



Original: **English**

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

Date: **26 May 2015**

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

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 Request for an Extension of the Page Limit for Submissions
Regarding the Elements of Article 70 Offences and Modes of Liability Pursuant to the
Order given at the Status Conference of 24 April 2015 (ICC-01/05-01/13-T-8-Conf-
ENG)**

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 respectfully requests Trial Chamber VII ('Trial Chamber') to grant it the permission to exceed the page limit for its submissions on the elements of offences contained in Article 70 and modes of liability that were ordered at the Status Conference of 24 April 2015. It requests an extension of 20 pages.

II. PROCEDURAL HISTORY

2. On 24 April 2015, the Trial Chamber directed the parties to make full submissions in writing on the matter of the elements of Article 70 offences and the applicable modes of responsibility.¹ It ordered written submissions should be filed by the Defence by 31 May 2015.²

3. On 11 May 2015, all Co-Accused jointly requested the Trial Chamber to suspend the deadline for the ordered submissions (hereafter '31 May submissions') for the reasons that, firstly, on the basis of principle, it should not be for the Defence to define the charges against it, and secondly, that submissions on the elements of offences and modes of liability is premature at the present stage of procedure.³ To date, no decision has been rendered.

III. APPLICABLE LAW

4. Pursuant to Regulation 37 (1) of the Regulations of the Court ('RoC'), a document filed with the Registry may not exceed 20 pages unless a different page limit is provided in the Statute, Rules, the RoC, or ordered by the Chamber. In exceptional circumstances, the Chamber may extend the page limit at the request of a participant under Regulation 37 (2) of the RoC.

5. The exceptional circumstances required by Regulation 37(2) have been met in other cases in light of the nature of the request or the issues on which an appeal was requested.⁴ Also relevant are the number⁵, complexity⁶, and novelty of the issues⁷ and/or the need to provide sufficient factual detail.⁸ An extension has also been granted in certain cases where the page limit

¹ ICC-01/05-01/13-T-8-CONF-ENG, p. 6, lines 12-15.

² *Ibid.*, p. 6, lines 17-18.

³ ICC-01/05-01/13-940, p. 12.

⁴ ICC-01/04-01/07-1546, para. 4; ICC-01/04-168 OA3, para. 4; ICC-02/11-01/11-471, para. 7.

⁵ ICC-01/04-01/10-248, p. 3; ICC-01/04-01/06-2532, para. 6.

⁶ ICC-01/04-168 OA3, para. 4; ICC-01/04-01/10-248, p. 3; ICC-01/04-01/10-495, paras 2 and 5; ICC-01/04-01/06-2532, para. 6; ICC-02/11-01/11-471, para. 7.

⁷ ICC-01/04-01/06-2965, para.9; ICC-01/04-01/10-495, paras 2 and 5.

⁸ ICC-01/09-27, para. 4; ICC-01/04-615, para. 7; ICC-01/04-01/06-1350, para. 8.

was insufficient to set out the relevant issues adequately and thus an extension was warranted to receive “comprehensive, well argued and clearly presented submissions”.⁹

IV. SUBMISSIONS

6. The Arido Defence respectfully submits that the ‘exceptional circumstances’ envisioned in Regulation 37 (2) RoC are met with regards to its submissions on the elements of the offences and applicable modes of liability. The nature of the submissions, the number, complexity, and novelty of the issues, and the need to present clear arguments point towards the need for argumentation extended beyond the 20 page limit.

7. The nature of the submissions requires greater elaboration than can be accommodated within the standard page limit. Firstly, this case being the first one of this type before the Court, there is no existing jurisprudence on the elements of the offences and applicable modes of liability, therefore requiring an in-depth analysis of other international tribunals’ practice. Secondly, the subject matter that the Arido Defence must address provides the superstructure for the entire case that follows. The matters discussed in the 31 May submissions may frame the entire trial that follows and may ultimately be drawn upon in the final judgement. In that respect, the 31 May submissions may form part of the final trial submissions and are critical to the Arido Defence.

8. In light of the nature of the 31 May submissions, it is also clear that the number and complexity of issues is also of an exceptional nature requiring an extension of pages. Mr. Arido has had charges confirmed, in one form or another, for all three offences falling under Article 70 and with respects to two forms of responsibility.¹⁰ That is to say, nearly the full gamut of Article 70. In such circumstances it is also necessary to address auxiliary related issues such as the as the interaction of these modes of liability with the offences themselves.

9. Further, the complexity of these charges cannot be downplayed. In an Appeals Chamber dissent Judge Tarfusser has stated in a dissent “[a]s regards article 25 (3) of the Statute, both the legal doctrine and, more significantly, the relevant case law of the Court show that its interpretation is far from being uncontentious or settled.”¹¹ Extensive unsettled case law, will require addressing the breadth of prior decisions in the 31 May submissions so as to best identify

⁹ ICC-01/04-01/07-3249, p. 4; *see also* ICC-01/04-01/06-177, para. 6.

¹⁰ ICC-01/05-01/13-749, p. 53.

¹¹ ICC-01/04-01/07-3363, para. 15.

the consistent principles and rules, as well as an analysis of the practice of other international jurisdictions.

10. Finally, the criterion of the novelty of the submissions is also present. Though the elements of the offences and modes of liability have been given some form by the Prosecution, Defence teams, and Pre-Trial Chamber in the Pre-Trial phase, the submissions in question will actually be the first to properly address comprehensively the nature of the offences. Novelty is by definition exceptional. With the 31 May submissions addressing issues that touch upon the more contentious and abstract areas of criminal law for the first time, it is submitted that thoroughness of treatment of the issues is both necessary to present the arguments accurately and clearly, which will assist the Trial Chamber in making its determination. It is also necessary to provide an adequate Defence to Mr. Arido.

V. CONCLUSION

11. For the reasons stated above, the Arido Defence hereby respectfully requests the authorisation of the Trial Chamber to file submissions to a limit of 40 pages.



Chief Charles Achaleke Taku, Counsel for Mr. Arido

Dated this 26th Day of May 2015

The Hague, The Netherlands