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THE APPEALS CHAMBER

Before: Judge Christine Van den Wyngaert, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Chile Eboe-Osuji
Judge Piotr Hofmański

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
*THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO***

Public Document

**Appellant's request for an extension of the time limit to file his document in
support of appeal against the Decision on Sentence**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Helen Brady

Counsel for the Defence of Mr Jean-Pierre Bemba Gombo

Peter Haynes, QC

Kate Gibson

Kai Ambos

Legal Representatives of the Victims

Marie-Edith Douzima-Lawson

The Office of Public Counsel for the Victims

Paolina Massidda

The Office of Public Counsel for the Defence

Xavier-Jean Keita

REGISTRY

Registrar

Herman von Hebel

I. INTRODUCTION

1. By this application the Defence seeks an extension of the time limit for filing its Sentencing Appeal Brief¹ of 30 days. It is content that any extension should similarly be granted to the Prosecution, and its primary submission is that this limited delay would allow for meaningful submissions to best assist the Appeals Chamber, and would not impact on the timetable for the determination of issues raised on appeal.

2. This application is born of a unique and coincidental set of circumstances. The bifurcation of the sentencing procedure at first instance,² and the sequence of events following conviction³ have led to Mr. Bemba being required to file his Sentencing Appeal Brief and Conviction Appeal Brief⁴ within one day of each other.

3. This Defence brings this application after a realistic assessment of its resources and capacity to deal with all matters both in a timely manner and in a way which properly and professionally discharges its functions.

II. BACKGROUND

4. On 21 March 2016, Trial Chamber III ("Trial Chamber") rendered its Judgment under Article 74 of the Statute ("the Judgment").⁵ The Trial Chamber convicted Mr. Jean-Pierre Bemba ("the Appellant") for murder as a crime against humanity under Article 7(1)(a) of the Statute and as a war crime under Article 8(2)(c)(i) of the Statute; rape as a crime against humanity under Article 7(1)(g) of the

¹ Document in support of appeal under Regulation 58 of the Regulations of the Court.

² ICC-01/05-01/08-3071.

³ ICC-01/05-01/08-3370; ICC-01/05-01/08-3405.

⁴ Document in support of appeal under Regulation 58 of the Regulations of the Court.

⁵ ICC-01/05-01/08-3343.

Statute and as a war crime under Article 8(2)(e)(vi) of the Statute; and pillaging as a war crime under Article 8(2)(e)(v) of the Statute.⁶

5. On 4 April 2016, the Appellant filed a notice of appeal against the Judgment pursuant to Rule 150(1) of the Rules of Procedure and Evidence, and Regulation 57 of the Regulations of the Court.⁷

6. On 5 April 2016, the Appellant requested a variation of the time limits for the filing of his Conviction Appeal Brief to 180 days after the notification of the Conviction Decision.⁸ On 15 April 2016, the Appeals Chamber granted that extension of time and ordered the Appellant to file his Conviction Appeal Brief on Monday, 19 September 2016 at 16h00.⁹

7. On 21 June 2016, the Trial Chamber rendered its Decision on Sentence pursuant to Article 76 of the Statute and sentenced Mr. Bemba to a total of 18 years of imprisonment.¹⁰ On 22 July 2016, both the Prosecution and the Defence filed a notice of appeal against the Decision on sentence.¹¹

8. On 2 August 2016, the Appellant was notified of the composition of the Appeal Chamber¹² and on 5 August 2016 was notified of its Presiding Judge.¹³

9. According to Regulation 58 of the Regulations of the Court, the Appellant is required to file a Sentencing Appeal Brief within 90 days of notification of the relevant decision. In the absence of any variation of this time limit, the Appellant

⁶ ICC-01/05-01/08-3343, para. 752.

⁷ ICC-01/05-01/08-3348.

⁸ ICC-01/05-01/08-3353.

⁹ ICC-01/05-01/08-3370.

¹⁰ ICC-01/05-01/08-3399.

¹¹ ICC-01/05-01/08-3411 A2 and ICC-01/05-01/08-3412 A3.

¹² ICC-01/05-01/08-3416.

¹³ ICC-01/05-01/08-3418.

will be required to file his Sentencing Appeal Brief on 20 September 2016, one day after filing his Conviction Appeal Brief.

III. APPLICABLE LAW

10. Regulation 35 of the Regulations of the Court provides:

1. Applications to extend or reduce any time limit as prescribed in these Regulations or as ordered by the Chamber shall be made in writing or orally to the Chamber seized of the matter setting out the grounds on which the variation is sought.

2. The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. [...]

11. Following a determination of good cause, the Appeals Chamber must then determine “whether the length of extension requested is justified.”

IV. SUBMISSIONS

12. As acknowledged by the Appeals Chamber, this case raises issues of significant complexity. The Appeals Chamber has recognised both the fact that the appeal against the conviction “is the first directed at a decision on criminal responsibility under article 28 of the Statute, which may raise both complex and novel issues”;¹⁴ and “the number and complexity of the filings associated with the article 70 proceedings” as exceptional circumstances.¹⁵ With this in mind, the Appeals Chamber granted both the extension of time and the extension of pages requested by the Defence to file its appeal brief against the decision on conviction.¹⁶

¹⁴ ICC-01/05-01/08-3405, para. 10.

¹⁵ ICC-01/05-01/08-3405, para. 11.

¹⁶ ICC-01/05-01/08-3370; ICC-01/05-01/08-3405.

13. At present, the Defence has been driven to allocate the majority of its resources (and the time available) to the drafting of the Conviction Appeal Brief. Meaningful submissions must also be made to assist the Appeals Chamber in determining the appeals from sentence. The sentencing of commanders is not a straightforward question. The nature of a commander's culpability and the concomitant impact on sentencing has generated significant legal and academic commentary, and was the focus of the Defence submissions.¹⁷ The question of the impact on a convicted person's expended resources and frozen assets on his sentence is novel before the International Criminal Court, with little helpful available precedent from other international courts and tribunals. The issues addressed in the Sentencing Appeal Brief are novel, and complex. This alone constitute good cause warranting the discrete extension requested.

14. However, the Decision on Sentence itself is also significant in terms of substance and references. The majority of the citations are cross-references to the judgment which require the review of transcripts, evidence and documents.¹⁸ The extension sought will allow the Defence to conduct a complete review of this material without causing unnecessary delay, and without having to direct resources away from the Conviction Appeal Brief in this critical and final phase of drafting.

15. There are also considerations of equality. In the 90 days available for the preparation of drafts, the Prosecution's resources can be directed solely towards the drafting of its Sentencing Appeal Brief, while the Defence's resources are split across two briefs. The extension sought herein would give the Defence 30 clear days within which resources could be focused exclusively on the Sentencing Appeal Brief, ensuring adequate time and facilities for the preparation of this document.

¹⁷ ICC-01/05-01/08-3376-Conf, paras. 18-27.

¹⁸ ICC-01/05-01/08-3399.

16. The requested delay would also assist in the taking of meaningful instructions. Time with Mr. Bemba is not unlimited. He has yet to have been provided with the Decision on Sentence in a language that he fully understands and speaks,¹⁹ further complicating the consultative process. A temporal division of the two appeals would greatly assist in allowing the process of taking instructions to be focused and defined.

17. Nor will the proposed extension impact on the overall progression of the appeals process. There is no statutory provision for a delay in the determination of the appeal from the Conviction Decision until the conclusion of the briefing period on sentencing, or vice versa. The limited delay is proportionate when viewed against the scope of the anticipated Sentencing Appeal Brief, the complexity of the issues raised, and the scope of the Sentencing Decision itself.

18. The *Bemba* case is significant, particularly in terms of the legal principles addressed. It is in the interests of justice for the Appellant to have sufficient time to prepare streamlined, focused, and exhaustive briefs that are of assistance to this Chamber, while respecting the need for the expeditious conduct of appeals. The proposed extension appropriately balances those interests.

19. The Defence respectfully submits that the factors set out above represent good cause for an extension of time to be granted under Regulation 35.

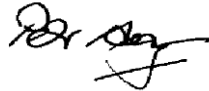
V. RELIEF SOUGHT

20. In view of the above submissions, the Defence respectfully requests that the Appeals Chamber:

¹⁹ Rule 144 (2)(b) of the Rules of Procedure and Evidence requires that copies of decisions of the Trial Chamber concerning criminal responsibility of the accused sentence and reparations shall be provided as soon as possible to “[t]he accused, in a language he or she fully understands or speaks, if necessary to meet the requirements of fairness under article 67, paragraph 1(f).”.

GRANT the Appellant's request for an extension of time of 30 days within which to file his Sentencing Appeal Brief.

The whole respectfully submitted.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 16 August 2016

It is hereby certified that this document contains a total of 1573 words and complies in all respects with the requirements of regulation 36 of the Regulations of the Court.