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International Criminal Court

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Date: **6 February 2015**

TRIAL CHAMBER VII

Before: **Judge Olga Herrera Carbuccia**
Judge Robert Fremr
Judge Chile Eboe-Osuji

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 Order on the Prosecution to Withdraw the Charges

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 respectfully requests the Trial Chamber to order the Prosecution to withdraw the charges against Mr. Arido, or, in the alternative, to order the Prosecution to objectively assess the investigation and prosecution of Mr. Arido with a view to determining whether a withdrawal of the charges would be in the interests of justice.

2. It is submitted that a continued prosecution, in light of the limited scope and gravity of the alleged offences, and the absence of a legitimate purpose for a conviction following the 11 months Mr. Arido already spent in pre-trial detention, is not in the interests of justice and would not amount to an efficient use of the limited judicial resources of the Court.

II. PROCEDURAL HISTORY

3. On 19 November 2013, the Prosecution requested the Single Judge of Pre-Trial Chamber II to issue an arrest warrant against, amongst others, Narcisse Arido.[1] On 20 November 2013, the Single Judge granted the Prosecution's request and issued a warrant of arrest against Mr. Bemba Gombo, Mr. Kilolo Musamba, Mr. Mangenda Kabongo, Mr. Babala Wandu, and Mr. Arido.[2]

4. On 23 November 2013, Mr. Arido was arrested by the French authorities.[3] He was transferred to the ICC Detention Centre on 18 March 2014,[4] and his initial appearance took place on 20 March 2014.[5]

5. On 30 June 2014, the Prosecutor submitted the Document Containing the Charges against Mr. Arido together with its list of evidence.[6] The Defence teams submitted their lists of evidence on 15 July 2014.[7]

6. The submissions on the confirmation of charges pursuant to Article 61 of the Statute were filed on 30 July 2014.[8] The Prosecution responded to the Defence team's submissions on

1 ICC-01/05-01/13-19-Conf.
2 ICC-01/05-01/13-1-Red2-tENG.
3 ICC-01/05-01/13-25-Conf.
4 ICC-01/05-01/13-T-4-Conf.
5 *Ibid.*
6 ICC-01/05-01/13-526.
7 ICC-01/05-01/13-569-Conf-AnxA (Bemba Defence); ICC-01/05-01/13-574-Conf-AnxA (Babala Defence); ICC-01/05-01/13-571-Conf-Anx-Corr (Kilolo Defence); ICC-01/05-01/13-570-Conf-AnxA-Corr (Arido Defence). The Mangenda Defence did not file a list of evidence.
8 ICC-01/05-01/13-594-Conf (Mangenda Defence); ICC-01/05-01/13-596 (Babala Defence); ICC-01/05-01/13-597 (Prosecution); ICC-01/05-01/13-598 (Arido Defence); ICC-01/05-01/13-599 (Bemba Defence); ICC-01/05-01/13-

21 August 2014,[9] and the Defence team filed their responses to the Prosecution's submissions on 11 September 2014.[10]

7. On 21 October 2014, the Single Judge ordered the immediate release of Mr. Arido as well as of all his co-suspects, with the exception of Mr. Bemba, on the basis of the lengthy period of pre-trial detention to which they were subjected.[11] He ordered them to sign an individual declaration stating their commitment to appear at trial or whenever summoned by the Court, and indicating the address at which they will be staying when released. Finally, he ordered the Registar to promptly make all the practical arrangements as necessary and appropriate to enforce the decision.[12]

8. On 11 November 2014, Pre-Trial Chamber II (hereinafter 'the Pre-Trial Chamber') issued its decision pursuant to Article 61 (7) (a) and (b) of the Rome Statute confirming part of the charges against Mr. Arido.[13] In particular, the Pre-Trial Chamber confirmed the following charges against Mr. Arido:

i. Perpetration (commission) under Article 25 (3) (a) of the Statute for intentionally corruptly influencing D-2, D-3, D-4 and D-6, by instructing them to either provide false information or withhold true information during their testimony in Court and encouraging their testimony with money transfers and the possibility of a relocation in Europe under Article 70 (1) (c),[14] or alternatively as an accessory for aiding, abetting or otherwise assisting in the commission of the offences pursuant to Article 25 (3) (c) by way of instructing them to falsely testify and encouraging their testimony with money transfers and the possibility of a relocation in Europe under Article 70 (1) (c);[15]

ii. Aiding, abetting or otherwise assisting in the commission of the offence of presenting false evidence by Bemba, Kilolo and Mangenda, according to Article 70 (1) (b), by

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600 (Kilolo Defence). The Mangenda and Kilolo Defence filed corrigendum, respectively ICC-01/05-01/13-594-Conf-Corr and ICC-01/05-01/13-600-Conf-Corr2).

9 ICC-01/05-01/13-646-Conf.

10 ICC-01/05-01/13-668-Conf (Mangenda Defence); ICC-01/05-01/13-671 (Babala Defence); ICC-01/05-01/13-673 (Arido Defence); ICC-01/05-01/13-669 (Bemba Defence), and ICC-01/05-01/13-674 (Kilolo Defence).

11 ICC-01/05-01/13-703.

12 *Ibid.*, p. 7.

13 ICC-01/05-01/13-749 ('Decision on the Confirmation of Charges').

14 *Ibid.*, para. 96 and p. 53.

15 *Ibid.*

way of instructing D-2, D-3, D-4 and D-6 on the false information to provide in Court and introducing them to Kilolo under Article 25 (3) (c) of the Statute;[16]

iii. Aiding, abetting or otherwise assisting in the commission of the offence of giving false testimony under Article 70 (1) (a) by way of recruiting D-2, D-3, D-4 and D-6, instructing, persuading or otherwise influencing them, including by way of transfers of money and the possibility of a relocation in Europe, to state false information or withhold true information before Trial Chamber III, pursuant to Article 25 (3) (c) of the Statute.[17]

9. The Pre-Trial Chamber declined to confirm the charges against the suspects regarding the offence of presentation of evidence that the party knows to be false or forged under Article 70 (1) (b) of the Statute, finding that the Prosecution had failed to met the required evidentiary standard.[18]

10. On 23 January 2015, the Single Judge rejected *en masse* the requests for leave to appeal the Confirmation of Charges filed by the five co-suspects.[19]

11. On 30 January 2015, the Presidency constituted Trial Chamber VII and referred the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido* to it.[20] On 3 February 2015, the Registry transmitted the full record of the proceedings to Trial Chamber VII.[21]

III. APPLICABLE LAW

A. Withdrawal of charges

12. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges, pursuant to Article 61 (9) of the Statute.

13. Regulation 60 of the Regulations of the Office of the Prosecutor provides that "[i]f at any stage in the proceedings, the Office considers that the evidence available, including both incriminating and exonerating evidence, does not support an element of the charges pleaded or

[16] *Ibid.*
[17] *Ibid.*
[18] *Ibid.*, para. 50.
[19] ICC-01/05-01/13-801.
[20] ICC-01/05-01/13-805.
[21] ICC-01/05-01/13-810.

supports a different charge, or that any charge pleaded otherwise cannot be pursued, in particular due to the individual circumstances of the accused, then the Office shall promptly seek to either:

(a) amend or withdraw the charges pursuant to article 61, paragraphs 4 and 9; or,

(b) submit the matter for consideration to the Trial Chamber in the light of its powers under regulation 55 of the Regulations of the Court."

14. Pursuant to Regulation 29 (2) of the same Regulations, when initiating a prosecution, the Prosecution shall consider various factors when assessing the gravity of the crimes allegedly committed, including their scale, nature, manner of commission, and impact.

B. Powers of the Trial Chamber

15. All the functions and powers of the Trial Chamber must be exercised while ensuring that "a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses", pursuant to Article 64 (2) of the Statute.

16. Under Article 64 (6) (f) of the Statute, the Trial Chamber is empowered to "[r]ule on any other relevant matters".

IV. SUBMISSIONS

17. The Arido defence makes the present request in light of the exceptional circumstances of the case against Mr. Arido. As a result of the extremely limited scope of the charges against Mr. Arido, the time Mr. Arido already spent in pre-trial detention, and in order to promote judicial economy and efficiency, it is submitted that the Trial Chamber, pursuant to its obligations under Article 64 (2) of the Statute, should order the Prosecution to withdraw the charges against Mr. Arido in the interests of justice. In the alternative, the Arido Defence requests the Trial Chamber to issue an order to the Prosecution, requesting it to assess the case against Mr. Arido with a view to determine whether a withdrawal of the charges is appropriate, and to report to the Trial Chamber accordingly.

A. The limited gravity of the offences charged against Mr. Arido does not meet the requisite threshold for a Prosecution before the ICC

18. The Arido Defence submits that the case against Mr. Arido simply does not have sufficient gravity to proceed. Mr. Arido is charged with Article 70 offences, which are substantially less

grave than the Article 5 core crimes. That is not to say that an Article 70 case - as such - is not of sufficient gravity to prosecute. Article 70 offences are detrimental to the functioning of the Court and must certainly be investigated and prosecuted. However, they are of a fundamentally different nature and do not form part of the Court's core jurisdiction. In the same way that it must ensure that only the most serious crimes are being prosecuted under Article 5,[22] the Prosecution should only prosecute the most serious Article 70 offences. This is a consideration which the Prosecution should take into account when deciding whether this case is of sufficient gravity to invest the Court's limited resources in.

19. In the present case, The Pre-Trial Chamber itself noted in the Confirmation of Charges decision that the involvement of Mr. Arido (as well as that of Mr. Babala) was "more limited" than that of the other co-suspects.[23] Mr. Arido faces three charges of offences against the administration of justice, under Article 70 (1) (a), (b), and (c), on the basis of events alleged to have taken place between January and February 2012, regarding four witnesses (D-2, D-3, D-4 and D-6).[24] It must be noted that the three charges are based on the exact same set of events.[25] Other than for the offence alleged under Article 70 (1) (c) of the Statute, for which he is also charged as a direct perpetrator (commission) under Article 25 (3) (a), Mr. Arido is charged as an accessory under Article 25 (3) (c), which is generally considered to be a less serious mode of liability.

20. Further, it must be noted that, as to the manner of commission of the crimes, none of Mr. Arido's alleged actions amount to threats or violence. He allegedly encouraged witnesses to either provide false information with alleged money transfers as well as promises of money and the possibility of relocation in Europe.[26] Especially when compared with the intimidation and coercion of witnesses, reported by the Prosecution to be occurring in the Kenyatta case,[27] the allegations against Mr. Arido are far from the worst scenario imaginable.

21. Mr. Arido is thus facing prosecution for a very limited set of allegations, much smaller in scope and gravity than the set of facts underlying the confirmation of the charges against the

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[22] Policy Paper on the Interests of Justice, p. 7, available at: http://www.icc-cpi.int/iccdocs/asp_docs/library/organs/otp/ICC-OTP-InterestsOfJustice.pdf.
[23] Decision on the Confirmation of Charges, para. 52.
[24] Decision on the Confirmation of Charges, para. 95.
[25] *Ibid.*
[26] ICC-01/05-01/13-749, pp. 53-54.
[27] 'Kenya's Uhuru Kenyatta becomes first head of state to appear before ICC', available at: http://www.theguardian.com/world/2014/oct/08/kenya-uhuru-kenyatta-head-of-state-icc-hague.

other co-suspects.[28] As the trial progresses, it may well be that in due course, the Arido Defence is merely disputing a couple of charges or a single charge. Given the time and resources required for a five-Accused trial - the first of its kind at the ICC - and taking into account the fact that the pre-trial phase alone lasted more than 15 months,[29] it must be asked whether the allocation of resources is judiciously used for prosecuting Mr. Arido in a time-consuming case.

22. While Part II of the Statute, which limits the Prosecution of cases to that of the highest gravity,[30] is not directly applicable to Article 70 cases,[31] the gravity of the offences should nonetheless be an important consideration in the decision to prosecuting charges under Article 70 of the Statute.[32] Further, the Regulations of the Office of the Prosecutor explicitely require the Prosecution, when deciding on initiating an investigation or prosecution, to consider the question of the gravity of the crime as well as the interests of justice.[33] In doing so, it shall consider various factors including the scale, nature, manner of commission, and impact of the offences.[34]

23. Article 53 of the Statute also places great importance on the gravity of the offences in relation to the decision to prosecute a case. The Prosecution is given the power to conclude that there is not a sufficient basis for a Prosecution because it is not in the interests of justice, taking into account all circumstances including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime.[35] While Article 53 is not directly applicable to the present case, the underlying rationale of it provides support for the claim that cases which are of a very limited scope and gravity should not be prosecuted.

B. The Prosecution of Mr. Arido no longer serves any legitimate purpose

24. A distinguishing feature of criminal trials is their imposition of a punishment for wrongful behaviour. This punishment must itself be justifiable - in other words it must serve a legitimate objective. Where no punishment can justifiably be imposed, a criminal trial serves little to no

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[28] ICC-01/05-01/13-749, pp. 47-52.
[29] The decision issuing the arrest warrant was filed on 20 November 2013 (ICC-01/05-01/13-19-Conf). The Presidency decision assigning a case to a Trial Chamber was filed on 30 January 2015 (ICC-01/05-01/13-805).
[30] Article 53 of the Statute.
[31] Rule 163 of the RPE.
[32] *Ibid.*, Rule 162 (2) (b).
[33] Regulation 29 (1) of the Regulations of the Office of the Prosecutor.
[34] *Ibid.*, Regulation 29 (2).
[35] Article 53 (2) (c) of the Statute.

purpose. In the circumstances of Mr. Arido, there is no longer any punitive objective that can be served by a possibly lengthy, burdensome, and costly trial.

25. Pursuant to Article 78 (1) of the Statute, a sentence must be based upon the "gravity of the crime and the individual circumstances of the convicted person". Pursuant to Article 70 (3), this sentence can be a fine amounting to no more than 50 per cent of the value of the convicted person's assets,[36] or a maximum prison sentence of 5 years.

26. Mr. Arido has already spent 11 months in pre-trial detention. That is about 1/5th of the maximum penalty that can be imposed for Article 70 offences. The Single Judge of Pre-Trial Chamber II himself has recognised that any further period of pre-trial detention would result in making its duration disproportionate in light of the statutory penalties applicable to the offences in the present case.[37]

27. In the absence of past jurisprudence on sentencing practices in Article 70 cases at the ICC, a close look at the practice of the *ad hoc* tribunals can provide useful guidance as to the sentencing practices for contempt cases. The penalties imposed for a finding of contempt at the ICTY range from a fine to 12 months of imprisonment[38] despite a possible maximum penalty of 7 years,[39] and from one year of probation to 2 years at the SCSL[40] despite a maximum possible penalty of 7 years.[41] Both the ICTY's and SCSL's sentencing practice regarding contempt cases provides support for the fact that the sentence Mr. Arido could face, should the Prosecution be found to have proved its case beyond any reasonable doubt, would not be longer than the time Mr. Arido has already spent in pre-trial detention. In sum, any possible penalty amounting to a prison sentence which could be imposed upon Mr. Arido has already been served.[42] It is without controversy that, should Mr. Arido be found guilty beyond any reasonable doubt, the time he

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[36] Rule 166 (3) of the RPE.
[37] ICC-01/05-01/13-703, p. 4, 4th paragraph.
[38] *See e.g.* 4 months of imprisonment for interfering with a witness in the *Prosecutor v. Beqaj* case; a fine of 15 000 Dutch Guilder (6800 euros) for the presentation of false evidence and instructing witnesses to testify falsely, in the *Prosecutor* v. *Tadić case*; 3 and 5 months for intimidating witnesses in the *Prosecutor v. Haraqija & Morina* case; 3 months for receiving a bribe for signing a statement before the ICTY, and locating two other men prepared to sign false statements in the *Prosecutor v. Tabaković* case; 12 months (of which 8 were suspended as the convict would have been the only woman in the UNDU) for procuring false evidence in the *Prosecutor v. Rašić* case.
[39] ICTY RPE, Rule 77 (G).
[40] *See e.g.* one year of probation for threatening and intimidating a protected witness in the *Independent Counsel v. Brima et al.* case; 12 months to 2 years for bribing witnesses in the *Independent Counsel v. Bangura et al.* case.
[41] SCSL RPE, Rule 77 (G).
[42] The Arido Defence notes that it has constantly challenged the pre-trial detention of Mr. Arido and raised the human rights concerns associated with the lengthy pre-trial detention, including fact that a preventive detention that is prolonged for an unreasonable time is tantamount to a sentence without a conviction and to anticipating a sentence, which is contrary to universally recognized general principles of law. *See e.g.* ICC-01/05-01/13-739 OA9, paras 9-10.

already spent in detention would outweight, in terms of gravity of punishment, any possible fine that could be imposed.

28. Under Rule 145 (1) (a) of the RPE, the punishment "must reflect the culpability of the convicted person". In deciding upon an appropriate sentence, the Court must take into account factors such as "the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person".[43] Having calculated the sentence, under Article 78 (2) of the Statute, the Court is obliged to deduct time previously spent in detention.

29. While the Statute provides little background as to the philosophical underpinning of the purpose or objectives of punishment in the event of its breach, the practice of prior international criminal tribunals places emphasis upon retribution and deterrence[44] and there are indications that the ICC will follow suit.[45] Within the secular legal systems of the world the generally legitimate purposes of punishing an individual include retribution, deterrence, rehabilitation, and incapacitation.[46]

30. Retribution has been defined by the ICTY as an objective, reasoned and measured determination of an appropriate punishment which properly reflects the culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore,

[43] Rule 145 (1) (c) of the RPE.
[44] See for example ICTY, *Prosecutor v. Tadić*, IT-94-1-Tbis-R117, Sentencing Judgement, 11 November 1999, paras. 7-9 available at: http://icty.org/x/cases/tadic/tjug/en/tad-tsj991111e.pdf. "The Trial Chamber shares the opinion expressed in the above-mentioned cases in respect of retribution and deterrence serving as the primary purposes of sentence", para. 9; *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, Judgement, Appeals Chamber, 17 December 2004, para. 1073, available at: http://www.icty.org/x/cases/kordic_cerkez/acjug/en/cer-aj041217e.pdf ('Kordić and Čerkez Appeal Judgement*'*). *See also*, more generally: Cassese, *International Criminal Law* (2013), p. 386.
[45] In discussing the purpose of sentencing the Trial Chamber in the Lubanga case gave little reasoning that would be applicable to the present case, *see* ICC-01/04-01/06-2901, para. 16. The Katanga sentencing suggests that the ICC will follow the approach of the *ad-hoc* tribunals, *see* ICC-01/04-01/07-3484, para. 38: "*En prononçant une peine, la Chambre doit aussi répondre au légitime besoin de vérité et de justice qu'expriment les victimes et leurs proches. Elle considère que la peine a donc deux fonctions importantes : le châtiment d'une part, c'est-à-dire l'expression de la réprobation sociale qui entoure l'acte criminel et son auteur et qui est aussi une manière de reconnaitre le préjudice et les souffrances causées aux victimes ; la dissuasion d'autre part, dont l'objectif est de détourner de leur projet d'éventuels candidats à la perpétration de crimes similaires*".
[46] *See e.g.* Fletcher, G., Rethinking Criminal Law (2000), §6.3.2, p.414 synthesizing historic debates and describing the various accepted justifications for punishment. More concretely see the United Kingdom's *Criminal Justice Act 2003*, s. 142(1): "Purposes of sentencing (1) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing - (a) the punishment of offenders, (b) the reduction of crime (including its reduction by deterrence), (c) the reform and rehabilitation of offenders, (d) the protection of the public, and (e) the making of reparation by offenders to persons affected by their offences.", available at: http://www.legislation.gov.uk/ukpga/2003/44/section/142.

unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.[47] In light of the time already "served" by Mr. Arido, which will have to be deduced from the final sentence,[48] and the limited gravity and scope of the charges against him, even in the event of a conviction on all charges, it is difficult to conceive of a custodial sentence being applied as a sentence proportionate to the alleged wrong. Simply put: whatever Mr. Arido might deserve should the Prosecution prove its case, he has already largely, if not totally, paid in advance. Thus, continued prosecution cannot reasonably be expected to serve a retributive goal – certainly not when balanced against what can be foreseen to be lengthy proceedings, and the effect that they have upon the life of an individual.

31. Deterring others through punishing the perpetrators of crime is thought to operate at the level of the individual, by discouraging him or her from re-offending, and at the level of the public by altering the cost-benefit analysis of a possible offender.[49] Again, given that Mr. Arido is unlikely to be given a custodial sentence, unless the trial itself is conceived of as punishment, whatever deterrent effect can be gained through prosecution has already largely, or totally, been exhausted. Moreover, others will be sufficiently deterred by the significant amount of time already spent by Mr. Arido in pre-trial detention.

C. The withdrawal of the charges would promote judicial economy and save the Court's resources

32. Though the Arido Defence recognises that the existence of Article 70 offences is predicated upon protecting the integrity of the proceedings under Article 5 of the Statute, it submits that continuing the present case against Mr. Arido is not in the interest of judicial economy. The reality is that the Court is an institution with limited resources and that the Office of the Prosecutor must make a selection in the cases it pursues.[50] As discussed in the previous section, continued prosecution has a reduced value. Mr. Arido faces minimal charges, his alleged role in the Prosecution's version of the events is very limited and he has already spent 11 months in pre-trial detention. Considering the limited value in continued prosecution, the Court's resources might be of better use elsewhere.

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[47] *ICTY,* Kordić and Čerkez Appeal Judgement, para. 1075.
[48] Article 78(2) of the Statute.
[49] *See e.g.* the discussion in ICTY, *Kordić and Čerkez* Appeal Judgement, paras 1076-1077.
[50] ICC, Office of the Prosecutor, 'Paper on some policy issues before the Office of the Prosecutor' (2003) p. 3, available online at: http://www.icc-cpi.int/nr/rdonlyres/1fa7c4c6-de5f-42b7-8b25-60aa962ed8b6/143594/030905_policy_paper.pdf.

33. The case against Mr. Arido might well be joined with the cases against Mr. Bemba, Mr. Kilolo, Mr. Mangenda and Mr. Babala, but the extra cost to maintain the case against Mr. Arido would nevertheless constitute a substantial addition to its budget. The present case is the first of its kind before the Court, being the first Article 70 proceedings before the ICC, and being the first trial to take place with five Accused. The fact that the pre-trial stage alone took longer than most Article 5 cases[51] even though the offences are of significantly less gravity,[52] combined with the multitude of suspects and the resulting high number of filings, cross-examinations and Defence cases, indicates that the proceedings will last for, at the very least, another year.

34. In addition to having a significant impact on all the suspects' rights to be tried expeditiously, this will result in significant costs for the Court over an extended period of time. In addition, withdrawing the charges against Mr. Arido would result in shorter proceedings in the present case. It does not appear to be in the interests of justice to use the already-limited judicial resources of the Court for a case of such low gravity and which could serve such a limited purpose – if at all.

35. Finally, the case against Mr. Arido will also draw on the resources of all ICC organs in a disproportionate manner, generating further work for all of these organs. The prosecution owes a larger duty, also to the Assembly of States-Parties, not to waste the Court's scarce resources on such a small case, in which the pre-trial detention period exceeds by far any reasonable sentence that could be imposed.

D. The Trial Chamber has the power to order the Prosecution to withdraw the charges against Mr. Arido in the interests of justice

36. The Arido Defence submits that it is within the power of the Trial Chamber - in exceptional circumstances such as these - to order the Prosecution to withdraw the charges against Mr. Arido. Pursuant to Article 64 (6) (f) of the Statute, it is entitled to "rule on any relevant matter". As stated above, a withdrawal of the charges is clearly in the interest of justice, and in particular of judicial economy and expediency. Therefore, it qualifies as a "relevant matter" for the purposes of Article 64 (6) (f) of the Statute. In addition, as a result of its duty to ensure

[51] Mr. Lubanga: around 10 months (http://www.icc-cpi.int/iccdocs/PIDS/publications/LubangaENG.pdf); Mr. Katanga: around 11 months (http://www.icc-cpi.int/iccdocs/PIDS/publications/KatangaEng.pdf); Mr. Ngudjolo Chui: around 7 months (http://www.icc-cpi.int/iccdocs/PIDS/publications/ChuiEng.pdf); Mr. Bemba: around one year (http://www.icc-cpi.int/iccdocs/PIDS/publications/BembaEng.pdf).
[52] ICC-01/05-01/13-560, para. 1.

that the trial is fair and expeditious, the Trial Chamber is also entitled to make any ruling necessary to reach this aim.[53]

37. At the very least, the Arido Defence submits that the Trial Chamber can order the Prosecution to review its case against Mr. Arido with a view of determining whether it should withdraw the charges against him.

V. CONCLUSION

38. In light of the limited gravity of the charges against Mr. Arido, his alleged limited degree of responsibility, the fact that he has already "served" any sentence that could be imposed on him, and in order to save precious judicial resources, it is submitted that it is in the interests of justice for the Trial Chamber to order the Prosecution to withdraw the charges against Mr. Arido.

39. In light of the above, the Arido Defence respectfully requests the Trial Chamber to order the Prosecution to withdraw the totality of the charges against Mr. Arido.

40. In the alternative, the Arido Defence respectfully requests the Trial Chamber to issue an order to the Prosecution, requesting it to assess the case against Mr. Arido with a view to determine whether a withdrawal of the charges is appropriate, and to report to the Trial Chamber and the parties accordingly.

Göran Sluiter, Counsel for Mr. Arido

Dated this 6th Day of February 2015

At Amsterdam, The Netherlands

[53] Article 64 (2) of the Statute.