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No.: ICC-01/05-01/13
Date: **2 November 2016**

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul C. Pangalangan

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

Decision on Requests for Variation of Deadlines in the Sentencing Calendar

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

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Trial Chamber VII ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Article 67(1)(f) of the Rome Statute ('Statute'), Rule 144 of the Rules of Procedure and Evidence ('Rules') and Regulation 35 of the Regulations of the Court ('Regulations'), issues the following 'Decision on Requests for Variation of Deadlines in the Sentencing Calendar'.

I. Procedural history and submissions

1. On 19 October 2016, the Chamber convicted Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido of offences against the administration of justice ('Judgment').¹
2. On 20 October 2016, the Single Judge of the Chamber set a calendar for sentencing ('Sentencing Calendar').² The first deadline required the parties to provide the identities of any witnesses they seek to call for sentencing, along with estimated examination lengths and anticipated testimony summaries, by 4 November 2016 ('4 November Deadline').
3. On 28 October 2016, the defence for Mr Arido and Mr Babala filed a joint submission ('Request'),³ requesting the Chamber to: (i) suspend the 4 November

¹ Judgment pursuant to Article 74 of the Statute, ICC-01/05-01/13-1989-Red (confidential version notified on the same day).

² Sentencing Calendar, ICC-01/05-01/13-1990.

³ Narcisse Arido and Fidèle Babala's Request for a Variation of Deadlines in the Sentencing Calendar (ICC-01/05-01/13-1990), ICC-01/05-01/13-1992. This request is the culmination of previous email exchanges between the parties, Chamber and Registry. Email from the Arido Defence to the Chamber and parties, 20 October 2016 at 13:32 (requesting an expedited French translation); Email from the Babala Defence to the Chamber and parties, 20 October 2016 at 15:28; Email from Trial Chamber VII Communications to the parties and Registry, 20 October 2016 at 17:49 ('The Arido and Babala Defence give no indication that they have endeavoured to consult with the Registry as regards its translation requirements, including any measures short of a full French translation. For information, the Chamber has already communicated five sections of the judgment (The Applicable Law, Findings of Fact, Legal Characterisation of the Conduct of the Accused, Cumulative Convictions, Verdict) - draft translations of these sections are being prepared and will be available shortly. The Registry is to make itself available for any such consultations as a question of priority, and the Defence teams concerned are to report back to the Chamber on whether a satisfactory arrangement has been reached by 26 October 2016'); Email from the Arido Defence to the Chamber, parties and Registry, 26 October 2016 at 17:14 (confirming that a satisfactory translation arrangement could not be reached); Email from Trial Chamber VII Communications to the parties and Registry, 26 October 2016 at 18:29 (directing the Arido Defence to submit its request by way of a formal filing due 28 October 2016, with any responses due 31 October 2016).

Deadline until a full French translation of the Judgment is available; (ii) set the deadline for provision of a list of witnesses no later than two weeks after the notification of this French translation and (iii) suspend and vary the later Sentencing Calendar deadlines ‘in accordance with the principles of fairness taking into account the date of delivery of the fully translated Judgment’.

4. On 31 October 2016, the Office of the Prosecutor (‘Prosecution’) responded to the Request.⁴ The Prosecution defers to the Chamber’s discretion as to the variation or suspension of the Sentencing Calendar time limits. That said, the Prosecution also ‘considers that the established schedule does not *prima facie* undermine the fairness of the prospective sentencing proceedings, nor does the argumentation advanced in the Request’.⁵
5. That same day, the defence for Mr Kilolo (collectively with the defence teams for Mr Arido and Mr Babala, the ‘Defence’) filed a response joining the Request.⁶
6. The Defence argues that suspension and variation of the Sentencing Calendar deadlines are necessary to avoid infringing the convicted persons’ rights ‘through bypassing their ability to provide input and instructions to their teams based upon their reading of the Judgment in a language they can understand’.⁷ The Defence submits that their clients are at a disadvantage relative to the co-convicted persons who can read English.⁸ Though noting that the Registry has provided working drafts of three Judgment sections already,⁹ the Defence

⁴ Prosecution’s Response to Narcisse Arido and Fidèle Babala’s Request for a Variation of Deadlines in the Sentencing Calendar (ICC-01/05-01/13-1990), ICC-01/05-01/13-1993.

⁵ ICC-01/05-01/13-1993, para. 1.

⁶ Adjonction de la Défense de Monsieur Aimé Kilolo Musamba à « Narcisse Arido and Fidèle Babala’s Request for a Variation of Deadlines in the Sentencing Calendar (ICC-01/05-01/13-1990) » (ICC-01/05-01/13-1992), ICC-01/05-01/13-1994.

⁷ Request, ICC-01/05-01/13-1992, para. 1.

⁸ Request, ICC-01/05-01/13-1992, paras 7, 22.

⁹ Request, ICC-01/05-01/13-1992, para. 19 (indicating that the following sections have been provided: Applicable Law, Findings of Fact and Legal Characterisation of the Conduct of the Accused). Though not mentioned in the Request, the verdict was also read out verbatim with French interpretation (and recorded in a French transcript) during the Judgment delivery. Transcript of Hearing, 19 October 2016, ICC-01/05-01/13-T-51-FRA. An 18 page summary of the Judgment, which also repeated the verdict of the Judgment verbatim, was also translated into French and publicly released on 19 October 2016.

position is that, to be able to comprehend and reflect on the Judgment, the convicted persons ‘should be able to read it in full and not in a piecemeal fashion’.¹⁰

II. Analysis

7. As with any time limit set by a Chamber, the Sentencing Calendar deadlines may be postponed if ‘good cause’ is shown within the meaning of Regulation 35(2) of the Regulations.
8. The Chamber emphasises at the outset that the issue presented is not whether the Judgment will be translated into French. All previous trial judgments of the Court have been translated so that they are available in both working languages¹¹ and the Registry is already preparing a French translation of the Judgment. Rather, the issue presented is whether the Defence requires a full French translation of the Judgment in order to participate in the sentencing phase of the proceedings.¹²
9. The statutory texts do not require convicted persons to receive a translated judgment for purposes of sentencing. The Defence argues that ‘[a]ccording to Article 67(1)(f), [the convicted persons] have a right to have translations of

¹⁰ Request, ICC-01/05-01/13-1992, para. 18.

¹¹ See Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Jugement portant condamnation, ICC-01/12-01/15-171-tFRA (notified on 27 September 2016, the same day as the original language judgment); Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Jugement rendu en application de l’article 74 du Statut, ICC-01/05-01/08-3343-tFRA (notified 3 October 2016 after original language judgment notification on 21 March 2016); Trial Chamber II, *The Prosecutor v. Germain Katanga*, Judgment pursuant to article 74 of the Statute, ICC-01/04-01/07-3436-tENG (notified 20 April 2015 after original language judgment notification on 7 March 2014); Trial Chamber II, *The Prosecutor v. Mathieu Ngudjolo Chui*, Judgment pursuant to article 74 of the Statute, ICC-01/04-02/12-3-tENG (notified 12 April 2013 after original language judgment notification on 18 December 2012); Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Jugement rendu en application de l’article 74 du Statut, ICC-01/04-01/06-2842-tFRA (notified 31 August 2012 after original language judgment notification on 14 March 2012).

¹² From the length of time it took to notify French judgment translations in the *Lubanga* and *Bemba* cases, it is reasonable to expect that it will take approximately six months to prepare an official translation of the Judgment. These cases are most comparable to the Judgment in this respect. The *Katanga* and *Ngudjolo* judgments do not have French translations because they were written in French. The *Al Mahdi* judgment was issued in English, French and Arabic simultaneously, but this case had a substantially smaller judgment on account of there being an admission of guilt in that case.

documents presented to the Court'.¹³ This overstates the right granted in Article 67(1)(f) of the Statute, which actually requires only such translations 'as are necessary to meet the requirements of fairness'. Rule 144(2) of the Rules likewise requires that copies of certain decisions must be provided to 'the accused, in a language he or she fully understands or speaks, if necessary to meet the requirements of fairness [...]'. Rule 144(1) of the Rules explicitly specifies decisions on the 'criminal responsibility of the accused' as falling within the scope of Rule 144(2) of the Rules, making clear that something less than a full translation of a trial judgment may suffice to meet the requirements of fairness.

10. In determining what meets the 'requirements of fairness' at the sentencing stage, the Chamber must take into account the nature of the proceedings. Having rendered the Judgment, the Chamber now passes the appropriate sentence as foreseen in Article 70(3) of the Statute and Rule 166 of the Rules. With a view to enabling the convicted persons to meaningfully respond on this issue, the Chamber agrees that the convicted persons must be fully informed of the factual findings underpinning the conviction and the Chamber's corresponding legal conclusions.¹⁴ Accordingly, during the sentencing phase the Chamber will not enter into a discussion of the evidence supporting the factual findings of the Chamber or the applicable law pertaining to Articles 25 and 70 of the Statute.

11. The Registry already provided the defence teams with French translations of the Judgment sections which the Chamber identified as requiring priority translation for the purposes of sentencing.¹⁵ These sections include: (i) all the Chamber's abstract determinations on the applicable law (Chapter II of the

¹³ Request, ICC-01/05-01/13-1992, paras 15, 22.

¹⁴ See also the practice of other trial chambers that ordered the expedited draft translation of similar portions of Article 74 judgments, e.g., Trial Chamber II, *The Prosecutor v. Germain Katanga*, Ordonnance portant calendrier de la procédure relative à la fixation de la peine (article 76 du Statut), 7 March 2014, ICC-01/04-01/07-3437, para. 3, footnote 5; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on "Defence Request for clarification of the Decision on the timetable and on the sentencing procedure" and related issues, 21 March 2016, ICC-01/05-01/08-3344, para. 8.

¹⁵ Email from Trial Chamber VII Communications to the parties and Registry, 20 October 2016 at 17:49. See also footnote 3 above.

Judgment); (ii) all the factual findings underlying the Chamber's legal conclusions (Chapter III of the Judgment); (iii) the legal conclusions themselves (Chapter V of the Judgment); (iv) the chapter discussing cumulative convictions (Chapter VI of the Judgment) and (v) the verdict (Chapter VII of the Judgment). In light of the above, the Chamber does not consider that it is necessary for the requirement of fairness receive a full French translation in order for the Defence to meet the Sentencing Calendar deadlines.

12. Beyond the translation of portions of the Judgment that have already been provided to the defence teams, the Chamber, in addition, facilitated that the defence teams profit further from assistance by the Registry. The Defence may work out other language assistance arrangements in cooperation with the Registry, such as by using French interpreters to translate portions of the Judgment, identified as relevant for the respective convicted person, as it is read aloud in his presence. Although the Judgment is written in English, much of the evidence relied upon is available in French and can also be evaluated by the convicted persons using the electronic registration numbers provided in the Judgment. Further, the Defence can identify additional parts of the Judgment to the Registry for which they consider French translation to be necessary for sentencing. However, the Chamber emphasises that any party's assessment of what is 'necessary' for sentencing is not dispositive for the suspension or variance of any deadlines – it is ultimately the Chamber, not the parties, which determines what is necessary for the requirements of fairness.

13. It is simply unreasonable for the Defence to assert that the *entire* Judgment is needed in order to advance *any* sentencing submissions or evidence. The consideration of an appropriate sentence is derived from factual and legal conclusions in the judgment, all of which have been translated already. Sentencing is not the forum to challenge the way the Chamber reached its conclusions, as this would improperly transform the sentencing process into a

request to reconsider the Judgment. Such challenges may instead be heard by the Appeals Chamber pursuant to Article 81(1) of the Statute. It must also be noted that, in the *Lubanga* and *Bemba* cases, the sentencing decisions in those cases also preceded the underlying judgments' full French translations.¹⁶ This occurred even though Mr Lubanga and Mr Bemba did not fully understand and speak English, the original language of their respective judgments.

14. The arguments that Rule 136(2) of the Rules is breached are also unpersuasive. The Chamber considers that providing the Defence with targeted French draft translations of the Judgment is all that is necessary to provide for sentencing purposes under Article 67(1)(f) of the Statute. They incur no disadvantage relative to the other convicted persons whose defence teams did not request the same relief.
15. For the above reasons, the Chamber does not consider there to be good cause to suspend or vary the Sentencing Calendar deadlines to the extent requested by the Defence. The Chamber rejects the relief sought and emphasises that all parties must comply with the 4 November Deadline and the remainder of the Sentencing Calendar.
16. This said, the Chamber also expects the defence teams to continue to liaise and coordinate with the relevant sections in the Registry, which will provide draft French translations of the Judgment on a rolling basis. It is the understanding of the Chamber that the defence teams will indicate the portions that they consider to be necessary for their preparation of the sentencing phase, including the priority in which those portions are expected to be translated. Should processing further parts of the draft French Judgment translation meaningfully change any defence teams' assessment of their evidence or submissions, the defence teams

¹⁶ Compare footnote 11 above with Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Sentence pursuant to Article 76 of the Statute, 21 June 2016, ICC-01/05-01/08-3399; Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on Sentence pursuant to Article 76 of the Statute, 14 July 2012, ICC-01/04-01/06-2901.

may file further Regulation 35(2) requests before the sentencing decision is issued to supplement what they presented previously.

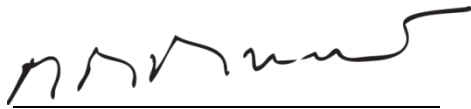
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the relief sought in the Request.

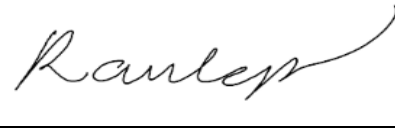
Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt, Presiding Judge



Judge Marc Perrin de Brichambaut



Judge Raul C. Pangalangan

Dated 2 November 2016

At The Hague, The Netherlands