

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **10 March 2017**

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

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

**Narcisse Arido's Response to
"Request for Continued Provisional Release Pending Appeal"
(ICC-01/05-01/13-2112)**

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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SUBMISSIONS

1. Following the provision of 22 March 2017 as the date of sentencing,¹ on 8 March 2017, the Mangenda Defence, “out of an abundance of caution”,² requested that Trial Chamber VII (‘Trial Chamber’) to continue Mr Mangenda’s provisional release following the pronouncement of sentence.³
2. Briefly summarised, the Mangenda Defence argues that (i) Mr Mangenda is not a flight risk and that the conditions that led the Trial Chamber to maintain Mr Mangenda’s liberty in its oral decision of 19 October 2016 have not changed (ii) that from the pronouncement of the sentence Article 81(3)(a) will cease to be applicable thus leaving Article 81(4) as the only applicable provision, and (iii) that Mr Mangenda’s right of appeal⁴ would be made ineffective if his appeal was accepted – thus acquitting him – yet he was incarcerated for the period of his appeal.
3. The Arido Defence associates itself with the legal arguments of the Mangenda Defence and requests the same remedy. It is worth briefly rehearsing that Mr Arido has appeared at court every instance he has been ordered and has previously appeared for a Status Conference despite not being ordered. As he is not a permanent residence in France, he has diligently maintained his address for a considerable time and, as noted by the Trial Chamber, he has already spent time in pre-trial detention. Nothing – other than an Arido Defence notice of appeal against conviction – has changed since the Trial Chamber issued its oral decision on continued release following Mr Arido’s conviction.
4. On 9 March by email, the Prosecution responded to the Mangenda request by email⁵ noting that:

The Prosecution intends to defer its response to the Mangenda Defence’s Request for Continued Provisional Release Pending Appeal (ICC-01/05-01/13-2112) to 22 March 2017 upon the rendition of the Decision on Sentencing. The Request is premature, as the Chamber has yet to issue a custodial sentence

¹ ICC-01/05-01/13-2111.

² ICC-01/05-01/13-2112, para. 1.

³ *Ibid.*

⁴ A right guaranteed under international human rights law, see Article 14(5) of the International Covenant on Civil and Political Rights, art. 14(5), Dec. 19, 1966, S. TREATY DOC. NO. 95-20, 999 U.N.T.S. 175, (Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”), available at: <http://www.refworld.org/docid/3ae6b3aa0.html>.

⁵ Email, sent 9 March 2017 at 13h43, subject “170309 - Mangenda Defence’s Request for Continued Provisional Release”.

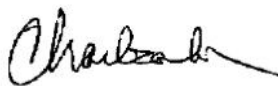
against Mangenda. Should it do so, the Prosecution will respond to the Request as may be appropriate.

The Prosecution advises that at such time, with the Chamber's leave, it will request the immediate remand to detention of any Convicted Person for whom the Decision on Sentencing imposes a term of imprisonment additional to that for which the individual is entitled to credit.

5. The Prosecution email response is inapposite. The Mangenda Defence request addresses the considerations for Mr Mangenda in a more comprehensive manner than an oral request and provides the Trial Chamber with the greatest time-frame for consideration. Moreover, the Prosecution's email response does not indicate how the delivery of a sentence – whether longer or shorter – would change consideration of any of the arguments put forward, namely: (i) the location of Mr Mangenda's family or why he would be more likely to flee (ii) the legal argument that Article 81(3)(a) will cease to exist or (iii) that a pending appeal would be rendered moot where an individual is incorrectly imprisoned and subsequently set free. As the Arido Defence has associated itself with the Mangenda Defence arguments, this observation equally applies to Mr Arido.

6. Finally, in addition to Mr Mangenda's arguments, the Arido Defence notes that international human rights jurisprudence has concluded for at least 34 years that the presumption of innocence governs criminal proceedings in their entirety, irrespective of the outcome of the prosecution, and not solely the examination of the merits of the charge.⁶ Where, as with Mr Arido, an individual has been released pending the delivery of a sentence and an appeal is pending, it is submitted the case for re-incarceration of an individual still benefitting from the presumption of innocence is extremely limited.

7. Respectfully submitted.



Chief Charles Achaleke Taku, Counsel for Mr. Arido

Dated this 10th Day of March 2017

The Hague, The Netherlands

⁶ ECtHR, *Affaire Poncelet c. Belgique*, Requête no 44418/07, Judgment, 30 mars 2010, para. 50, available at: <http://hudoc.echr.coe.int/eng?i=001-97989>; *Garycki v. Poland*, Application no. 14348/02, 6 February 2007, Judgment, para. 68, available at: <http://hudoc.echr.coe.int/eng?i=001-79352>; and *Minelli v. Switzerland*, Application no. 8660/79, Judgment, 25 March 1983, para. 30, available at: <http://hudoc.echr.coe.int/eng?i=001-57540>.