

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 June 2016

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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

**Public Redacted Document
with**

Confidential, *EX PARTE*, Annex only available to the Registrar, and Prosecution

**Public redacted version of "Prosecution's Application for Reconsideration of ICC-
01/05-01/13-661-Conf-Exp", 8 September 2014, ICC-01/05-01/13-665-Conf**

Source: The Office of the Prosecutor

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

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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) requests reconsideration of the Chamber’s decision granting Arido’s 1 September 2014 request (“Arido Request”)¹ to [REDACTED] (“Decision”).²

2. Reconsideration is appropriate in this instance because: (1) there are pertinent new circumstances³ requiring the [REDACTED] of which the Prosecution became aware on 27 August 2014; (2) when the Decision was issued on 3 September, the Prosecution was in the process of finalising its response to the Arido Request, which would have brought this new information to the Chamber’s attention in the context of this issue;⁴ (3) this information would likely have affected the Decision, as the Chamber [REDACTED] in place against Arido based on the absence of new information warranting their extension; and (4) the granting of reconsideration is in the interests of justice and causes no prejudice to the Defence.

II. Confidentiality

3. This filing is classified as “*Confidential and Ex Parte*, only available to the Registrar, Prosecution and Arido Defence”, as it solely concerns Arido. As the annex contains [REDACTED] a Prosecution witness, it is classified as “*Confidential and Ex Parte*, only available to the Registrar and the Prosecution”.

¹ ICC-01/05-01/13-658-Conf-Exp.

² ICC-01/05-01/13-661-Conf-Exp.

³ See ICC-01/05-01/13-661-Conf-Exp, p. 4.

⁴ This information was contained in the Prosecution’s 29 August 2014 motion for redactions; see ICC-01/05-01/13-657-Conf-Exp-AnxA, p.1.

III. Submissions

i. Reconsideration is appropriate in the circumstances

4. Although the Statute does not expressly provide for reconsideration as a procedural remedy, as such,⁵ the power of a Chamber to reconsider its own decisions is inherently within its discretion.⁶ Further, the Appeals Chamber has affirmed the Court's ability to exercise its inherent judicial powers in the absence of an express statutory provision.⁷

5. Trial Chamber I's holding that decisions can be reconsidered if they are "manifestly unsound and their consequences are manifestly unsatisfactory"⁸ is entirely consistent with this jurisprudence. It is also fully consistent with the holdings of this Pre-Trial Chamber, in that it does not provide for an "unqualified" procedural remedy,⁹ but, rather, one narrowly circumscribed. Here, the Prosecution does not seek reconsideration of the Decision based on the same information before the Chamber at the time it was rendered, but in view of, and restricted to, new information that is *prima facie* material to the basis on which the Decision was rendered. The Chamber would not, therefore, have reasonably considered or evaluated this information when issuing the Decision. As such, the requested procedural remedy is both definite and limited.

⁵ ICC-01/05-01/13-498, p. 3.

⁶ ICC-01/09-02/11-863, para. 11.

⁷ ICC-01/04-01/06-772 OA4, paras. 24, 36-39.

⁸ ICC-01/04-01/06-2705, para. 18.

⁹ See ICC-01/05-01/13-498, p. 3; ICC-01/05-01/13-460, p. 3; ICC-01/05-01/13-114, p. 4.

ii. New circumstances require reconsideration of the Decision and [REDACTED]

6. The Chamber's finding that "*no new circumstances requiring [REDACTED] have arisen*"¹⁰ does not take into consideration pertinent information brought to the Prosecution's attention on 27 August 2014. Specifically, the Prosecution learned that, in addition to [REDACTED] by [REDACTED],¹¹ [REDACTED].¹² The attached *ex parte* annex provides further details. [REDACTED]. By no coincidence, this could have a detrimental impact on [REDACTED]. As the Chamber was likely unaware of this information when it issued the Decision, reconsideration on this limited basis is appropriate and justified.

7. The nature of the information [REDACTED] makes clear that [REDACTED] ([REDACTED], which formed the basis of the Prosecution's request for [REDACTED]¹³). This comprises a material change in the nature and extent of the [REDACTED] which has taken place and affects any risk assessment made with regard to [REDACTED].

8. Further, the new information demonstrates that the effect [REDACTED]. [REDACTED] information has the effect – [REDACTED].

9. [REDACTED], may affect the available evidence at trial. The [REDACTED] appropriately minimises this potential.

¹⁰ ICC-01/05-01/13-661-Conf-Exp, p. 4.

¹¹ ICC-01/05-01/13-575-Conf-Exp.

¹² CAR-OTP-0080-0021.

¹³ ICC-01/05-01/13-575-Conf-Exp.

iii. [REDACTED] is the only appropriate measure in the circumstances

10. [REDACTED] is the least intrusive means to protect against Arido's potential further [REDACTED] regarding Prosecution witnesses.

11. The Prosecution notes that the [REDACTED] placed on Arido were [REDACTED] in the balance of interests in light of the safety and security of witnesses in this case. Moreover, Arido's lack of denial of [REDACTED] relating to Prosecution witnesses¹⁴ reinforces the need to [REDACTED]. While [REDACTED] may be temporary in nature,¹⁵ there is nothing that precludes their maintenance where justified. The circumstances concerning the [REDACTED] and nature of the charges against Arido must be considered in this regard.

IV. Conclusion

12. It is appropriate that the Chamber has a full opportunity to consider and evaluate the new circumstances in determining the Arido Request. The nature and effect of the new information is such that reconsideration is warranted in the interests of justice, given the potential repercussions to the fairness of the trial and integrity of proceedings, having regard to [REDACTED].

13. Further, reconsideration of the Decision will not occasion any prejudice to the Arido Defence as: (i) [REDACTED] are currently already lifted; (ii) a Prosecution response opposing the lifting of [REDACTED] would have been anticipated by the Arido Defence in the circumstances and within the timeframe of this Request; and (iii) the Chamber may in its discretion afford Arido a reasonable opportunity to respond to the Request and/or to contest the new information.

¹⁴ ICC-01/05-01/13-658-Conf-Exp, para. 20.

¹⁵ ICC-01/05-01/13-661-Conf-Exp, p. 3.

V. Requested Relief

14. On the basis of the foregoing, the Prosecution respectfully requests the Chamber to reconsider the Decision.



Fatou Bensouda, Prosecutor

Dated this 21st Day of June 2016
At The Hague, The Netherlands