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**International
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No.: **ICC-01/05-01/13**
Date: **7 November 2016**

THE APPEALS CHAMBER

Before: Judge Silvia Fernández de Gurmendi
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Piotr Hofmański
Judge Geoffrey Henderson

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

**Prosecution's response to Fidèle Babala Wandu's request for an extension of time
to file his appeal brief**

Source: Office of the Prosecutor

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

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Introduction

1. On 19 October 2016, Trial Chamber VII convicted all five accused in the *Bemba et al.* case of article 70 offences.¹ The Judgment was notified that same day.² Ordinarily, a party's appeal brief would be due within 90 days of the Judgment's notification (18 January 2017).³ On 1 November 2016, Fidèle Babala Wandu requested three additional months to file his appeal brief.⁴ He claims good cause for this extension: he argues that the case and the Judgment are novel and complex, that the Defence is presently preparing for the sentencing proceedings, and that both Babala and his legal team, being francophone, have "*les difficultés linguistiques*" with the Judgment available in English alone.⁵ Babala requests, in the alternative, that the Appeals Chamber deems that the Judgment is only notified on the date when the French translation of the Judgment is available.⁶

2. The Prosecution does not object to Babala's Request for three additional months to file his appeal brief. The complexity of the case and the appeal constitutes good cause for a limited extension of time to file appeal briefs. If the Appeals Chamber were minded to grant this extension, Babala's appeal brief would be due on 19 April 2017.⁷

¹ ICC-01/05-01/13-1989-Conf and ICC-01/05-01/13-1989-Red ("Trial Judgment" or "Judgment").

² Regulation 31(2), Regulations of the Court: "Unless otherwise provided in the Statute, Rules, these Regulations or ordered by the Chamber, a participant is deemed notified, informed of or to have had communicated to him or her, a document, decision or order on the day it is effectively sent from the Court by the Registry [...]." *See also* regulation 34, Regulations of the Registry: "Documents [...] or decisions shall be notified electronically to a secure ICC email account. The email shall constitute the notification form provided for in regulation 31, sub-regulation 2 of the Regulations of the Court." *See further* Email sent by Court Management-Court Records on 19 October 2016 at 15.06 and 15.08, notifying the confidential and public redacted versions of the Judgment.

³ Regulation 58(1).

⁴ ICC-01/05-01/13-1996 A2 ("Request" or "Request for additional time"), submitted on 31 October 2016, and notified on 1 November 2016.

⁵ Request, para. 1.

⁶ Request, para. 1.

⁷ Assuming that day 1 for the extension is 19 January 2017.

3. The Prosecution intends to file a consolidated response in this appeal, especially in view of the cross-cutting issues involving the five convicted persons in this case.⁸ As of the date of this filing, three of the five convicted persons have announced their intention to appeal the Judgment.⁹ If the Appeals Chamber decides to grant Babala's requested extension, the Prosecution suggests that a schedule is established whereby all appellants file their appeal briefs by the same date, 19 April 2017. Such a synchronised briefing schedule would streamline and expedite the appeal proceedings, and enable the Prosecution to address the appeals from all convicted persons at the same time.¹⁰ A synchronised briefing schedule would avoid a staggered and piecemeal briefing.

4. Notwithstanding, the Prosecution requests the Appeals Chamber, in line with its good practice in the *Bemba* Main Case appeal, to order the appellants in the case to inform the Chamber and the other Parties of the findings in the Judgment they intend to challenge within the 90 day time limit prescribed in regulation 58,¹¹ *i.e.*, 18 January 2017. As the Appeals Chamber has noted, not only does this enhance the efficiency of the proceedings, the appellants are not prejudiced.¹²

Submissions

i. Response to request for extension of time

5. Regulation 35 allows a Chamber to "extend [...] a time limit if good cause is shown[...]."¹³ Good cause must be based on "sound reasons" that would

⁸ Regulation 63(1): "Unless otherwise ordered by the Appeals Chamber, in a case of more than one appeal under rule 150 [...] (b) When more than one convicted person files a document in support of the appeal, the Prosecutor shall file a consolidated response[...]."

⁹ As of the date of this filing, three out of the five convicted persons have announced their intention to appeal the Judgment. *See* ICC-01/05-01/13-1995 A ("Arido's Notice of Appeal"); ICC-01/05-01/13-1999 A2 ("Babala's Notice of Appeal"); ICC-01/05-01/13-2006 A3 ("Mangenda's Notice of Appeal").

¹⁰ At present, the Prosecution is reviewing the Judgment and has yet to determine if it will appeal the Judgment.

¹¹ ICC-01/05-01/08-3370 A ("*Bemba* 15 April 2016 Decision"), paras. 5-9 (granting Bemba an extension of time to file his appeal brief, but requiring him to specify briefly the Trial Chamber's legal findings which he intends to challenge on appeal within the 90 day time limit.)

¹² *Bemba* 15 April 2016 Decision, para. 9.

¹³ Regulation 35.

“objectively” justify the inability of a party to comply with his/her obligations.¹⁴ Moreover, departures from the stipulated time limits should not “[d]erail the proceedings from their ordained course [...]”.¹⁵ Proceedings should be conducted and concluded within a reasonable time”.¹⁶

6. According to the Court’s case-law, the complexity of the legal and factual issues on appeal can constitute good cause.¹⁷ Good cause is therefore shown in this case—the *Bemba et al.* case is complex. Not only does it involve five convicted persons, each of them was convicted of different article 70 offences with varying modes of participation. The case involves a range of legal, factual and procedural issues, as reflected in the 458 page Judgment.¹⁸

7. On this basis, the Prosecution does not object to Babala’s request for a three-month extension to file his appeal brief (by 19 April 2017). If the Appeals Chamber decides to grant this extension, the Prosecution suggests that *all* appeal briefs in the case be filed by the same date. Not only would the synchronised filing of all appeal briefs streamline and expedite the appeal proceedings, it would significantly facilitate the filing of the Prosecution’s consolidated response. Without a synchronised briefing schedule, the appeal proceedings would be staggered and delayed.

8. The Prosecution defers to the Appeals Chamber’s discretion if Babala’s remaining claims of competing work obligations and the unavailability of the French translation of the Judgment demonstrate good cause. The Prosecution notes, however, that conflicting work priorities do not always constitute good cause.¹⁹

¹⁴ ICC-01/04-01/07-653 OA7, para. 5.

¹⁵ ICC-01/04-01/07-653 OA7, para. 6; ICC-01/05-01/08-827 OA3, para. 10.

¹⁶ *Ibid.*

¹⁷ *Bemba* 15 April 2016 Decision, para. 6; ICC-01/04-02/06-1549 OA4, para. 10, ICC-01-04-01/06-190 OA3, 11 July 2006, paras. 4-5; ICC-01/04-01/06-129 OA2 (Dissenting Opinion, Judge Pikis), para. 7.

¹⁸ *See generally* Trial Judgment.

¹⁹ *See e.g.*, ICC-01/04-01/06-493, para. 2 (referring to ICC-01/04-01/06-488); ICC-01/04-01/06-359, p. 4.

Moreover, although the Babala Defence claims that it is simultaneously preparing for the *Bemba et al.* sentencing proceedings,²⁰ it is unclear why the 4 November 2016 sentencing deadline (to provide *inter alia* relevant witness information), or the remaining sentencing calendar, to be completed by 7 December 2016,²¹ would necessarily stand in the way of filing the appeal brief in the second half of January 2017.

9. Likewise, the *Bemba et al.* Trial Chamber has confirmed (when rejecting Babala's request before that Chamber for additional time to meet the sentencing deadlines) that the Defence teams have already been provided with the following sections of the Judgment in French:

- i. All the Chamber's abstract determinations on the applicable law (Chapter II);
- ii. All the factual findings underlying the Chamber's legal conclusions (Chapter III);
- iii. The legal conclusions (Chapter V);
- iv. The chapter on cumulative convictions (Chapter VI); and
- v. The verdict (Chapter VII).²²

At this juncture, it appears that the Defence has all but two chapters of the Judgment in French. Further, the *Bemba et al.* Trial Chamber has facilitated the Registry's assistance to the Defence for the pending translations.²³ It also noted that, despite the Judgment being in English, "[t]he 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."²⁴ In these circumstances and when it appears that

²⁰ Request for additional time, para. 15.

²¹ See ICC-01/05-01/13-2001 ("Bemba et al. Sentencing Time-Limits Extension Decision"), paras. 7-16, where Trial Chamber VII rejected Babala's request to suspend the sentencing dates and confirmed the sentencing calendar. See also ICC-01/05-01/13-1990 ("Bemba et al. Sentencing Calendar"), para. 2.

²² *Bemba et al.* Sentencing Time-Limits Extension Decision, para. 11. *Contra* Request, paras. 12-13.

²³ *Bemba et al.* Sentencing Time-Limits Extension Decision, para. 12 ("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 [...]; Further, the Defence can identify additional parts of the Judgment to the Registry for which they consider French translation to be necessary for sentencing.")

²⁴ *Bemba et al.* Sentencing Time-Limits Extension Decision, para. 12.

significant portions of the Judgment are already available to the Defence and the complete translation may well be accessible in a reasonable time, deferring the filing of the appeal brief on this basis alone seems unjustified.

10. Nor is Babala's alternative request to the Appeals Chamber, in effect, to re-notify the Judgment warranted.²⁵ The Trial Judgment was already notified on the same day it was delivered, according to this Court's practice.²⁶ Moreover, as the official notification date of the French version of the Judgment is unknown, any extension of time based on this yet undetermined date will unnecessarily delay the appeal proceedings. The Prosecution requests the Appeals Chamber to reject this alternative request.

ii. Request for a detailed notice of appeal

11. Notwithstanding any additional briefing time that may be granted to the appellants in the case, the Prosecution requests the Appeals Chamber to require all appellants to file, by the 90-day time limit (18 January 2017), a detailed notice of appeal outlining, at the least, the findings to be challenged on appeal. The Appeals Chamber has already established this precedent "in the interests of the efficient conduct of proceedings."²⁷ In the *Bemba* Main Case appeal, although Bemba was granted an extension of time to file his appeal brief, he was ordered to inform the Chamber of the legal findings.²⁸

12. Requiring the filing of a detailed notice of appeal is indeed good practice. Adequate notice of the grounds of appeal, and the underlying arguments, is crucial in all appeals, and more so, in a multi-party appeal. Not only will it assist the Chamber in its hearing of the appeal, the respondent and the other appellants can utilise the information in the notice to prepare. Likewise, it will assist the appellants

²⁵ *Contra* Request, para. 1, p. 8.

²⁶ See fn. 2; see also ICC-01/05-01/08-3259, paras. 19-21.

²⁷ *Bemba* 15 April 2016 Decision, para. 9.

²⁸ *Ibid.*

to do the necessary groundwork in time to present a more focussed appeal in their briefs.

Conclusion and Relief

13. For the reasons above, the Prosecution

- i. considers that the complexity of the case and the Judgment demonstrates good cause, and does not oppose Babala's request for a three-month extension of time (until 19 April 2017) to file his appeal brief;
- ii. requests the Appeals Chamber to reject Babala's alternative request;
- iii. requests the Appeals Chamber, if it decides to grant Babala's requested extension of time, to adopt a synchronised appeal briefing schedule, and require all appellants to file their briefs on the same day (19 April 2017). Even if the Appeals Chamber decides to grant a smaller extension of time, the Prosecution maintains its request for a synchronised briefing schedule; and
- iv. requests the Appeals Chamber to order all appellants to file a detailed notice of appeal, in line with the practice of the *Bemba* Main Case appeal, by 18 January 2017.

Word Count: 2146²⁹



Fatou Bensouda, Prosecutor

Dated this 7th day of November 2016
At The Hague, The Netherlands

²⁹ The Prosecution hereby makes the required certification: ICC-01/11-01/11-565 OA6, para. 32.