

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **30 March 2017**

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

**Prosecution's Response to "Narcisse Arido's Request for a Variation of the
Deadline for Giving of a Notice of Appeal against the Sentencing Decision"**

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 Jean-Pierre Bemba Gombo

Ms Melinda Taylor
Ms Mylène Dimitri

Counsel for Aimé Kilolo Musamba

Mr Michael G. Karnavas
Mr Steven Powles

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Gosnell
Mr Peter Robinson

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila
Mr Jean-Pierre Fofe Djofia Malewa

Counsel for Narcisse Arido

Mr Charles Achaleke Taku
Ms Beth Lyons

The Office of Public Counsel for Victims

States Representatives

The Office of Public Counsel for the Defence

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section **Other**

Introduction

1. Mr Arido shows good cause for extending the deadlines for the filing of any notices of appeal, and supporting appeal briefs, against the sentencing decision in this case.¹ Similar extensions should, however, be granted to all the other Parties in this case, in order to achieve a synchronous briefing schedule of any appeals. Synchronicity is strongly favoured by judicial economy and the interests of a fair and expeditious hearing.

Submissions

A. The Request establishes good cause

2. The Request correctly identifies that it must show good cause to warrant extension of the deadline for filing any notice of appeal against sentence and, subsequently, any document supporting such an appeal.²

3. The Prosecution agrees that, in the particular circumstances of this case, good cause is established by “the overlapping time-lines of work for the appeal against conviction and appeal on sentence” and “the complexity of legal and factual issues raised by the sentencing appeal”.³ It notes in particular that, if the briefing schedule is not amended, multiple deadlines will closely coincide—not only between the filing of any notice(s) of appeal against sentence and the documents supporting appeal against conviction,⁴ but also between the Prosecution response to the appeals against conviction and any documents supporting appeal against sentence.⁵

4. In this respect, the Prosecution recalls the view of the Appeals Chamber in *Bemba* that good cause existed to extend the briefing schedule in the appeals against

¹ *Contra* [ICC-01/05-01/13-2128](#) (“Request”), paras. 1, 13.

² [Request](#), paras. 1-2 (citing rule 150(2) and regulation 35).

³ [Request](#), para. 3.

⁴ [Request](#), para. 4.

⁵ [Request](#), para. 9.

sentence based on the coincidence with the briefing schedule in the appeal against conviction.⁶ In particular, the Appeals Chamber considered that a 30-day extension for all Parties was “reasonable and proportionate in the context of the current filing schedule, the anticipated scope and complexity of Mr Bemba’s appeals against the Conviction Decision and Sentencing Decision, the practical allocation of resources between those appeals and the overall progression of the appeals process.”⁷ These reasons are similar in many respects to those prevailing in this case, and raised in the Request.⁸

5. Likewise, although the Request does not elaborate upon its claim that the sentence decision in this case gives rise to complex legal and factual issues,⁹ the Prosecution agrees that this is so. Not only does the sentencing decision pertain to five persons, but it is the first sentencing decision relating to offences under article 70 of the Statute, and the first sentencing decision to impose pecuniary fines and suspended sentences. These issues all require careful consideration and analysis.

6. The Prosecution considers that the proposed 30-day extensions are reasonable in the circumstances. However, the deadline proposed in the Request for filing any documents supporting appeals against sentence (20 July 2017) now falls one day before the judicial recess, which commences at the end of 21 July 2017 and halts at the start of 14 August 2017. Correspondingly, the time for responding to any such documents, or addressing any litigation immediately arising from those documents, will fall immediately within the recess period. It may be more appropriate therefore to further extend the deadline for any documents supporting appeals against sentence until the last working day of the recess (11 August 2017).

⁶ See [ICC-01/05-01/08-3431 A2 A3](#) (“*Bemba Sentence Appeal Decision*”), paras. 11-13.

⁷ [Bemba Sentence Appeal Decision](#), para. 12.

⁸ [Request](#), paras. 10-11.

⁹ [Request](#), para. 3.

B. The Appeals Chamber should set a synchronous briefing schedule

7. In determining the Request, the Appeals Chamber should ensure a synchronous briefing schedule by ordering the same deadlines for all Parties. As the Appeals Chamber appears previously to have recognised, synchronous briefing schedules favour judicial economy and promote the fair and expeditious hearing of appeals.¹⁰ Moreover, consistent with the presumption in regulation 63(1)(b) for the Prosecution to file a consolidated response to appeals by multiple persons, with time running only from “notification of the *last* document filed in support of the appeal by a convicted person”,¹¹ the fairest solution would seem to be for all the appellants against sentence to file their briefs at the same time so that no one Party derives any advantage (or suffers any disadvantage) from a staggered schedule.

8. The Prosecution further notes in this context that it is presently studying the sentencing decision and is considering whether to file an appeal. Accordingly, it also seeks the benefit of any extensions made in favour of the Parties.

C. Parties who elect to appeal should give advance notice of their anticipated grounds

9. It has been the recent practice of the Appeals Chamber, both in *Bemba* and the appeals against conviction in this case, to order appellants to “inform the Appeals Chamber briefly of, at the very least, the legal findings in the [Impugned] Decision that they intend to challenge, without prejudice to the actual formulation of the grounds of appeal that they wish to advance in their documents in support of the appeal subsequently filed.”¹² This notice could be provided either in a Party’s notice of appeal, or in a subsequent document filed sufficiently in advance of the deadline for documents supporting the appeal.

¹⁰ See e.g. [ICC-01/05-01/13-2046 A A2 A3 A4 A5](#) (“Extension Decision”) (ordering a synchronous briefing schedule, on the basis of similar arguments). See further [Extension Decision](#), para. 9; [ICC-01/05-01/13-2013 A2](#), paras. 3, 7.

¹¹ Regulation 63(4) (emphasis added).

¹² [Extension Decision](#), para. 19. See also para. 20 (confirming that such advance notice “is without prejudice to the actual formulation of the grounds of appeal that the appellants may wish to advance”); [ICC-01/05-01/08-3370 A](#), para. 9.

10. The Prosecution submits that the practice of providing advance notice of this kind is no less “in the interest of the efficient conduct of the proceedings” in any appeals against sentence than it was in the appeals against conviction.¹³ The Appeals Chamber should therefore so order.

Conclusion

11. For all the reasons above, the Request should be granted, provided that:

- i. equal extensions are ordered for all Parties, and the briefing schedule is synchronised for all appeals against sentence; and,
- ii. consistent with its recent practice, the Appeals Chamber orders all appellants against the sentencing decision to give brief further details of their anticipated grounds of appeal, in advance of the documents supporting their appeals.



Fatou Bensouda, Prosecutor

Dated this 30th day of March 2017¹⁴

At The Hague, The Netherlands

¹³ [Extension Decision](#), para. 19.

¹⁴ This submission complies with regulation 36, as amended on 6 December 2016: [ICC-01/11-01/11-565 OA6](#), para. 32.