

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **11 September 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 for an oral hearing pursuant to Rule 156(3)

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 (also referred to as the ‘Appellant’) hereby requests the Appeals Chamber to grant an oral hearing pursuant to Rule 156(3) on its appeal against the Judgement and Sentence.
2. The Arido Defence submits that the oral hearing is fundamental to safeguard the rights of the Accused under Article 67 of the Statute, as well as being in the interest of justice.

II. PROCEDURAL HISTORY

3. On 19 October 2016, Trial Chamber VII (‘Chamber’ or ‘TC’) rendered its Judgment under Article 74 of the Statute (‘Judgment’), convicting Appellant of the offence of corrupting witnesses, in conjunction with Article 25(3)(a), in respect to P-260 (D-2), P-245 (D-3), D-4 and D-6. Appellant was acquitted of Article 70(1)(a) and (b) in respect to the same witnesses.¹
4. On 2 November 2016, the Chamber rejected a request by the Defence for Mr Arido, Mr Babala and Mr Kilolo to suspend or vary the deadlines of the sentencing calendar pending delivery of the French translation of the entire Judgment.²
5. Between 12 and 14 December 2016, the Chamber held the sentencing hearing during which it heard the oral submissions and evidence presented by the parties.³
6. On 22 March 2017, Trial Chamber VII issued its Decision on Sentence pursuant to Article 76 of the Statute, sentencing Appellant to 11 months of imprisonment.⁴
7. On 24 April 2017, the Appellant submitted his Document in Support of Appeal Pursuant to Article 81, in which he raised several fair trial errors, and other factual, legal and evidentiary

¹ ICC-01/05-01/13-1989-Red, para. 871.

² Decision on Requests for Variation of Deadlines in the Sentencing Calendar, 2 November 2016, ICC-01/05-01/13-2001, para. 15, and page 9. Leave to appeal this decision was denied by the Chamber, see Decision on Arido Defence Request for Leave to Appeal the Decision on Requests for Variation of Deadlines in the Sentencing Calendar, 15 November 2016, ICC-01/05-01/13-2030, page 4.

³ Transcript of Hearing, 12 December 2016, ICC-01/05-01/13-T-53-Conf-ENG (‘T-53-Conf’); ICC-01/05-01/13-T-53-Red-ENG (‘T-53-Red’); Transcript of Hearing, 13 December 2016, ICC-01/05-01/13-T-54-Conf-ENG; ICC-01/05-01/13-T-54-Red-ENG (‘T-54-Red’); Transcript of Hearing, 14 December 2016, ICC-01/05-01/13-T-55-Conf-ENG; ICC-01/05-01/13-T-55-Red-ENG (‘T-55-Red’)

⁴ ICC-01/05-01/13-2123-Corr, para. 97.

errors, and requested the Appeals Chamber to reverse the TC's conviction for the offence of Article 70(1)(c), as well as grant any other remedies which it deemed fair and equitable.⁵

8. On 25 August 2017, the Appeals Chamber issued its Decision on Mr Arido's application for admission of two hearing transcripts as additional evidence, in which it rejected Mr Arido's request to admit the Witness D-4 Testimony as additional evidence on appeal, or, in the alternative, to take judicial notice of the sentencing transcripts.⁶
9. On 25 August 2017, as rebuttal evidence,⁷ the Prosecution requested the admission of one decree of the government of the Central African Republic and two statements⁸ of CAR individuals pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence ('RPE').⁹
10. On 25 August 2017, the Appellant filed "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."¹⁰

III. APPLICABLE LAW

11. Rule 156 (3) of the RPE provides that "the appeal proceedings shall be in writing unless the Appeals Chamber decides to convene a hearing."
12. The Appeals Chamber has previously held that Rule 156(3) establishes as a norm that proceedings on appeal such as the present should be conducted by way of written submissions.¹¹ Furthermore, it added that the Appeals Chamber is vested with discretion to convene a hearing, and for it to exercise its discretion and depart from this norm, it must be furnished with cogent reasons that demonstrate why an oral hearing *in lieu* of, or in addition to, written submissions is necessary.¹²

⁵ ICC-01/05-01/13-2145-Corr-Red, pages 3 – 7 and 105 – 111, and paras. 474-476. A confidential corrected version of the document was filed on 8 May 2017 (ICC-01/05-01/13-2145-Conf-Corr).

⁶ ICC-01/05-01/13-2206, paras. 17-19.

⁷ ICC-01/05-01/13-2205-Conf, paras. 2 and 26.

⁸ P-805: CAR-OTP-0093-0064-R01; and P-785: CAR-OTP-0093-0092-R01.

⁹ The Arido Defence filed its response to this request on 30 August 2017, ICC-01/05-01/13-2212-Conf.

¹⁰ ICC-01/05-01/13-2208.

¹¹ ICC-01/09-02/11-251, paras. 9-10 ; ICC-01/09-02/11-421, para. 10.

¹² *Ibid.* See also Prosecutor, v. Jean-Pierre Bemba Gombo, "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 24 June 2010 entitled "Decision on the Admissibility and Abuse of Process Challenges", 19 October 2010, ICC-01/05-01/08-962 (OA 3), paras. 24-25.

13. The Appeals Chamber moreover found that in considering whether or not to exercise its discretion, the Appeals Chamber must also take into account the possible delay that the holding of an oral hearing might cause, given the requirement under Rule 156 (4) of the RPE that “[t]he appeal shall be heard as expeditiously as possible”.¹³

IV. SUBMISSIONS

14. The Arido Defence is mindful that the Statute, as well as the RPE and Regulations,¹⁴ provides the Appeals Chamber with broad powers and discretion towards ensuring that the proceedings are conducted fairly. The Arido Defence submits that its request for an oral hearing would ensure the fairness of the proceedings.

A. **Oral arguments will assist the Appeals Chamber in the adjudication of the issues in dispute**

15. The Appellant submits that in the instant case, there are myriad, complex legal, evidentiary and factual issues to be determined in the present appeal, many which are either novel or have not previously been settled by the Appeals Chamber and thus remain unresolved.
16. Some of the complex issues include, but are not limited to: the legal weight to be attached when assessing missing or accomplice witnesses, the issue of lack of notice and the necessity for an Updated Document Containing the Charges (UDCC), the errors related to the Article 55(2) statements, the legality of the Western Union Documents and other evidentiary or fair trial rights violations related thereto, and the consequences of violations of the Appellant’s and his family’s civil, political and human rights.
17. This is the first Article 70 case before the Court. In addition to the written submissions, an oral hearing will significantly assist the Appeals Chamber’s consideration of several of the contested and novel issues, as well as provide an opportunity for the parties to comprehensively address them through oral arguments.

¹³ *Ibid.*

¹⁴ Regulations of the Court.

18. In this regard, the Arido Defence notes that the Pre-Trial Chamber in *Bemba* previously found that an oral hearing “enabled [the Court] to address what is a relatively complicated issue extremely expeditiously and helpfully.”¹⁵

B. Fairness

19. The Appellant submits that throughout the course of the proceedings, several of his fair trial rights recognised in Article 67 of the Statute were violated, including rights to notice regarding the mode of liability,¹⁶ to present witnesses on his behalf,¹⁷ to confront witnesses against him, to have translations in a language which the Accused fully speaks and understands.¹⁸ In addition to these rights violations, the Defence submits that the Trial Chamber further admitted evidence obtained illegally in violation of Article 69(7), and in violation of international human rights norms.¹⁹

C. Expeditiousness of proceedings

20. There is no indication that an oral hearing will necessarily unduly delay the appellate proceedings as a whole.
21. A consideration of the parties’ arguments during an oral hearing will assist the Appeals Chamber in striking an appropriate balance so as to ensure that the trial is both fair and expeditious. While the Arido Defence acknowledges that the expeditiousness of the proceedings is an important component under the Statute and Rule 156(4), it submits that expeditiousness is not the only fair trial component recognised under the Statute or Rules, and that the issues it wishes to address at the oral hearing affect the fairness of the proceedings as a whole, and are intrinsic to the integrity of this Court.

¹⁵ See Prosecutor v. Bemba, Status Conference Hearing, ICC-01/05-01/08-T-22-ENG CT, 27 April 2010, page. 69, lines. 3-6.

¹⁶ See for example, ICC-01/05-01/13-2145-Conf-Corr, at paras. 48-50, 53.

¹⁷ *Ibid*, at paras. 88-94.

¹⁸ See for example, ICC-01/05-01/13-2208, at paras. 2, 5, 9 and 11; ICC-01/0501/13-2174, paras. 1-2, 9, 11, 13; also see ICC-01/05-01/13-2196, at para. 11, regarding the French translation of the Prosecution’s response to documents in support of the Appellant’s appeal, where the Appeals Chamber held that it “does not consider that either Mr Arido or Mr Babala suffers any prejudice from not receiving the translation and it, therefore, considers that fairness does not require that Mr Arido and Mr Babala should receive the Response in a language they fully understand and speak in order to prepare a request for leave to reply [...] The Appeals Chamber is satisfied that, even without a translation of the Response, Mr Arido and Mr Babala, duly assisted by their respective counsel, will be able to consider whether the Response raises issues that necessitate a reply, and accordingly make the determination of whether to request leave of the Appeals Chamber to file a reply.”

¹⁹ ICC-01/05-01/13-2145-Conf-Corr, paras. 134-135.

V. **REMEDY**

22. In light of the above, the Arido Defence respectfully requests the Appeals Chamber to grant an oral hearing for its appeal on the Judgement and Sentence.



Chief Charles Achaleke Taku, Counsel for Mr. Arido

Dated this 11th Day of September 2017

Bujumbura, Burundi