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

Date: 02/11/2016

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

**Defence's response to Prosecution's Request for an extension
of the page limit, ICC-01/05-01/08-3456**

Source: 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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I. BACKGROUND

1. In compliance with an order of the Appeals Chamber,¹ on 20 June 2016, Mr. Jean-Pierre Bemba Gombo (“the Appellant”) filed a document setting out “legal findings in the Conviction Decision that he intends to challenge”.²

2. On 28 June 2016, the Appellant filed a request for an extension of the page limit of an additional 150 pages for his document in support of appeal (“Appeal Brief”), on the basis of the breadth, novelty and complexity of the errors identified in the Judgment.³ The Prosecutor opposed this request.⁴

3. On 11 July 2016, the Appeals Chamber granted the Appellant’s request for an extension of 100 pages, also extending by 100 pages the Prosecution’s response.⁵

4. On 19 September 2016, the Appellant filed an Appeal Brief of 200 pages, and 59,641 words.⁶

5. The Prosecution is now requesting an extension of 20% of the page limit for its response to the Appeal Brief (“Request”).⁷ By the present response the Appellant requests the Appeals Chamber to reject the Prosecution Request.

II. SUBMISSIONS

6. The Prosecution has been on notice of which of the Trial Chamber’s findings the Appellant intended to challenge on appeal, since 20 June 2016.⁸

¹ ICC-01/05-01/08-3353.

² ICC-01/05-01/08-3398.

³ ICC-01/05-01/08-3400.

⁴ ICC-01/05-01/08-3401.

⁵ ICC-01/05-01/08-3405.

⁶ ICC-01/05-01/08-3434-Conf.

⁷ ICC-01/05-01/08-3456.

7. Having doubtless considered the grounds of appeal prefaced in that document, the Prosecution submitted in July 2016 in response to the Appellant's request for an extension to the 100 page limit, that no exceptional circumstances existed.⁹ In the Prosecution's submission, "this appeal is not exceptionally complex", there are "no exceptional circumstances justifying any extension of the page limit", and "certainly, no circumstances in this case justify a brief more than double the customary length."¹⁰ The Prosecution argued that "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. To the contrary, this is more often the norm in international criminal appeals."¹¹

8. The current application is, thus, the diametric opposite of the Prosecution's originally stated position as to the need for extended pleadings in this case. In July 2016, this appeal was nothing exceptional.¹² It is now as broad an appeal as is possible.¹³

9. To take another example of this reversal, the Prosecution Request cites the need for additional pages on the basis that further developed written arguments will allow any future oral hearing to be "conducted in a more focused way". Should the Prosecution be limited in its ability to respond properly, its arguments may require "greater clarification or amplification later in the proceedings."¹⁴

10. Contrast this with the Prosecution's previous submission in July 2016, where it urged the Appeals Chamber to reject the Appellant's requested page extension on

⁸ ICC-01/05-01/08-3398.

⁹ ICC-01/05-01/08-3401.

¹⁰ ICC-01/05-01/08-3401, paras. 4, 6.

¹¹ ICC-01/05-01/08-3401, para. 6.

¹² ICC-01/05-01/08-3401, para. 6.

¹³ ICC-01/05-01/08-3456, para. 5.

¹⁴ ICC-01/05-01/08-3456, para. 11.

the basis that it could always “convene a hearing” at which the parties could provide “further argument on any of the issues developed in the Parties’ written submissions”.¹⁵

11. The Prosecution is, of course, entitled to change its position depending on the outcome which it seeks. However, these inconsistencies aside, the Prosecution has been in receipt of the Appeal Brief since 19 September 2016.¹⁶ Given that the Request was filed three weeks prior to the due filing date of its response, it is untimely. More significantly, it does not establish “exceptional circumstances” warranting an extension beyond the 200 pages as set by the Appeals Chamber.¹⁷

12. It will come as no surprise to the parties or the Appeals Chamber that the Appeal Brief underwent a rigorous editing and reduction process in the three weeks prior to 19 September. The Appellant’s arguments are “pithy”,¹⁸ because he was required to present them within a prescribed page limit. Alleged errors are presented “in a matter of sentences”¹⁹ because the Appellant was limited as to the number of words he had to express them. The Appellant went to “the very limit allowed by regulation 36(3)”, with “an average of 298 words per page”,²⁰ in order to ensure compliance. Should the Prosecution wish to contextualise arguments, or engage with the legal premise underlying a challenge,²¹ it is well within its rights to do so. It must, however, as the Appellant was required to do, limit and abbreviate other arguments accordingly.

13. There is no precedent in international criminal law for the responding party to have a greater opportunity to present arguments than the party challenging the

¹⁵ ICC-01/05-01/08-3401, para. 9.

¹⁶ ICC-01/05-01/08-3434-Conf.

¹⁷ ICC-01/05-01/08-3405.

¹⁸ ICC-01/05-01/08-3456, para. 8.

¹⁹ ICC-01/05-01/08-3456, para. 8.

²⁰ ICC-01/05-01/08-3456, para. 10.

²¹ ICC-01/05-01/08-3456, para. 8.

judgment at first instance. The Prosecution implicitly concedes that fairness dictates that the Appellant have “more pages than the Prosecution.”²² Its proposed solution is to offer not to oppose a partial and theoretical reply (with an increased page limit) which the Appellant may neither wish to, nor receive leave to, file. The Prosecution is not in a position to offer something which is uniquely within the gift of the Appeals Chamber.

14. The arguments concerning footnotes are nonsensical. The Appellant is criticised both for “making relatively few citations to the Judgment or evidence”, and at the same time going to the “very limit allowed by regulation 36(3).”²³ In reality, this is a non-submission. The Prosecution’s complaint is that, should it use more than 300 words a page, it will have to file a document which is less than 200 pages in length. This same concern applies to every filing before the International Criminal Court. Dense footnotes mean fewer pages. Dense footnotes do not provide a basis for exceptional circumstances warranting an extension of the page limit.

15. As submitted by the Prosecution in July 2016, “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.”²⁴

16. In light of this, and the above submissions, the Defence respectfully requests that the Appeals Chamber:

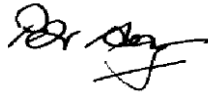
REJECT the Prosecution’s request for an extension of the page limit.

The whole respectfully submitted.

²² ICC-01/05-01/08-3456, para. 5.

²³ ICC-01/05-01/08-3456, para. 10.

²⁴ ICC-01/05-01/08-3401, para. 6.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 2 November 2016

It is hereby certified that this document contains a total of 1,217 words and complies in all respects with the requirements of regulation 36 of the Regulations of the Court.