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

Date: **25 August 2017**

THE APPEALS CHAMBER

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Geoffrey A. Henderson
Judge Piotr Hofmański

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 Request to Extend the Deadline to File its Request for Leave to Reply to 'Prosecution's Consolidated Response to Mr Bemba's, Mr Babala's, and Mr Arido's Appeals against the Sentencing Decision' Starting from the Date of Notification of Complete French Translation of the Prosecution Response

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 requests the Appeals Chamber to extend the deadline to file its request for leave to reply to ‘Prosecution’s Consolidated Response to Mr Bemba’s, Mr Babala’s, and Mr Arido’s Appeals against the Sentencing Decision’ (‘Prosecution Response’ or ‘Response’)¹ starting from the date of notification of the complete French translation of the Prosecution’s Response. In addition, the Arido Defence also requests the Appeals Chamber to give Appellant sufficient time to review and analyse the French version of the Response to enable him to adequately instruct his Counsel.
2. The Defence avers that the translation of the Prosecution’s Response into Appellant’s native language is necessary a) to meet the requirements of the fairness under Article 67(1)(f) of the Statute; and b) to allow Appellant to fully participate in the Appeal proceedings and present his own defence under Article 67(1)(e) of the Statute.
3. These arguments support good cause under Regulation 35(2) of the Regulations of the Court (‘RoC’), and thus warrant the present request.

II. APPLICABLE LAW

4. Article 67 of the Statute suggests that the minimum guarantees must be interpreted to ensure that the Defence “is placed insofar as possible on an equal footing with the prosecution, in order to protect fully the right of the accused to a fair trial”.²
5. The Appeals Chamber held that the Article 67(1)(f) of the Statute “guarantees the right of the accused to have free of any cost, such translations as are “necessary to meet the requirements of fairness””.³ Pursuant to Article 67(1)(e) of the Statute “[t]he accused shall also be entitled to raise defences and to present other evidence admissible under this Statute”.
6. Article 6(3)(e) of the European Convention on Human Rights (‘ECHR’) establishes that everyone charged with a criminal offence has the right to free assistance of an

¹ ICC-01/05-01/13-2203-Conf.

² ICC-01/04-01/06-1091, para. 18.

³ ICC-01/05-01/13-2196, para. 11.

interpreter if he or she cannot understand or speak the language used in court.⁴ This is consistent with the case law of the European Court of Human Rights ('ECtHR').⁵

7. Pursuant to Regulation 35(2) of the RoC, the Appeals Chamber may "extend or reduce a time limit if good cause is shown [...]." The 'good cause' may be established, *inter alia*, by the complexity of the legal and factual issues and fair trial arguments.⁶

III. SUBMISSIONS

8. The Arido Defence claims good cause for the requested extension of the deadline to file its request for leave to reply to Prosecution's Response for the following reasons:
9. The lack of French translation of the Prosecution's Response places Appellant and his Defence at a significant disadvantage *vis-à-vis* the Prosecution, violating Article 67(1)(f) of the Statute, which establishes that Appellant has the right to such translations as are necessary to meet the requirements of fairness.⁷
10. As a Francophone, Appellant suffers prejudice from not receiving the translation of the Prosecution's Response in his own language. It makes it impossible for him to read and/or identify any of the issues raised in the English version of the Response, and thus participate in, and present, his own defence, as established under Article 67(1)(e) of the Statute.
11. Furthermore, the right of Appellant to effectively participate in appeal proceedings includes, *inter alia*, the right to be present.⁸ The Defence avers that any charged, accused or convicted person who does not understand the proceedings against her or him – as in the Appellant's case – is not 'present' at trial.⁹
12. It is not sufficient that the Counsel, but not Appellant knows the language of the Court. In this regard, the ECtHR in *Kamasinski v Austria* held that:

⁴ ECHR, Article 6(3)(e).

⁵ ECtHR: *Luedicke, Belkacem and K09 v Germany*, Judgment, 28 November 1978, para. 48; ECtHR: *Kamasinski v Austria*, Judgment, 19 December 1989, para. 74.

⁶ ICC-01/05-01/08-3370 A, para. 6; see also ICC-01/04-02/06-1549 OA4, para. 10; ICC-01/04-01/06-190 OA3, paras 4-5.

⁷ See ICC-01/05-01/13-2196, para. 11.

⁸ See Article 6(3)(c) of the ECHR; see also ECtHR: *Lagerblom v Sweden*, Judgment, 14 April 2003, para. 49; ECtHR: *Galstyan v Armenia*, Judgment, 15 February 2008, para. 89

⁹ William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, Oxford University Press, 2010, p. 812.

“the right to the free assistance of an interpreter for the translation or interpretation of **all** documents or statements in the proceedings instituted against him which it is necessary for him to understand or to have rendered into the court’s language in order to have the benefit of a fair trial” (emphasis added).¹⁰

13. In sum, the requested translation and extension of deadline to allow Appellant to raise his own defence are necessary to satisfy the requirements of fair trial, and thus present a good cause for the Appeals Chamber to grant the present request.

IV. RELIEF SOUGHT

14. In light of the above, the Arido Defence respectfully requests the Appeals Chamber to:
- a) **ORDER** the Registry to provide the complete French translation of the Prosecution Response;
 - b) **GRANT** its request to extend the deadline to file its request for leave to reply to Prosecution’s Response starting from the date of notification of the complete French translation of the Prosecution’s Response; *and*
 - c) **GRANT** its request to give Appellant sufficient time to review and analyse the French version of the Prosecution Response.



Chief Charles Achaleke Taku, Counsel for Mr. Arido

Dated this 25 Day of August 2017

The Hague, The Netherlands

¹⁰ ECtHR: *Kamasinski v Austria*, Judgment, 19 December 1989, para. 74; ECtHR: *Cuscani v the United Kingdom*, Judgment, para. 38.