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No.**: ICC-01/05-01/08 A**
Date: **1 July 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 Hofmánski

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF
THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

Public

Response to request for an extension of the page limit

Source: **Office of the Prosecutor**

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Mr James Stewart
Ms Helen Brady

Counsel for the Defence
Mr Peter Haynes
Ms Kate Gibson
Ms Melinda Taylor

Legal Representatives of the Victims
Ms Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants

Unpresented Victims

Unrepresented Applicants

The Office of Public Counsel for Victims
Ms Paolina Massidda

The Office of Public Counsel for the Defence
Mr Xavier-Jean Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Introduction

1. There are no exceptional circumstances justifying any extension of the page limit for the document supporting Mr Bemba's appeal,[1] as required by regulation 37(2) of the Regulations of the Court. And, certainly, no circumstances in this case justify a brief more than double the customary length.[2] However, in order to facilitate the fair and expeditious conduct of this appeal, the Prosecution would not object to the grant, *ex gratia*, of a modest extension of no more than 20 pages.

2. In any event, should the Appeals Chamber order any extension of the page limit for the document supporting Mr Bemba's appeal, the Prosecution requests an equal extension for its brief in response.

Submissions

3. None of the arguments in the Request show exceptional circumstances justifying any extension of the applicable page limit, much less an extension of the very significant proportions sought. Although this case is indeed significant, it is not "exceptionally" complex. Nor are the two additional arguments raised in the Request—the limited number of issues certified for appeal during the trial, and the incidence of separate proceedings under article 70—relevant to the procedural matter at hand. For these reasons, to any extent that the Appeals Chamber may order an extension of the applicable page limit, it should only be a modest one.

A. This appeal is not exceptionally complex

4. Regulation 58(5) specifically provides that a document supporting an appeal shall not exceed 100 pages, which amounts to 30,000 words. The application of regulation 37(2) to regulation 58(5) thus requires "exceptional circumstances" *in the*

[1] *Contra* ICC-01/05-01/08-3400 A ("Request"), paras. 6, 15.
[2] *Contra* Request, paras. 14-15.

context of an appeal against conviction. The complexity of an appeal brief by comparison with other types of filing, for example, cannot justify an extension of the page limit.

5. The Prosecution acknowledges the Appeals Chamber's previous recognition of "the anticipated factual and legal complexity of the appeal" and "the novelty of the legal issues to be addressed and fair trial arguments that Mr Bemba may wish to make".[3] However, this determination—to which the Prosecution had no objection—was part of a broader showing of "good cause" for the extension of time to file the document in support of an appeal,[4] which was not required to meet the apparently higher threshold of "exceptional circumstances".

6. Accordingly, although the Prosecution recognises that the appeal will indeed be factually and legally complex, it does not agree that it will be exceptionally so. It is not exceptional for an appellant to challenge "both the legal and factual bases" of a mode of liability, or "to ventilate issues of evidence, procedure, fact and law".[5] To the contrary, this is more often the norm in international criminal appeals, and the procedural restrictions exist to assist the Parties in focusing their submissions on those arguments which in their view have the best prospect of success, as well as ensuring clarity for opposing counsel and other participants, the Appeals Chamber, and the public.

7. Indeed, 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,

[3] ICC-01/05-01/08-3370 A ("Extension of Time Decision"), para. 6. *See also* Request, para. 6.
[4] Extension of Time Decision, para. 6. *See also* regulation 35(2).
[5] *Contra* Request, paras. 6-7.
[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 ("*Stanišić and Župljanin* Decision"), p. 4; *Prosecutor v. Orić*, IT-03-68-A, Decision on Defence Motion for Extension of

in and of themselves, by factors such as "the length of the trial judgement" or "the number of 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.

8. Consistent with the previous practice of this Court, the Appeals Chamber should instead look to the objective reality of the imminent appeal, the content of the Trial Judgment, and the facts of the case. On the one hand, the Defence intends—as it is entitled—to challenge many aspects of the Trial Judgment, as well as the fairness of the proceedings. Yet on the other, the Trial Judgment is reasonably concise, and enters convictions on just one mode of liability, albeit for the first time, and on a relatively small number of charges. Accordingly, considering these factors as a whole, as well as the typical characteristics of other international criminal cases (including those presently at the pre-trial and trial stage at this Court),[8] the Prosecution cannot agree that this appeal is of "exceptional" complexity, for the purpose of regulation 37(2).[9]

9. Moreover, should the Appeals Chamber consider that it would benefit from further argument on any of the issues developed in the Parties' written submissions, it may convene a hearing in which the Parties can address particular areas of interest orally.[10] It may also request supplemental written submissions, if it requires.[11] Thus,

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Word Limit for Defence Appellant's Brief, 6 October 2006 (available through http://icr.icty.org/default.aspx), p. 3.

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

[8] *See below* para. 21 (providing illustrative examples from the practice of the ICTY). Likewise, at this Court, the *CAR Article 70*, *Ntaganda*, *Gbagbo and Blé Goudé*, and *Ongwen* cases all charge multiple modes of liability, and a broader range of crimes.

[9] The Prosecution does, however, recognise that regulation 37(2) appears to impose a high standard in the context of appellate submissions, and in this context does not therefore oppose a modest *ex gratia* extension to the page limit, not exceeding 20 pages. *See further below* paras. 18, 27-28, 30.

[10] ICC-01/04-02/12-199 A, para. 13 (considering that "the decision to hold an oral hearing in appeal proceedings against final judgments is discretionary and made on a case-by-case basis", "based primarily on the potential

maintaining the ordinary length prescribed for an appeal brief, or even permitting only a modest extension,[12] will not limit the ability of the Defence to assist the Appeals Chamber adequately.[13]

B. The absence of justification for appeals under article 82(1)(d), during trial, is irrelevant to the subsequent conduct of proceedings under article 81

10. The reference to the single interlocutory appeal certified in this trial not only fails to establish "exceptional circumstances" but is indeed irrelevant to the nature of appeal proceedings under article 81.[14]

11. The Request appears to misunderstand the purpose of interlocutory appeals under article 82(1)(d), which do not exist to review *all* alleged errors but only those which, by their nature and the circumstances in which they occur, significantly affect the fair and expeditious conduct of the proceedings or outcome of the trial *and* require immediate resolution by the Appeals Chamber. Thus, the Trial Chamber's practice in applying article 82(1)(d), even if it denied the majority of Defence applications,[15] allows no inference of any kind to be drawn concerning the legal correctness of the impugned decisions, or the scope of the necessary review under article 81. Nor is the ordinary application of article 82(1)(d) any basis to find that the circumstances of this case were "exceptional", or that the procedure employed at trial was, to any exceptional extent, not subject to interlocutory appellate review.[16]

12. Furthermore, it does not follow from the right of appeal under article 81 that *every* aspect of the trial proceedings may be challenged—rather, it always remains incumbent upon the appellant to show that the judgment was materially affected by

utility of an oral hearing, namely whether it would assist the Appeals Chamber in clarifying and resolving the issues raised in the appeal"). *See further* ICC-01/04-02/12-193-Red, paras. 12-16.
[11] *See* Regulation 28(1).
[12] *See below* paras. 18, 27-28, 30.
[13] *Contra* Request, para. 7.
[14] *Contra* Request, paras. 8-10.
[15] Request, paras. 8, 12.
[16] *Contra* Request, paras. 9-10.

a procedural decision, or else risk dismissal *in limine*. Procedural decisions which neither meet the requirements of article 82(1)(d) nor materially affect the ultimate judgment of a Trial Chamber are simply not appealable, due to their very limited impact upon the case as a whole. The Request is thus speculative in its implication that every procedural decision for which leave to appeal was denied must, or even can, necessarily be raised in this appeal under article 81.

13. Accordingly, the Defence arguments under this head merely repeat their intention to challenge the fairness of the trial, and the legal procedure which was applied. Yet, as stated above, although this intention is acknowledged, it is not itself necessarily exceptional.[17]

C. Arguments concerning the separate article 70 proceedings remain speculative and are unsubstantiated

14. The Appeals Chamber has previously observed that it would be "speculative and premature" to rely on the circumstances of the separate article 70 proceedings against Mr Bemba and others, even for the purpose of showing "good cause" for the extension of time to file the document in support of the appeal.[18] This finding remains apposite. Arguments on this basis are indeed irrelevant and speculative.[19]

15. The Request relies in this context on contentious and conclusory arguments on the facts.[20] This is inappropriate for a procedural submission. The Prosecution recognises the difficulty in avoiding a speculative claim, on the one hand, and making unsubstantiated assertions on the merits, on the other—but the Request has, nonetheless, steered the wrong course. The Prosecution will not enter into the merits

[17] *See above* paras. 5-9.
[18] Extension of Time Decision, para. 7.
[19] *Contra* Request, paras. 11-13.
[20] *See* Request, para. 11 (alleging that: i.) the Prosecution attorneys responsible for this case, and the separate article 70 proceedings, were "the same"; ii.) certain material was "undisclosed" but "improperly provided to the Trial Chamber"; and iii.) "[s]ome of the Prosecution's investigative steps have now been deemed illegal"). *See also* para. 13.

of the Defence claims at this time, yet it underlines that it accepts neither their factual accuracy nor alleged significance.

16. The Appeals Chamber should not allow the use of claims of this nature as an independent basis to show "exceptional circumstances". Indeed, this would only encourage the Parties to make ever wilder allegations for tactical purposes. They add nothing to the basic fact that the Defence intends to challenge the fairness of the trial—an intention which is already adequately and reasonably expressed in the first part of the Request.

D. Any extension should not, in any event, exceed more than 20 pages

17. In any event, the proposed extension—an additional 150 pages (or 45,000 words), for a total brief of 250 pages (or 75,000 words)—is unreasonable. It is more than double the ordinary length for a document in support of an appeal, which is 100 pages (amounting to 30,000 words). Such an extension should not be granted.

18. The Prosecution would not object, however, to a modest extension, on an *ex gratia* basis, of no more than 20 pages, in any event conditioned on the order of a similar extension for the brief in response.

i. The proposed extension is unreasonable

19. In the circumstances prevailing in this case, a 150% increase in the size of an appeal brief is excessive. It would not facilitate the fair and efficient administration of justice, and may even tend to impede it.[21] The Appeals Chamber should not grant an unreasonable extension.[22]

[21] *See e.g.* *Stanišić and Župljanin* Decision, p. 4 (recalling that "the quality and effectiveness of an appellant's brief do not depend on its length, but on the clarity and cogency of the arguments presented and that, therefore, excessively long briefs do not necessarily facilitate the administration of justice").
[22] *See e.g.* ICC-02/11-01/11-481 OA4 ("*Gbagbo* Detention Decision"), para. 6.

20. Consistent with these principles, in *Lubanga*, the Appeals Chamber determined that it was reasonable to order an extension of 20 pages (*i.e.*, a 20% increase) for an appeal against conviction which was anticipated to raise "complex and novel issues"[23]—and from a judgment approximately twice the length of the judgment in this case.[24] Likewise, in *Ngudjolo*, the Appeals Chamber determined that it was reasonable to order an extension of 50 pages (*i.e.*, a 50% increase) for an appeal against acquittal raising "complex and novel issues", and having regard to the extensive citations to the record demanded by the issues in dispute.[25]

21. The practice of the ICTY, for example, reflects a similar approach. Like this Court, an appeal brief at the ICTY is ordinarily 30,000 words (*i.e.*, 100 pages). Yet not even in the most complex case at the ICTY does there appear to be a precedent for a 150% increase, as requested by Mr Bemba. Indeed, on just one occasion in recent years did an appellant even receive a 100% increase—and that in the context of an exceptionally large and complex case. Rather, cases which are more analogous to Mr Bemba's case (although, ultimately, still 'larger') tended to receive no more than a 33.3% increase. Thus:

- In *Prlić et al*, an extension of 20,000 words (*i.e.*, a 66.6% increase, or approximately 66 pages) was granted per Defence appellant.[26] The trial judgment is 4 volumes long, amounting to 1,871 pages or 6,304 paragraphs,[27] and addresses 23 counts relating to a campaign of ethnic cleansing in 8 municipalities containing approximately 280,000 people over nearly 3 years. Crimes were not only alleged in the conduct of hostilities, but in multiple

[23] ICC-01/04-01/06-2946 A5 ("*Lubanga* Extension Decision"), para. 5.
[24] *Lubanga* Extension Decision, para. 5 (also taking into account "the length of the Conviction Decision"). The article 74 judgment in *Lubanga* was 593 pages, or 1364 paragraphs, in length, plus separate opinions. The article 74 judgment in this case is 364 pages, or 753 paragraphs, plus separate opinions.
[25] ICC-01/04-02/12-34 A ("*Ngudjolo* Extension Decision"), paras. 4-5.
[26] ICTY, *Prosecutor v. Prlić et al*, IT-04-74-A, Decision on Appellants' Requests for Extension of Time and Word Limits, 9 October 2014, p. 4.
[27] In addition, two further volumes were dedicated to annexes and separate opinions.

villages, camps and prisons. The 6 defendants ranged in seniority up to the highest leadership of the "Republic of Herceg-Bosna", and were charged with multiple modes of liability.

- In *Tolimir*, an extension of 10,000 words (*i.e.*, a 33.3% increase, or approximately 33 pages) was initially granted.[28] Exceptionally, Mr Tolimir—a self-representing appellant—was permitted to file a supplemental appeal brief,[29] and then a consolidated appeal brief exceeding the applicable limit by 14,997 words (approximately a 50% increase or 50 pages).[30] The trial judgment is 519 pages long, or 1,242 paragraphs, and addresses 8 counts relating to the genocide at Srebrenica, in which more than 6,000 people were killed and others forcibly displaced, as well as the fall of the enclave at Žepa.

- In *Stanišić and Simatović*, a Prosecution appeal, no extension of word limit was requested or ordered. The judgment comprises 2 volumes, amounting to 851 pages or 2,363 paragraphs, and addresses 5 counts relating to 3 campaigns of ethnic cleansing in Croatia and Bosnia and Herzegovina involving at least 9 armed groups over nearly 4 years, leading to the enforced displacement of thousands of people.

- In *Stanišić and Župljanin*, an extension of 10,000 words (*i.e.*, a 33.3% increase, or approximately 33 pages) was granted per Defence appellant.[31] The judgment comprises 2 volumes, or 841 pages or 2,647 paragraphs,[32] and addresses 10 counts relating to ethnic cleansing in 17 municipalities of Bosnia and

[28] *Tolimir* Decision, pp. 3-4.
[29] *See* ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, Annex A (Procedural History), paras. 2-3.
[30] *See* ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Public Redacted Version of the Consolidated Appeal Brief, 28 February 2014.
[31] *Stanišić and Župljanin* Decision, pp. 4-5. *See also Prosecutor v. Stanišić and Župljanin*, IT-08-91-A, Decision on Mićo Stanišić's Motion Seeking Reconsideration of Decision on Variation of Time and Word Limits to File Appellant's Brief, 21 June 2013 (denying request).
[32] In addition, a further volume contains relevant annexes.

Herzegovina over almost a year. Crimes were alleged to have occurred in more than 50 detention facilities, among other locations, and to have resulted in thousands of deaths and tens of thousands of people forcibly displaced.

- In *Perišić*, an extension of 8,000 words (just under a 25% increase or 25 pages) was granted.[33] The judgment is 573 pages, or 1,841 paragraphs, in length, and addresses 12 counts relating to the 3-year siege of Sarajevo, the killing of thousands at Srebrenica, and the shelling of Zagreb.

- In *Gotovina and Markač*, an extension of 10,000 words (*i.e.*, a 33.3% increase, or approximately 33 pages) was granted per Defence appellant.[34] The judgment comprises 2 volumes, amounting to 1,341 pages or 2,623 paragraphs, and addresses allegations of the forced displacement of tens of thousands of people in the course of a military operation to liberate Croatian territory.

- In *Đorđević*, an extension of 15,000 words (*i.e.*, a 50% increase, or approximately 50 pages) was granted. In authorising this extension, however, the Pre-Appeal Judge acknowledged that he did "not […] really see a good reason for what I'm going to decide, but I want to be as magnanimous as I can with you".[35] The judgment comprises 2 volumes, amounting to 83 pages or 2,231 paragraphs, and addresses 5 counts of ethnic cleansing in more than 40 neighbourhoods, towns, and villages across 14 municipalities of Kosovo, committed in less than 6 months. Hundreds of thousands of people were forcibly displaced, and hundreds more murdered or assaulted.

[33] ICTY, *Prosecutor v. Perišić*, IT-04-81-A, Decision on Momčilo Perišić's Motion for Leave to Exceed the Word Limit for the Appeal Brief, 30 January 2012, pp. 2-3.
[34] ICTY, *Prosecutor v. Gotovina*, IT-06-90-A, Decision on Ante Gotovina's and Mladen Markač's Motions for Leave to Exceed the Word Limit, 20 July 2011, pp. 2-3.
[35] ICTY, *Prosecutor v. Đorđević*, IT-05-87/1-A, Status Conference, 30 May 2011, AT. 8, lines 19-25.

- In *Popović et al*, an extension of 10,000 words (*i.e.*, a 33.3% increase, or approximately 33 pages) was granted per appellant.[36] The judgment comprises 2 volumes, of 838 pages or 2,229 paragraphs, and addresses 8 counts relating to the genocide at Srebrenica, in which more than 6,000 people were killed and others forcibly displaced, as well as the fall of the enclave at Žepa. The 7 defendants ranged in seniority within the VRS armed forces, and were charged with multiple modes of liability.

- In *Šainović et al*, an extension of 30,000 words (*i.e.*, a 100% increase, or approximately 100 pages) was granted for Mr Lukić, and an extension of 15,000 words (*i.e.*, a 50% increase, or approximately 50 pages) was granted for the other four Defence appellants.[37] The judgment features 3 volumes, totalling 1,435 pages or 3,787 paragraphs,[38] and addresses 5 counts of ethnic cleansing in more than 40 neighbourhoods, towns, and villages across 14 municipalities of Kosovo, committed in less than 6 months. Hundreds of thousands of people were forcibly displaced, and hundreds more murdered or assaulted. The 6 defendants were all senior members of armed forces, police, and government, and were charged with multiple modes of liability.

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[36] 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, pp. 6-7. *See also Prosecutor v. Popović et al*, IT-05-88-A, Decision on Motion of Drago Nikolić for Permission to Further Exceed Word Limitation, 12 January 2011 (denying request); *Prosecutor v. Popović et al*, IT-05-88-A, Decision on Motion of Vujadin Popović for Permission to Further Exceed Word Limitation, 17 January 2011 (denying request); *Prosecutor v. Popović et al*, IT-05-88-A, Decision on Motion of Radivoje Miletić for Permission to Further Exceed Word Limitation, 18 January 2011 (denying request). One appellant, Pandurević, did not seek an extension of the applicable word limit, and therefore appears not to have been granted one.

[37] ICTY, *Prosecutor v. Šainović et al*, IT-05-87-A, Decision on Defence Motions for Extension of Word Limit, 8 September 2009, pp. 4-5 (noting "the unprecedented length of the trial judgement, the fact that the convictions subject to appeal concern numerous criminal incidents, covering diverse geographical locations"); *Prosecutor v. Šainović et al*, IT-05-87-A, Decision on Nikola Šainović's and Dragoljub Ojdanić's Joint Motion for Extension of Word Limit, 11 September 2009, p. 4. *See also Prosecutor v. Šainović et al*, IT-05-87-A, Decision on Sreten Lukić's Motion to Reconsider Decision on Defence Motions for Extension of Word Limit, 14 September 2009 (denying request for reconsideration); *Prosecutor v. Šainović et al*, IT-05-87-A, Status Conference, 25 September 2009, AT. 15-17 (denying request for reconsideration); *Prosecutor v. Šainović et al*, IT-05-87-A, 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.

[38] In addition, a further volume contains relevant annexes.

22. It should be further noted that, in all these submissions, consistent with the practice of the ICTY, counsel were expected to raise arguments not only on guilt or innocence but also on sentence. There is no such requirement in the practice of this Court, in which sentence appeals are governed by a separate procedure. Accordingly, the ordinary 100-page appellant's brief at this Court may be used even more efficiently to challenge a finding of guilt or innocence than the ordinary 100-page appellant's brief at the ICTY.

23. Considering this context as a whole, although the Request states that the 150% extension sought is "not unprecedented",[39] it is clearly very unusual.

24. Indeed, it appears to be even more exceptional than the Request implies, on the basis of the two cases cited. For example, the Request says of the *Taylor* appeal brief, at the SCSL, that it was "298 pages in length without submissions on sentence, and 307 pages in total."[40] Yet this omits to explain that the extension granted in *Taylor* appears to have been specifically tailored to the circumstances of a cross-appeal, in which each Party would file both an appeal brief *and* a response brief, and each Party had requested an extension. Thus, in the underlying decision (not cited in the Request), the SCSL Pre-Appeal Judge ordered:

> I further find that an extension of *two hundred pages in total for both the Appellant's Submissions and the Respondent's Submissions* is reasonable and proportionate. Considering that Counsel are experienced lawyers and best-placed to assess their needs and strategy, *the Parties may allocate this extension between the Appellant's Submissions and the Respondent's Submissions as they see fit*.[41]

[39] Request, para. 14.
[40] Request, para. 14, fn. 14.
[41] SCSL, *Prosecutor v. Taylor*, SCSL-03-01-A, Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112, and 113, 7 August 2012, para. 30 (emphasis added). *See also* para. 8 (recalling the SCSL practice direction specifying that "Appellant's Submissions and Respondent's Submissions shall be no longer than one hundred pages or thirty thousand words, whichever is greater"). *See also Prosecutor v. Taylor*, SCSL-03-01-A, Decision on Defence Motion for Reconsideration or Review of 'Decision on Prosecution and Defence Motions for Extension of Time and Page

25. It follows from this explanation that the extension in the *Taylor* appeal brief is not the 200% increase (100 pages to just over 300 pages) that it might appear to be. Rather, it represents a 100% increase (combined appeal and response briefs totalling 200 pages to combined appeal and response briefs totalling 400 pages). Accordingly, allowing for the differences in circumstances, the Request in this case (150%) would appear to exceed the extension granted in *Taylor* (100%) by half as much again.

26. Likewise, although it is correct that, in *Case 002/01* at the ECCC, the appellants were permitted to file appeal briefs of more than 200 pages,[42] it should be noted that the Supreme Court Chamber issued its directions in the absence of *any* general rule for the length of such documents,[43] and expressly on the basis that "appellate proceedings before the ECCC differ" in their scope "from those before international or other internationalized criminal courts and tribunals".[44] Accordingly, in their own terms, these decisions are of limited assistance to the practice of this Court, and do not in any event give any basis to estimate the proportion of the 'extension' at all.

ii. The Prosecution would not object to a modest extension of 20 pages for both the appeal and response

27. Notwithstanding the failure of the Request to show exceptional circumstances justifying an extension of the applicable page limit under regulation 37(2), the Prosecution is not unsympathetic to the concerns of the Defence. Accordingly, having regard to the practice of this Court in *Lubanga* and *Ngudjolo,* and the practice of other international courts and tribunals, the Prosecution would not object to a

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Limits Pursuant to Rules 111, 112, and 113 and Final Order on Extension of Time for Filing Submissions', 21 August 2012.

[42] *See* Request, para. 14, fn. 14. *See further See* ECCC, *Case No. 002/01 (Nuon Chea and Khieu Samphan)*, 002/19-09-2007/ECCC/SC, Decision on Motions for Extensions of Time and Page Limits for Appeal Briefs and Responses, 31 October 2014 ("*Case No. 002/01* First Decision"), paras. 17, 23; *Case No. 002/01 (Nuon Chea and Khieu Samphan)*, 002/19-09-2007/ECCC/SC, Decision on Defence Motions for Extension of Pages to Appeal and Time to Respond, 11 December 2014, paras. 16-17. Again, these decisions were not directly cited.

[43] *See Case No. 002/01* First Decision, paras. 11-12. Rather, the practice of the ECCC appears to set a blanket 30-page restriction for all documents filed in any kind of appeal proceedings, unless otherwise ordered.

[44] *Case No. 002/01* First Decision, para. 16.

modest extension of no more than 20 pages for the document supporting Mr Bemba's appeal.

28. Consistent with the previous practice of the Appeals Chamber,[45] the Prosecution requests an extension of the applicable page limit for its brief in response corresponding to any extension granted to the appellant. This is not only necessary in the interests of fairness and equality of arms, but will also allow the Prosecution to provide a suitably comprehensive response to the arguments raised on appeal.

[45] *See e.g. Ngudjolo* Extension Decision, para. 6; ICC-01/04-01/06-2965, para. 9; *Gbagbo* Detention Decision, para. 7.

Conclusion

29. For all the reasons above, the Request should be denied because it fails to show the exceptional circumstances required by regulation 37(2).

30. However, in order to facilitate the fair and expeditious conduct of the appeal, the Prosecution would not object to the grant, *ex gratia*, of a modest extension of the applicable page limits, not exceeding 20 pages, for a total of 120 pages or 36,000 words. In any event, in the interests of fairness, the Prosecution requests permission to file a response brief of the same length as the appeal brief.

Word count: 4,674[46]

Fatou Bensouda, Prosecutor

Dated this 1st day of July 2016

At The Hague, The Netherlands

[46] The Prosecution hereby makes the required certification: ICC-01/11-01/11-565 OA6, para. 32.