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No.: **ICC-01/05-01/13**

Date: **17 November 2016**

THE APPEALS CHAMBER

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

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

**Narcisse Arido's Response to
"Requête de la Défense de M. Babala visant à suspendre les échéances
applicables à une potentielle procédure d'appel"
(ICC-01/05-01/13-1996)**

Source: Counsel for Narcisse Arido

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

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I. SUBMISSIONS

1. On 1 November 2016, the Defence for Fidèle Babala Wandu ('Babala Defence') requested three additional months to file its document in support of appeal.¹ The Babala Defence claims good cause for the extension request. In particular, it submits that the Article 70 case and the corresponding Judgment are novel and complex, and that both Mr. Babala, and his francophone legal team, have "linguistic difficulties" with the analysis of the Judgment as it is available in English alone.² In the alternative, the Babala Defence requests the Appeals Chamber to consider the Judgment as notified only on the date when the French translation of the Judgment is available.³

2. Following this request, on 7 November 2016, the Prosecution responded to the Babala Defence's request.⁴ In its response, the Prosecution states that it does not object to the Babala Defence's request for a three-month extension to file its document in support of appeal. The Prosecution also requests that, if the Appeals Chamber decides to grant the requested extension, then a synchronised filing schedule is established for all Article 70 case appellants.⁵ Furthermore, the Prosecution requests the Appeals Chamber "to require all appellants to file a detailed notice of appeal by the 90-day time limit."⁶

3. The Arido Defence hereby joins and supports the Babala Defence's extension request. The Arido Defence considers that the Babala request is reasonable and proportionate in the context of the complexity of the issues raised in the Judgment, the novel practices applied during the Trial proceedings, and the lack of comprehensive translation of the Judgment.⁷

4. Pursuant to Regulation 35(2) of the Regulations of the Court ('RoC'), the Chamber may "extend or reduce a time limit if good cause is shown [...]." The "good cause" may be established by the complexity of the legal and factual issues on appeal.⁸ Both the Babala Defence and the Prosecution have rightly pointed out, the complex and novel character of the Article 70 case proceedings⁹ shows "good cause" and thus warrants the requested three-month extension.

¹ ICC-01/05-01/13-1996 A2.

² *Ibid.*, para. 1.

³ *Ibid.*, para. 1.

⁴ ICC-01/05-01/13-2013 A2.

⁵ *Ibid.*, para. 3.

⁶ *Ibid.*, para. 11.

⁷ ICC-01/05-01/13-1996 A2, para. 1.

⁸ ICC-01/05-01/08-3370 A, para. 6; *see also* ICC-01/04-02/06-1549 OA4, para. 10; ICC-01/04-01/06-190 OA3, paras 4-5.

⁹ ICC-01/05-01/13-1996 A2, paras 13-14; ICC-01/05-01/13-2013 A2, para. 6.

The Arido Defence submits that the Appeals Chamber should grant the proposed extensions as it would balance both the interest of justice and the interests all parties to the Article 70 case appeal proceedings.

5. Moreover, the Arido Defence considers it essential to take meaningful instructions from Mr. Arido, based on his inclusive understanding and analysis of the Judgment that renders him guilty under Article 70 of the Statute.¹⁰ As with Mr. Babala,¹¹ Mr. Arido is francophone, which makes it impossible for him to read and/or understand any of the issues discussed in the English version of the Judgment. An extension of the time to file the document in support of the appeal would greatly assist the Arido Defence in allowing the process of taking instructions from its client to be focused, defined, and in-depth.

6. The Arido Defence also clarifies a potentially misleading statement by the Prosecution that the Defence have already been provided with all but two chapters of the Judgement in French.¹² As of today, Article 70 case Defence teams have been provided with 140 draft translated pages of 458 total pages – or about 30% of the Judgment. What has been provided includes: “Findings of Fact”,¹³ “Applicable Law”,¹⁴ “Legal Characterisation of the Conduct of the Accused”, “Cumulative Convictions”, and “Verdict”¹⁵; “Evidentiary Threshold and Methodology”¹⁶; and “Witnesses D-2, D-3, D-4 and D-6”.¹⁷ Important missing are large parts of section IV – “Assessment of Evidence”.

7. The Arido Defence does not object to the Prosecution’s request to require that ‘*all* appeal briefs in the case be filed by the same date’.¹⁸ Should the Appeals Chamber grant the three-month extension, the Arido Defence does not object to a synchronised schedule as it would both expedite and preserve the fairness of the appeal proceedings in accordance with the Article 67 of the Statute.¹⁹

¹⁰ Rule 144(2)(b) of the Rules and Procedure and Evidence requires that copies of Trial Chamber decisions concerning criminal responsibility of the Accused, sentencing, and reparations shall be provided as soon as possible to ‘[t]he accused, in a language he or she fully understands or speaks, of necessary to meet the requirements of fairness under article 67, paragraph 1(f).’

¹¹ ICC-01/05-01/13-1996 A2, para. 12.

¹² ICC-01/05-01/13-2013 A2, para. 9.

¹³ Email from Counsel Support Section (‘CSS’), 24 October 2016, 16h22, subject line: ‘RE: French translation of the Judgement’.

¹⁴ Email from CSS, 25 October 2016, 10h35, subject line: ‘RE: French translation of the Judgement’.

¹⁵ Email from CSS, 27 October 2016, 14h22, subject line: ‘RE: French translation of the Judgement’.

¹⁶ Email from CSS, 3 November 2016, 15h47, subject line: ‘RE: French translation of the Judgement’.

¹⁷ Email from CSS, 11 November 2016, 9h22, subject line: ‘RE: French translation of the Judgement’.

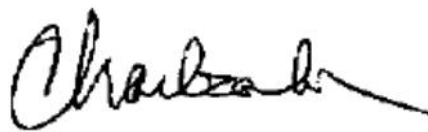
¹⁸ ICC-01/05-01/13-2013 A2, para. 7.

¹⁹ *Ibid.*, para. 7.

8. Finally, the Arido Defence opposes the Prosecution's request that the Appeals Chamber require all appellants to file a detailed notice of appeal by the 90-day time limit.²⁰ Presuming, the Babala Defence request is granted,²¹ then the reasons for granting the request – i.e. the need for proper Defence preparation – defeat the logic of preparing a detailed notice. Firstly, the amount of time and resources spent on an outline distract the Defence from its focused work on the document in support of the appeal itself. Secondly, the Babala Defence request is premised in part upon the need for time to formulate clear arguments. If an extension is required to provide precise and well developed arguments then this suggests that a notice advanced in mid-January will not be of assistance. Furthermore, the Arido Defence considers that forcing the Defence to provide a detailed notice is unfair because, even if issues are not ultimately pursued upon appeal, it would force the Defence's hand before it has selected its precise lines of appeal.

II. CONCLUSION

9. In light of the above, the Arido Defence respectfully requests the Appeals Chamber to:
- a. GRANT the Babala Defence's request for an extension of three months or grant its alternative request that the deadline for the document in support of the appeal run from the date of notification of the translated Judgment; and
 - b. REJECT the Prosecution's request to order all appellants to file a detailed notice of appeal.



Chief Charles Achaleke Taku, Counsel for Mr. Arido

Dated this 17 Day of November 2016

The Hague, The Netherlands

²⁰ ICC-01/05-01/13-2013 A2, paras 11-12.

²¹ *Ibid.*, para. 11.