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No.: ICC-01/05-01/08 A

Date: 28/06/2016

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

Request for an extension of the page limit

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

Peter Haynes QC
Kate Gibson
Melinda Taylor

Legal Representatives of the Victims

Marie-Edith Douzima-Lawson

**The Office of Public Counsel for
Victims**

Paolina Massidda

**The Office of Public Counsel for the
Defence**

Xavier-Jean Keita

REGISTRY

Registrar

Herman von Hebel

A. BACKGROUND

1. On 21 March 2016, Trial Chamber III convicted Mr. Bemba of the charges against him.¹

2. On 15 April 2016, the Appeals Chamber granted a Defence request for a variation of the time limit within which to file its document in support of appeal² on the basis of, *inter alia*, “the anticipated factual and legal complexity of the appeal, the novelty of the legal issues to be addressed and fair trial arguments that Mr Bemba may wish to make.”³

3. In the same decision, the appellant was ordered to inform the Appeals Chamber of “at the very least, the legal findings in the Conviction Decision that he intends to challenge within the 90 day time limit prescribed in regulation 58 of the Regulations.”⁴

4. Accordingly, on 20 June 2016, the appellant informed the Appeals Chamber of the errors identified in the Judgment which he anticipated contesting on appeal (“20 June filing”).⁵ The scope and number of these errors prompt the present application for a variation of the page limit for his document in support of appeal.

B. REQUEST FOR EXTENSION OF THE PAGE LIMIT

5. Regulation 58(4) of the Regulations of the Court limits the document in support of the appeal to 100 pages in length. In exceptional circumstances, the Appeals Chamber may extend the page limit at the request of a party.⁶

¹ ICC-01/05-01/08-3343 (“Judgment”).

² ICC-01/05-01/08-3353.

³ ICC-01/05-01/08-3370, para. 6.

⁴ ICC-01/05-01/08-3370, para. 9.

⁵ ICC-01/05-01/08-3398.

⁶ Regulation 37(2) of the Regulations of the Court.

6. Exceptional circumstances exist in this case. The most apparent,⁷ and as recognised by the Appeals Chamber, is the “factual and legal complexity of the appeal”.⁸ This is the first superior responsibility case at the International Criminal Court. As foreshadowed in the 20 June filing, both the legal and factual bases of the superior responsibility conviction are being challenged. The appellant is also contesting the Trial Chamber’s findings on contextual elements of crimes, and legal and factual findings on the crimes themselves. The Trial Chamber’s failure to consider critical pieces of evidence will also be brought to the Appeals Chamber’s attention, as will underlying and widespread errors in the assessment of evidence.

7. As such, this is not an appeal where the appellant disputes discrete aspects of the law, or particular findings on credibility. The vast majority of the Judgment is being challenged, with the appellant compelled to ventilate issues of evidence, procedure, fact and law. In such circumstances, the 100 pages proscribed by the Regulations will limit his ability to adequately assist the Appeals Chamber in its consideration of his grounds of appeal.

8. The second factor rendering this case exceptional is the Trial Chamber’s approach to appellate oversight of the proceedings. This was a case devoid of appellate scrutiny. Apart from one instance at the outset of the trial,⁹ the parties were refused leave to appeal the Trial Chamber’s decisions, despite consistent requests throughout the four-year trial.¹⁰

⁷ See ICC-01/05-01/08-3353, paras. 10-14.

⁸ ICC-01/05-01/08-3370, para. 6.

⁹ ICC-01/05-01/08-1169.

¹⁰ See, for example, ICC-01/05-01/08-1782-Conf, ICC-01/05-01/08-2082-Conf, ICC-01/05-01/08-2313, ICC-01/05-01/08-2483-Red, ICC-01/05-01/08-2767-Red, ICC-01/05-01/08-2901-Red2, ICC-01/05-01/08-2932-Red2, ICC-01/05-01/08-3064, ICC-01/05-01/08-3084, ICC-01/05-01/08-3103-Red2, ICC-01/05-01/08-3142-Red, ICC-01/05-01/08-3260-Corr, ICC-01/05-01/08-3308, ICC-01/05-01/08-3316, ICC-01/05-01/08-3338, ICC-01/05-01/08-3339, ICC-01/05-01/08-3386.

9. The sole decision for which leave to appeal was granted, whereby a majority of Trial Chamber judges set out a novel regime for the admissibility of evidence, was quashed by the Appeals Chamber for being “outside the legal framework of the court”.¹¹ Following this decision, the Trial Chamber’s decisions remained unreviewed.

10. In practical terms, whereby in other cases significant procedural and legal developments were reviewed by the Appeals Chamber throughout the course of the trial, and errors corrected on a rolling basis, the *Bemba* Trial Chamber refused Defence requests for mid-stream corrections, and all but one of the legal issues contained in this brief come before the Appeals Chamber for the very first time. In such circumstances, the appellant submits that a variation of the page limit under Regulation 58(5) is warranted.

11. Lastly, unlike other cases to come before the Appeals Chamber, the present proceedings are two-dimensional. In addition to the presentation of evidence by the parties, and the rendering of a Judgment by the Trial Chamber, the *Bemba* case has another layer. This is a case where the Prosecution – comprised of the same Prosecution trial attorneys responsible for prosecuting the Main Case – were simultaneously investigating allegations under Article 70 of the Statute and collecting material directly relevant to the credibility of Defence witnesses which remained undisclosed to the Defence, but was improperly provided to the Trial Chamber during a period of five months. Some of the Prosecution’s investigative steps have now been deemed illegal. The material thus obtained was relied upon by the Prosecution for strategic advantage in the Main Case.

12. As such, and as outlined in the 20 June filing, the parallel Article 70 case gives rise to a plethora of legal and procedural issues which remain unique to international criminal law. Litigation of these questions in the Main Case runs to

¹¹ ICC-01/05-01/08-1386.

over 1000 pages in length.¹² The Defence sought leave to appeal adverse decisions, but each application was denied.¹³

13. Accordingly, none of the legal issues surrounding the lifting of Defence privileges and immunities, breaches of confidentiality and internal work product privilege, or the legality of investigation in the absence of judicial orders, have been considered by the Appeals Chamber. This situation is unique, and warrants a finding of exceptional circumstances, justifying an extension of the page limit.

14. In such circumstances, and given the breadth and complexity of the errors identified in the 20 June filing, the appellant respectfully requests that the Appeals Chamber grant an extension of an additional 150 pages for the document in support of appeal. An extension of this length is not unprecedented.¹⁴

¹² ICC-01/05-01/08-2920, ICC-01/05-01/08-2943, ICC-01/05-01/08-2978, ICC-01/05-01/08-3006, ICC-01/05-01/08-3012, ICC-01/05-01/08-3057, ICC-01/05-01/08-2967-Conf, ICC-01/05-01/08-2986-Conf, ICC-01/05-01/08-3021; ICC-01/05-01/08-2412, ICC-01/05-01/08-2421, ICC-01/05-01/08-2461, ICC-01/05-01/08-2462, ICC-01/05-01/08-2441, ICC-01/05-01/08-2606-Conf; ICC-01/05-01/08-2548-Conf-Red4; ICC-01/05-01/08-2910, ICC-01/05-01/08-2937-Conf, ICC-01/05-01/08-2940, ICC-01/05-01/08-2942, ICC-01/05-01/08-3016, ICC-01/05-01/08-3024, ICC-01/05-01/08-3029; ICC-01/05-01/08-3036, ICC-01/05-01/08-3058, ICC-01/0501/08-3062-Conf-Exp, ICC-01/0501/08-3073, ICC-01/05-01/08-3101, ICC-01/05-01/08-3103-Conf-Exp, ICC-01/05-01/08-3113; ICC-01/05-01/08-3020-Conf, ICC-01/05-01/08-3033-Conf, ICC-01/05-01/08-3039, ICC-01/05-01/08-3044, ICC-01/05-01/08-3049, ICC-01/05-01/08-3055-Conf, ICC-01/05-01/08-3100; ICC-01/05-01/08-2963, ICC-01/05-01/08-2969, ICC-01/05-01/08-2984, ICC-01/05-01/08-2987, ICC-01/05-01/08-2993, ICC-01/05-01/08-2996, ICC-01/05-01/08-3004, ICC-01/05-01/08-3080, ICC-01/05-01/08-3084, ICC-01/05-01/08-3090, ICC-01/05-01/08-3114; ICC-01/05-01/08-2962, ICC-01/05-01/08-2998-Conf, ICC-01/05-01/08-2945-Conf, ICC-01/05-01/08-2265-Conf, ICC-01/05-01/08-2983-Conf, ICC-01/05-01/08-2985, ICC-01/05-01/08-2991-Conf, ICC-01/05-01/08-3059, ICC-01/05-01/08-3064, ICC-01/05-01/08-3122; ICC-01/05-01/08-3217-Conf-Exp, ICC-01/05-01/08-3228-Conf, ICC-01/05-01/08-3229-Conf-Exp, ICC-01/05-01/08-3231-Conf-Exp, ICC-01/05-01/08-3233, ICC-01/05-01/08-3234, ICC-01/0501/08-3236, ICC-01/05-01/08-3239-Conf-Exp, ICC-01/05-01/08-3255, ICC-01/05-01/08-3260-Corr, ICC-01/05-01/08-3261, ICC-01/05-01/08-3273; ICC-01/05-01/08-3257-Conf, ICC-01/05-01/08-3264-Conf-Exp, ICC-01/05-01/08-3265-Conf, ICC-01/05-01/08-3271, ICC-01/05-01/08-3272, ICC-01/05-01/08-3274-Conf, ICC-01/05-01/08-3275-Conf-Exp, ICC-01/05-01/08-3276-Conf-Exp, ICC-01/05-01/08-3277-Conf-Exp, ICC-01/05-01/08-3279, ICC-01/05-01/08-3280-Conf, ICC-01/05-01/08-3281-Conf-Red, ICC-01/05-01/08-3294-Conf, ICC-01/05-01/08-3299-Conf, ICC-01/05-01/08-3303-Conf, ICC-01/05-01/08-3305-Conf, ICC-01/05-01/08-3307-Conf, ICC-01/05-01/08-3308-Conf, ICC-01/05-01/08-3309, ICC-01/05-01/08-3310-Conf, ICC-01/05-01/08-3313-Conf, ICC-01/05-01/08-3335, ICC-01/05-01/08-3336, ICC-01/05-01/08-3338, ICC-01/05-01/08-3339 ICC-01/05-01/08-3341, ICC-01/05-01/08-3342, ICC-01/05-01/08-3382.

¹³ ICC-01/05-01/08-3113, ICC-01/05-01/08-3114, ICC-01/05-01/08-3122, ICC-01/05-01/08-3273, ICC-01/05-01/08-3282, (Decision denying Leaves to appeal ICC-01/05-01/08-3338 and ICC-01/05-01/08-3339).

¹⁴ See, for example, *Charles Ghankay Taylor v. The Prosecutor*, SCSL-2003-01-A, Appellant's Submissions of Charles Ghankay Taylor, 1 October 2012, which was 298 pages in length without

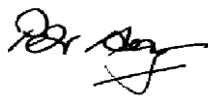
E. RELIEF REQUESTED

15. For the reasons outlined above, the appellant respectfully requests that the Appeals Chamber:

FIND that exceptional circumstances for a variation of the page limit exist in the present case; and

ORDER that the page limit for the document in support of appeal under Regulation 58(5) of the Regulations of the Court be extended by 150 pages.

The whole respectfully submitted.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands

28 June 2016

It is hereby certified that this document contains a total of 1,391 words and complies in all respects with the requirements of regulation 36 of the Regulations of the Court.

submissions on sentence, and 307 pages in total. See also *Prosecutor v. Nuon et al.*, 002/19-09-2007-ECCC/SC, Mr. Khieu Samphan's Defence Appeal Brief Against the Judgment in Case 002/01, 29 December 2014, which was 235 pages in length, and *Prosecutor v. Nuon et al.*, 002/19-09-2007-ECCC/SC, Nuon Chea's Appeal Against the Judgment in Case 002/01, 29 December 2014 which was 275 pages in length.