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

Date: 24/03/2017

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 with Confidential Annex A

Request for an extension of the page limit and deadline

Source: Art. 70 Defence for Mr. Jean-Pierre Bemba Gombo

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

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Introduction

1. Pursuant to Regulations 35(1) and 37(2) of the Regulations of the Court,¹ the Defence for Mr. Jean-Pierre Bemba respectfully requests the Honourable Appeals Chamber to grant:
 - a. A discrete extension of the deadline for filing the document in support of the appeal, from 18 April to 26 April 2017; and
 - b. A modest extension of the page limit, such that the total for the Bemba Defence is 150 pages.
2. These variations are warranted in light of the particular circumstances of Mr. Bemba as a detained defendant, the impact of the sentencing judgment, and the complexity of the appellate issues that concerns Mr. Bemba specifically.

Submissions

Request for extension of the deadline

3. On 23 November 2017, the Appeals Chamber varied the deadline for filing the appeal brief, such that it is currently due on 18 April 2017.
4. This date is the first Tuesday after the Easter recess (which commences on Friday, 14 April 2017).
5. Even if the brief is virtually finalised before the commencement of the Easter recess, it cannot be excluded that it might be necessary to make changes concerning substance, or, if necessary to meet the page limit, omit certain grounds of appeal. Given that the draft itself will be prepared in English, it is much more effective to discuss and explain such issues and changes in

¹ A request to vary an existing deadline or page limit does not constitute a request for reconsideration: ICC-01/09-01/11-82. As such, the merits of this request should be judged by the criteria set out in Regulations 35 and 37, rather than the standard for reconsideration.

person, and to present Mr. Bemba with a written version of any changes, for him to consider, and carefully read.

6. The putative ability of the Defence to review the draft with Mr. Bemba in person is, however, impacted by the fact that in general, it is not possible for Counsel to meet with a detained client during the weekend, or during public holidays. If this rule is applied, it will not be possible for the Defence to meet with Mr. Bemba to discuss various iterations of the draft for the four days preceding the deadline. This will negatively impact on the ability of the Bemba Defence to prepare its brief in an effective manner.
7. After the issuance of the Sentencing Judgment, the Defence wrote to the Detention Unit in order to inquire as to the specific detention regime that will govern communications and meetings between the Article 70 Defence and Mr. Bemba.²
8. The Detention unit has informed the Defence that it is looking into the matter. Pending any modifications, it would appear that Mr. Bemba continues to be governed by the same detention restrictions that apply to his other case. Thus, during its visit with Mr. Bemba on Friday 24 March 2017, the Defence was subjected to the same detention restrictions in terms of visit cut-off times that apply to other Defence teams representing detained defendants.
9. Consequently, if the *status quo* to the detention restrictions is maintained, the Defence would not be in a position to visit and discuss with Mr. Bemba the final parts of the Appeal Brief for a period of four consecutive days, in the immediate lead-up to the deadline.

² Confidential Annex A.

10. For this reason, the Defence requests that the deadline be shifted by a discrete amount of time in order to allow the Defence to present the final drafts to Mr. Bemba, and obtain his feedback and comments prior to submission.
11. Independent of the above matter, a small extension of time is further warranted by the issuance of the sentencing judgment, mere weeks before the deadline for submitting the appeal brief.
12. The judgment itself has significant consequences for Mr. Bemba and his family. Even if it might be logical to do so, it is unrealistic on a human level to expect an accused to postpone any legal discussion and consideration regarding the impact of the sentence on his personal situation, until after the completion of the merits appeal. The judgment has therefore diverted the time and resources of the Defence accordingly.
13. The requested extension – a mere five working days – is commensurate with the impact of the above issues on the right of the Defence of Mr. Bemba to have adequate time and facilities to prepare the appeal brief, with the benefit of Mr. Bemba's informed and effective involvement.

Request for extension of the page limit

14. On 23 March 2017, the Appeals Chamber *sua sponte* varied the page limit for the five Defence teams from 100 pages to 115 pages.³
15. The decision was triggered by a request by the Defence for Mr. Babala for an additional 50 pages for their appeal brief, and was issued before the Defence for Mr. Bemba filed its observations.

³ ICC-01/05-01/13-2124

16. In reaching its decision, the Appeals Chamber found that the particular issues raised by the Babala Defence did not warrant the requested page limit of 150 pages. The rationale for rejecting the additional 35 pages is therefore specific to the parameters of the Babala appeal, and does not exclude the possibility that additional pages might be required by other defendants.
17. The ICTY and ICTR have recognised in this regard, that it might be fair to accord certain defendants in a joint case more pages than others, due to the fact that the defendants are mounting appeal of different complexities and breadth.⁴
18. It is significant that whereas Mr. Babala was convicted as an accessory in relation to two offences under Article 70(1)(c) occurring in a span of mere days, Mr. Bemba was convicted pursuant to a common plan encompassing 14 offences under Articles 70(1) (a) (b) and (c), over a period of approximately two years, pursuant to Article 25(3)(a) and (b). The scope of the offences underpinning the conviction necessarily raises more legal and factual issues than those faced by the Defence for Mr. Babala. This appears to be reflected by the fact that there appears to be over 20 issues raised in the Bemba detained notice of appeal that are not raised in equivalent document

⁴ Extension of word limits for one Appeal Brief was granted in a multiple accused cases where that specific appeal raised particularly broad range of factual and legal issues, some of which were of significant complexity or required the discussion of considerable parts of the voluminous trial record. ICTR, *Bagosora, Ntabakuze, Nsengiyumva, v. The Prosecutor*, Case No. ICTR-98-41-A, 19 January 2010, p. 4.

The Appeals Chamber granted an extension of word limit to one co-appellant considering that the scope of his appeal would appear to be broader than those of the other two co-appellants. ICTY, *Prosecutor v. Sainovic, Ojdanic, Pavkovic, Lazarevic, Lukic*, Case No. IT-05-87-A, 8 September 2009, p. 5. In a joinder of five co-defendants, the Appeals Chamber considered as a factor to grant an extension of word limits to one of co-defendants the fact that the convictions subjects to appeal concerned numerous criminal incidents, covering diverse geographical locations. ICTY, *Prosecutor v. Sainovic, Ojdanic, Pavkovic, Lazarevic, Lukic*, Case No. IT-05-87-A, 11 September 2009, p. 4.

submitted by the Babala defence.⁵ The Defence is compelled to present its arguments in relation to a wider degree of evidence concerning the 14 witnesses.

19. Mr. Bemba's status as the defendant and privilege holder in the Main Case, and fact that he was covertly monitored in detention also raises several complex legal issues that are unique to his conviction. The Single Judge found that because the monitoring decisions were issued in the investigation phase, the Defence had no standing to litigate them after Mr. Bemba's arrest, and although requested, interlocutory appeal was never granted in relation to the decisions concerning the role of the Independent Counsel, the involvement of the Bemba defence in the review process, and the scope of privilege.⁶ The Defence was also denied standing to raise these matters before the Presidency.⁷ The Appeal constitutes the first time that the Defence will have an effective opportunity to litigate these matters.

20. These issues will be raised in the appeal, and require sufficient space to elaborate upon the complex interplay between the domestic and ICC proceedings.

21. For these reasons, the Defence submits that its appeal is distinguishable in breadth and complexity from the Babala appeal, and that an additional amount of 35 pages is justified.

Relief sought

⁵ Such as grounds II, III, V, VI, VII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXV, XXVI, XXVII, XXIX, XXX, XXXI, XXXII, XXXIV.

⁶ ICC 01/05-01/13-50-Conf; ICC-01/05-01/13-51-Conf; ICC-01/05-01/13-56. See also ICC-01/05-01/13-749, para.10; ICC-01/05-01/13-801, para.31.

⁷ ICC-RoR221-03/14-3-Conf-Exp

22. For the reasons set out above, the Defence for Mr. Bemba respectfully requests the Honourable Appeals Chamber to:

- i. Extend the deadline for filing the appeal brief to 26 April 2017;
and
- ii. Extend the page limit of the Bemba Defence appeal brief to 150 pages.



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Dated this 24th day of March 2017

The Hague, The Netherlands

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