**Cour
Pénale
Internationale**

**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05-01/13**
Date: **27 March 2015**

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccia
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

Decision on Arido Defence request to withdraw the charges

No. ICC-01/05-01/13   1/7   27 March 2015

To be notified, in accordance with Regulation 31 of the *Regulations of the Court,* **to:**

The Office of the Prosecutor
Ms Fatou Bensouda
Mr James Stewart
Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo
Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba
Mr Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo
Mr Christopher Gosnell

Counsel for Fidèle Babala Wandu
Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido
Mr Göran Sluiter

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

No. **ICC-01/05-01/13**   2/7   **27 March 2015**

Trial Chamber VII (the 'Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Articles 61(9), 64(2) and (6)(f) of the Rome Statute (the 'Statute') and Rules 163(2) and 165 of the Rules of Procedure and Evidence (the 'Rules') issues the following 'Decision on Arido Defence Request to withdraw the charges'.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. Mr Arido has been committed to trial on charges for offences against the administration of justice allegedly committed during the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.[1] He is accused of crimes under Articles 70(1)(a), 70(1)(b) and 70(1)(c) of the Statute in respect of four witnesses.

2. On 6 February 2015, the defence team for Mr Arido (the 'Arido Defence') requested the Chamber to order the Office of the Prosecutor ('Prosecution') to withdraw the charges against Mr Arido or, in the alternative, to order the Prosecution to conduct a reassessment of the case against Mr Arido with a view to determining whether a withdrawal of the charges is appropriate (the 'Request').[2]

3. On 26 February 2015, the Prosecution filed its response opposing the Request (the 'Response').[3] None of the other defence teams filed a response.

4. The Arido Defence argues that, in light of the limited scope of the charges confirmed against Mr Arido and the time he has already spent in pre-trial

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[1] Pre-Trial Chamber II, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute, 11 November 2014, ICC-01/05-01/13-749.

[2] Request, ICC-01/05-01/13-812, paras 1, 17, 39 and 40.

[3] Prosecution Response to the Arido Request to Withdraw the Charges, ICC-01/05-01/13-827-Conf, a public redacted version was filed the following day. Corrected confidential and public redacted versions were filed on 3 March 2015.

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detention, the Chamber should order the Prosecution to withdraw the charges against Mr Arido in the interests of justice.[4]

5. It submits that the case against Mr Arido, as confirmed by the Pre-Trial-Chamber, lacks sufficient gravity to proceed.[5] It argues that the 'Prosecution should only prosecute the most serious Article 70 offences' and that the scope of the confirmed charges against Mr Arido do not justify further prosecution.[6] The Arido Defence further submits that the prosecution no longer serves any legitimate purpose as Mr Arido already spent 11 months[7] in detention;[8] and that a withdrawal of the charges would promote judicial economy and save the Court's resources.[9]

6. In respect of the legal basis to order the withdrawal of the charges, the Arido Defence submits that the Chamber has authority, in exceptional circumstances, to order the Prosecutor to withdraw the charges pursuant to Article 64(6)(f) of the Statute.[10] Further, as a result of its obligation to ensure a fair and expeditious trial under Article 64(2) of the Statute, the Chamber is 'entitled to make any ruling necessary to reach this aim'.[11]

7. In its Response, the Prosecution submits that there is no legal basis for the Chamber to order the Prosecution to withdraw the charges. It avers that a decision of withdrawal lies solely with the Prosecution in accordance with

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[4] Request, ICC-01/05-01/13-812, para. 17.
[5] Request, ICC-01/05-01/13-812, para. 18.
[6] Request, ICC-01/05-01/13-812, para. 18-21.
[7] Pre-Trial Chamber II ordered the release of Mr Arido on 21 October 2014, which was executed the following day. *See* Pre-Trial Chamber II, Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, 21 October 2014, ICC-01/05-01/13-703 and Registry's Report on the Implementation of the "Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido" (ICC-01/05-01/13-703), 27 October 2014, ICC-01/05-01/13-722-Conf, and confidential Annexes 1-15.
[8] Request, ICC-01/05-01/13-812, paras 24-31.
[9] Request, ICC-01/05-01/13-812, paras 32-35.
[10] Request, ICC-01/05-01/13-812, paras 16 and 36.
[11] Request, ICC-01/05-01/13-812, para. 36.

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Article 61(9) of the Statute.[12] It further argues that there is no gravity requirement for Article 70 offences.[13]

8. With regard to the alternative request, the Prosecution states that it is moot since it has already undertaken an assessment under Article 54(1)(a) of the Statute with a view to determining whether the accused is criminally responsible for the offences under the Statute.[14] Further, it submits, that the charges against Mr Arido are sufficiently severe to warrant his prosecution.[15]

II. ANALYSIS

9. The Chamber notes the attempt of the Arido Defence to achieve the withdrawal of charges, in essence, on the basis of 'gravity' and/or 'interest of justice' considerations. As already held by Pre-Trial Chamber II,[16] this proposition is unfounded as the statutory documents make clear that 'gravity' and 'interests of justice' should not readily be invoked in the context of Article 70 proceedings. Indeed, Rule 163(2) of the Rules states that provisions of Part 2 of the Statute are inapplicable; likewise, Rule 165(2) of the Rules sets out that Article 53 of the Statute and any rule thereunder shall not apply. Indeed, the Chamber considers that for a court of law, there is an intrinsic gravity to conducts that, if established, *may* amount to the offence of obstruction of justice (with which the accused is charged). Such conducts are certainly never in the 'interest of justice', and hardly will it ever be so to tolerate them. For, they potentially undermine the very efficacy and efficiency of the rule of law and of the courts entrusted to administer it.

10. Whether or not Mr Arido bears criminal responsibility can only be the result of the Chamber's evidentiary analysis at trial. The assumption that the

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[12] Response, ICC-01/05-01/13-827-Red-Corr, para. 8.
[13] Response, ICC-01/05-01/13-827-Red-Corr, paras 10 and 11.
[14] Response, ICC-01/05-01/13-827-Red-Corr, para. 14.
[15] Response, ICC-01/05-01/13-827-Red-Corr, paras 15 and 21.
[16] Pre-Trial Chamber II, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute, 11 November 2014, ICC-01/05-01/13-749, paras 22-23.

prosecution of Mr Arido no longer serves a legitimate purpose as Mr Arido has spent already 11 months in detention and "there is no longer any punitive objective that can be served"[17] is speculative in nature and anticipates the outcome of the trial. Accordingly, it shall not be entertained by the Chamber.

11. Finally, in the view of the Chamber, other compelling arguments are neither apparent nor have been raised warranting the withdrawal of charges. Accordingly, the first limb of the Request, ordering the Prosecutor to withdraw the charges, must be rejected.

12. In light of the foregoing, the Chamber also considers that the alternative relief contained in the Request must be rejected. The Chamber recalls that Pre-Trial Chamber II has already assessed the evidence for the purpose of determining whether Mr Arido is committed to a Trial Chamber for trial. At trial, the onus to prove the guilt of Mr Arido lies squarely on the Prosecutor (Article 66(2) of the Statute). Whether or not the evidence reaches the threshold of 'beyond reasonable doubt' will be discussed at trial. Therefore, the Chamber does not deem it necessary to request the Prosecutor to assess the evidence with regard to Mr Arido prior to trial with a view to determining whether the charges should be withdrawn. As a result, the alternative relief of the Request, seeking the Prosecutor to assess the evidence prior to trial and to report to the Chamber and the parties, must also be rejected.
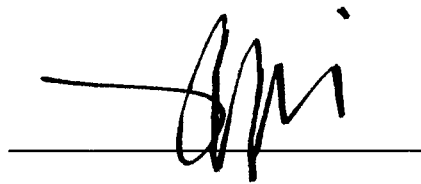
FOR THE FOREGOING REASONS THE CHAMBER HEREBY

REJECTS the Request.

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[17] Request, ICC-01/05-01/13-812, para. 24.

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Done in both English and French, the English version being authoritative.

Judge Chile Eboe-Osuji, Presiding

Judge Olga Herrera Carbuccia   **Judge Bertram Schmitt**

Dated 27 March 2015

At The Hague, The Netherlands