a result and unlike what is alleged by the Prosecution, the release of Mr. Arido would not frustrate its appeal, as Mr. Arido could be rearrested immediately, should the Appeals Chamber grant the Prosecution’s appeal. This is particularly true since Mr. Arido, as an asylum seeker, does not have any document allowing him to travel, and does not have financial means at his disposal which could permit him to travel to other countries.

B. The execution of the Single Judge’s Decision will not lead to consequences that would be difficult to correct

13. Secondly, the Arido Defence submits that the Prosecution fails to present arguments that the release of Mr. Arido could lead to consequences that would be difficult to correct, or be irreversible.¹⁴ The Prosecution only refers to previous decisions of the Single Judge deciding that the arrest and continued detention of Mr. Arido was necessary. However, the Single Judge, by his 21 October 2014 decision, decided otherwise, as he ordered the release of the suspects without conditions and stated that “the need to ensure the Released Persons’ appearance before the Court at trial, or whenever otherwise required, is adequately met by making their release conditional upon the signing of a personal commitment to that effect and that, accordingly, detention is no longer necessary for the purposes of article 58(1)(b)(i) of the Statute”.¹⁵

14. The determination of the correctness of the Single Judge’s decision is a matter to be argued by the Prosecution in its appeal, and to be decided upon by the Appeals Chamber, and it should not in any way be used preemptively to deny Mr. Arido’s right to be released.

¹² ICC-01/05-01/13-706 OA6, para. 4.

¹³ The French authorities said that the arrest was made without any difficulties and without the use of force, *see* CAR-OTP-0074-1058.

¹⁴ ICC-01/05-01/13-706 OA6, para. 2.

¹⁵ ICC-01/05-01/13-703, p. 5.

15. The Arido Defence wishes to emphasise that the case at stake is the first one to be presented before the Appeals Chamber, which usually deals with interim release questions regarding individuals suspected of Article 5 crimes, namely war crimes or crimes against humanity. Article 70 offences are of significantly lower gravity: Mr. Arido is not accused of having killed or hurt anyone, nor is he accused of having endangered anyone. The allegations against him related to attempts to corrupt the judicial system. The offences he is charged with carry a minimum penalty of a financial fine, and a maximum penalty of five years.¹⁶

16. In addition, the Appeals Chamber must keep in mind that the underlying justification for the Single Judge's decision is that interim release was necessary in order to avoid an unreasonable delay of pre-trial detention. Pursuant to Article 21 (3) of the Statute, the Statute – including Article 82 (3) – must be interpreted in light of internationally recognised human rights. Mr. Arido has been held in pre-trial detention for nearly 1 year. **That is more than some Article 5 cases,**¹⁷ even though Article 70 cases are of significant less gravity, as recently stated by the Appeals Chamber.¹⁸ Granting the Prosecution's request would have irreversible consequences on the rights of Mr. Arido, as it would result in him spending even more time in pre-trial detention. This must be kept in mind by the Appeals Chamber when deciding on the Prosecution's request.

C. The execution of the Single Judge's Decision does not defeat the purpose of the Prosecution's appeal

17. Thirdly, the Prosecution's argument that not suspending the execution of the Single Judge's decision could potentially defeat the purpose of its appeal¹⁹ amounts to a statement that in every single case where interim release would be ordered, suspensive effect should automatically be

¹⁶ Article 70 of the Statute.

¹⁷ See e.g. in the case of *Lubanga*, Mr. Lubanga was arrested on 16 March 2006 and the decision was rendered on 29 January 2007, or a bit more than 10 months after the arrest (http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200106/Pages/democratic%20republic%20of%20the%20congo.aspx); In the *Katanga* case, Mr. Katanga was transferred to the Court on 17 October 2007 and the decision on the confirmation of charges was rendered on 26 September 2008, or about 11 months (http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200107/Pages/democratic%20republic%20of%20the%20congo.aspx); In the *Ngudjolo Chui* case, Mr. Ngudjolo Chui was arrested on 6 February 2008 and the decision on the confirmation of charges was given on 26 September 2008, or a bit more than 7 months (http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/ICC-01-04-02-12/Pages/default.aspx); In the *Bemba* case, Mr. Bemba was arrested on 24 May 2008 and the confirmation of charges decision was issued on 15 June 2009, or a bit more than one year after his arrest (http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200105/related%20cases/icc%200105%200108/Pages/case%20the%20prosecutor%20v%20jean-pierre%20bemba%20gombo.aspx).

¹⁸ ICC-01/05-01/13-560 OA4, para. 1.

¹⁹ ICC-01/05-01/13-706 OA6, para. 4.

granted should the Prosecution appeals. This was explicitly rejected by the Appeals Chamber, which held that “the mere fact that a decision orders release does not automatically require that a request for suspensive effect of an appeal against that decision be granted”.²⁰

18. Instead, the Appeals Chamber has to consider the specific circumstances of the case.²¹ In the present case, the Prosecution fails to provide any substantive argument supporting its request, which must therefore be rejected.

19. The Prosecution’s statement that the Appeals Chamber previously recognised, in “similar circumstances” that releasing an accused pending appeal against the release decision could defeat the purpose of the appeal is factually incorrect.²² The Prosecution relies on the *Lubanga* case,²³ where a stay of the proceedings was ordered, and where Mr. Lubanga was released as a result. It does not relate to interim release. In addition, in the *Lubanga* case, the Trial Chamber had also previously always considered that his detention was necessary otherwise. In the present case, the Single Judge explicitly stated that a signed declaration to appear for trial or when summoned was sufficient to ensure the suspects’ appearance at trial.²⁴ The *Lubanga* case law is therefore inapposite to the present situation. In any event, the Appeals Chamber must consider the Prosecution’s request taking into consideration the particular circumstances of the case of Mr. Arido.

20. Further, the Prosecution’s argument that there is a “real danger that [the released suspects] may not appear at trial or when summoned by this Court, frustrating the entire purpose of the proceedings against them”²⁵ is unsubstantiated. From the outset, the Article 70 suspects were never given the opportunity to voluntarily surrender to the Court, as the Prosecution requested an arrest warrant.

²⁰ ICC-01/04-01/06-2536, para. 8.

²¹ *Ibid.*

²² ICC-01/05-01/13-706 OA6, para. 3.

²³ ICC-01/04-01/06-1444.

²⁴ ICC-01/05-01/13-703, p. 5: “the Chamber is satisfied that the need to ensure the Released Persons’ appearance before the Court at trial, or whenever otherwise required, is adequately met by making their release conditional upon the signing of a personal commitment to that effect and that, accordingly, detention is no longer necessary for the purposes of article 58(1)(b)(i) of the Statute”.

²⁵ ICC-01/05-01/13-706 OA6, para. 4.

IV. CONCLUSION

21. The Prosecution's request is based on unsubstantiated statements, without reference to specific and concrete risks, and fail to demonstrate why the immediate execution of the Single Judge's order would in any way frustrate its appeal.

22. In light of the above, the Arido Defence respectfully requests the Appeals Chamber to reject the Prosecution's Request.

A handwritten signature in black ink, appearing to read 'Göran Sluiter', with a large, stylized initial 'G' and a horizontal line extending to the right.

Göran Sluiter, Counsel for Mr. Arido

Dated this 22nd Day of October 2014

At Amsterdam, The Netherlands