

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **1 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**

**Joint Defence Request for Suspension of the Deadline for Response to the ‘Prosecution  
Application for Notice to be given under Regulation 55(2) on the Accused’s Individual  
Criminal Responsibility’**

**Source: Counsel for Jean-Pierre Bemba Gombo  
Counsel for Aimé Kilolo Musamba  
Counsel for Jean-Jacques Mangenda Kabongo  
Counsel for Fidèle Babala Wandu  
Counsel for Narcisse Arido**

*Document to be notified in accordance with regulation 31 of the Regulations of the Court to:*

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**(Participation/Reparation)**

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## Introduction

1. On 23 April 2015, the Prosecution filed the 'Prosecution Application for Notice to be given under Regulation 55(2) on the Accused's Individual Criminal Responsibility' (hereinafter, the 'Application').<sup>1</sup>
2. In the Application, the Prosecution requests the Trial Chamber to give notice, pursuant to Regulation 55, that the charges might be re-characterised in order to extend the application of various modes of liability under Article 25(3) to the respective defendants.
3. On 24 April 2015, the Trial Chamber ordered the parties to file observations on the definition of the applicable modes of liability, and the elements of the crime.<sup>2</sup>
4. The Trial Chamber also received submissions concerning the propriety and utility of ordering the Prosecution to file an updated Document Containing the Charges (hereinafter 'DCC').
5. In light of these developments, it is the position of the Defence teams of Messrs. Arido, Babala, Bemba, Kilolo and Mangenda (hereinafter 'the Defence') that it is premature, and counterproductive to perform this exercise until:

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<sup>1</sup> ICC-01/05-01/13-922.

<sup>2</sup> ICC-01/05-01/13-T-8-ENG, p. 7, lines 18-23.

- i. The Prosecution has filed an updated DCC; and
  - ii. The Trial Chamber has ruled on the parties' submissions concerning the modes of liability and elements of the offence.
6. The Defence therefore respectfully request the Trial Chamber to suspend the deadline for the Defence response to the Application, pending these events.

### **Submissions**

7. In order to issue a notice under Regulation 55, it is necessary for the Trial Chamber to determine that the confirmed facts appear to correspond to an uncharged crime under articles 6, 7 or 8 or an uncharged mode of liability under Article 25.
8. Since the Pre-Trial Chamber declined to confirm certain factual allegations in this case, the DCC filed by the Prosecution during the pre-confirmation phase no longer constitutes an accurate representation of the confirmed facts and circumstances
9. Accordingly, before traversing down the route of checking whether the proposed recharacterisation corresponds to the confirmed facts and circumstances, it is logical that the precise nature and scope of the confirmed facts and circumstances in this case should first be defined, and set out in an updated DCC.

10. This is consistent with the fact that in the *Ruto & Sang* case, the Trial Chamber used the updated DCC as its compass for assessing whether the proposed recharacterisation fell within the scope of the charged facts and circumstances.<sup>3</sup>
11. The Trial Chamber also underscored that “it best for the Defence to be able to defend against giving notice of proposed legal recharacterisations with full clarity as to what factual allegations could be relied upon”.<sup>4</sup>
12. In line with this ruling, until Prosecutor reframes the facts and circumstances of its case to align with the confirmed charges, the Defence will lack full clarity as to what the factual allegations in this case are.
13. In particular, there is a risk that in order to address the Application, the Defence will need to engage in parallel arguments as to whether the particular facts cited in the Application actually fall within the scope of the confirmed charges. This would unnecessarily complicate and convolute the resolution of the Application, and result in the type of “multiplication of procedure” which the parties have been urged to avoid.<sup>5</sup>
14. Similarly, before deciding whether it is appropriate to recharacterise the modes of liability, it would be logical to define first the nature and scope of the modes of liability currently relied upon in the confirmation decision.

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<sup>3</sup> ICC-01/09-01/11-907, para. 11.

<sup>4</sup> ICC-01/09-01/11-907, para. 10.

<sup>5</sup> ICC-01/05-01/13-T-8-ENG, p. 5, lines 4-6.

15. This is particularly apposite in light of the question – which needs to be resolved by the Chamber – as to whether Article 25 in fact applies to Article 70 offences.
16. If it does not apply, then there would be no basis for invoking Regulation 55, and any litigation concerning the Application would serve no purpose.
17. It would therefore serve judicial economy and efficiency to defer the Defence observations until these preliminary matters have been resolved. There is thus good cause to suspend the deadline pursuant to Regulation 35 of the Regulations of the Court.

### **Relief Sought**

18. For the reasons set out above, the Defence teams for Messrs. Arido, Babala, Bemba, Kilolo and Mangenda respectfully request the Trial Chamber to suspend the deadline for their response to the 'Prosecution Application for Notice to be given under Regulation 55(2) on the Accused's Individual Criminal Responsibility', until:
  - i. The Prosecution has filed an updated Document Containing the Charges; and
  - ii. The Trial Chamber has ruled on the parties' submissions concerning the modes of liability and elements of the offence.

Respectfully submitted,



Melinda Taylor, Counsel for Jean-Pierre Bemba Gombo



Paul Djunga Mudimbi, Counsel for Aimé Kilolo Musamba



Christopher Gosnell, Counsel for Jean-Jacques Mangenda Kabongo



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



Charles Achaleke Taku, Counsel for Narcisse Arido

Dated this 1<sup>st</sup> Day of May 2015  
In The Hague, The Netherlands