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

Date: **23 March 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

**Prosecution's Response to "*Requête de la Défense de M. Babala sollicitant
 l'extension du nombre de pages de son mémoire en appel*"**

Source: Office of the Prosecutor

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

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Introduction

1. Mr Babala does not demonstrate exceptional circumstances justifying extension of the page limit for the document supporting his appeal,¹ as required by regulation 37(2) of the Regulations of the Court. Accordingly, the Request should be dismissed.

Submissions

A. The Request does not demonstrate exceptional circumstances

2. Although the Request recognises that it must demonstrate “exceptional circumstances” in order to warrant the relief sought,² it fails to establish that such circumstances exist in this case. To the contrary, the Request merely identifies concerns which are common to almost every case, as well as applying to every Party in this appeal. In particular, neither vague concern about “serious difficulties” in remaining within the confines of a page limit, nor an intention to present legal arguments “clearly and exhaustively”, constitutes sufficient justification.³ Indeed, “the quality and effectiveness of an appellant[’s] brief does not depend upon length, but upon the clarity and cogency of the arguments presented”.⁴

3. Similarly, a Party’s intention to raise “many” questions of “fact and law” does not itself establish “exceptional circumstances” justifying an extension of pages.⁵ The ICTY Appeals Chamber has recalled that “the number of grounds and sub-grounds of appeal does not in itself provide sufficient reason to enlarge the prescribed” limits on the length of an appeal brief.⁶ Nor is sufficient reason provided, in and of themselves, by factors such as “the length of the trial judgement” or “the number of

¹ *Contra* ICC-01/05-01/13-2121 A2 (“Request”), paras. 1, 12.

² Request, para. 7.

³ *Contra* Request, paras. 8, 12.

⁴ See e.g. ICTY, *Prosecutor v. Popović et al*, IT-05-88-A, [Decision on Motions for Extension of Time and for Permission to Exceed Word Limitations](#), 20 October 2010, p. 6.

⁵ *Contra* Request, para. 8.

⁶ See e.g. ICTY, *Prosecutor v. Stanišić and Župljanin*, IT-08-91-A, [Decision on Mićo Stanišić’s and Stojan Župljanin’s Motions Seeking Variation of Time and Word Limits to File Appeal Briefs](#), 4 June 2013, p. 4; *Prosecutor v. Orić*, IT-03-68-A, Decision on Defence Motion for Extension of Word Limit for Defence Appellant’s Brief, 6 October 2006 (available through <http://icr.icty.org/default.aspx>), p. 3.

exhibits admitted at trial”.⁷ Such a formalistic approach would either establish page limits on appeal on an arbitrary basis, or would allow the Parties to ‘bargain’ for additional pages by giving notice of an intention to argue an excessive number of grounds of appeal. This outcome would be contrary to judicial economy, and the interests of a fair and expeditious hearing.

4. Rather, consistent with the previous practice of this Court, the Appeals Chamber should look to the objective reality of the imminent appeal, the content of the Trial Judgment, and the facts of the case. In a multi-accused case, it is also relevant to consider the scope of the convictions of an accused Party seeking an extension of pages, relative to the scope of the case and the Trial Judgment as a whole.⁸ Consequently, notwithstanding the apparent complexity of a case overall, a Party may not necessarily show exceptional circumstances warranting an extension of pages if the scope of their convictions is relatively confined. This is just such an occasion.

5. It is true that this case is novel in addressing for the first time offences under article 70 of the Statute, and that it may potentially be of some complexity in that it relates to multiple accused persons and enters convictions on multiple modes of liability.⁹ Yet by contrast Babala is convicted under just one mode of liability for aiding Bemba, Kilolo and Mangenda in corruptly influencing only two witnesses.¹⁰ The scope of his convictions is thus limited relative to the scope of the Trial Judgment as a whole.

⁷ See e.g. ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, [Decision on Motion for Setting a Time Limit for Filing an Appellant’s \[sic\] Brief and for an Extension of Word Limit](#), 17 May 2013, p. 3.

⁸ See e.g. ICTY, *Prosecutor v. Šainović et al*, IT-05-87-A, [Decision on Defence Motions for Extension of Word Limit](#), 8 September 2009, p. 5 (granting Sreten Lukić a greater extension of words because “the scope of Lukić’s appeal would appear to be broader than those of Pavković and Lazarević”); *Prosecutor v. Šainović et al*, [Decision on the Prosecution’s Motion for an Order Requiring Sreten Lukić to File his Appellant’s Brief in Accordance with the Appeals Chamber Decisions](#), 29 September 2009, p. 3 (recalling that Lukić was granted “a considerable extension of the said word limit [...] compared with that granted to other appellants in this case”).

⁹ See Request, para. 10.

¹⁰ See [ICC-01/05-01/13-1989-Red](#), paras. 873-893, 934-942, and pp. 456-457 (Disposition).

6. Furthermore, there is nothing exceptional in the grounds of appeal preliminarily outlined by Babala.¹¹ Indeed, on the face of the imminent appeal, and given the concision and professionalism of counsel,¹² 100 pages appears entirely adequate to address these matters.

B. The reasons for extending the briefing schedule do not justify the Request

7. The Prosecution acknowledges that the Appeals Chamber has previously found good cause to extend the briefing schedule of this appeal based on three factors, of which one was its “anticipated factual, legal and procedural complexity [...] and the novelty of the legal issues to be addressed”.¹³ However, this finding is not germane to the present Request for three reasons.¹⁴

- First, the threshold to grant an extension of time (“good cause”) is, in its plain terms, apparently lower than the threshold to order an extension of pages (“exceptional circumstances”).
- Second, the anticipated complexity of the appeal and the novelty of the legal issues were not the sole basis for finding good cause, but merely isolated factors in the Appeals Chamber’s analysis. The other two factors relevant to the Extension of Time Decision are not relevant to—and do not support—the current Request.¹⁵
- Third, the Appeals Chamber’s previous assessment of the issues which may arise in this appeal was holistic, and did not specifically relate to Babala’s anticipated appeal.

¹¹ See ICC-01/05-01/13-2107 A2 (alleging approximately eleven discrete errors of fact, three errors of law, and one procedural error).

¹² See Request, para. 11.

¹³ [ICC-01/05-01/13-2046 A A2 A3 A4 A5](#) (“Extension of Time Decision”), para. 18.

¹⁴ *Contra* Request, para. 9.

¹⁵ See [Extension of Time Decision](#), para. 18 (also referring to “the ongoing sentencing proceedings before the Trial Chamber” and “the unavailability of the complete French translation” of the article 74 judgment).

8. The Request addresses none of these circumstances. Nor does it even attempt to explain or substantiate its claim that an extension is necessary in order to provide an “adequate and effective” defence to Babala.¹⁶

Conclusion

9. For all the reasons above, the Request should be dismissed. If the Appeals Chamber is nonetheless minded to grant Babala a modest extension of pages, however, the Prosecution requests a similar extension for its response.



Fatou Bensouda, Prosecutor

Dated this 23rd day of March 2017¹⁷

At The Hague, The Netherlands

¹⁶ See Request, paras. 8, 12.

¹⁷ This submission complies with regulation 36, as amended on 6 December 2016: [ICC-01/11-01/11-565 OA6](#), para. 32.