



**Original: English**

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

**Date: 4 November 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 document**

**Decision on the Prosecutor's request for an extension of the page limit for her  
response to the document in support of the appeal**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda

Ms Helen Brady

**Counsel for the Defence**

Mr Peter Haynes

Ms Kate Gibson

**Legal Representative of Victims**

Ms Marie-Edith Douzima-Lawson

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III entitled “Judgment pursuant to Article 74 of the Statute” of 21 March 2016 (ICC-01/05-01/08-3343),

Having before it the Prosecutor’s “Request for an extension of the page limit” of 31 October 2016 (ICC-01/05-01/08-3456),

*Renders* the following

## DECISION

The above-mentioned request is rejected.

## REASONS

### I. PROCEDURAL HISTORY

1. On 21 March 2016, Trial Chamber III delivered the “Judgment pursuant to Article 74 of the Statute”<sup>1</sup> (“Conviction Decision”).
2. On 11 July 2016, the Appeals Chamber granted a request of Mr Jean-Pierre Bemba Gombo (“Mr Bemba”) for the extension of the page limit for his document in support of the appeal (“Decision on Extension of Page Limit”).<sup>2</sup> The Appeals Chamber extended that page limit by 100 pages. It also extended the page limit for the Prosecutor’s response to the document in support of the appeal by 100 pages.
3. On 19 September 2016, Mr Bemba filed his document in support of the appeal against the Conviction Decision.<sup>3</sup>
4. On 31 October 2016, the Prosecutor filed a “Request for an extension of the page limit”<sup>4</sup> (“Request for Extension of Page Limit”).

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<sup>1</sup> [ICC-01/05-01/08-3343](#).

<sup>2</sup> “Decision on Mr Bemba’s request for an extension of page limit for his document in support of the appeal”, [ICC-01/05-01/08-3405 \(A\)](#).

<sup>3</sup> “Appellant’s document in support of the appeal”, ICC-01/05-01/08-3434-Conf (A); a public redacted version was filed on 28 September 2016 ([ICC-01/05-01/08-3434-Red \(A\)](#)).

5. On 2 November 2016, Mr Bemba filed the “Defence’s response to Prosecution’s Request for an extension of the page limit, ICC-01/05-01/08-3456”<sup>5</sup> (“Mr Bemba’s Response”).

## II. MERITS

6. Regulation 59 (2) of the Regulations of the Court provides that a response to the document in support of the appeal shall not exceed 100 pages. Pursuant to regulation 37 (2) of the Regulations of the Court, a Chamber may grant an extension of the page limit “in exceptional circumstances”.

7. The Appeals Chamber recalls that it granted an extension of the page limit for the document in support of the appeal on the grounds of (i) “a broad range of purported legal, procedural, and factual errors that are likely to form the basis of [Mr Bemba’s] appeal”,<sup>6</sup> (ii) the fact that “the present appeal is the first directed at a decision on criminal responsibility under article 28 of the Statute, which may raise both complex and novel issues”,<sup>7</sup> and (iii) “the existence of article 70 proceedings and Mr Bemba’s stated intention to argue, on the basis of facts already known, that these proceedings impacted on the fairness of his trial”, considering “the number and complexity of the filings associated with the article 70 proceedings”.<sup>8</sup> The Appeals Chamber deemed it appropriate also to extend the page limit for the Prosecutor’s response to the document in support of the appeal by 100 pages.<sup>9</sup>

8. The Prosecutor requests a 20% extension of the page limit for her response to Mr Bemba’s document in support of the appeal, to allow for a brief of no more than 240 pages.<sup>10</sup> She submits that the requested extension “will promote a clear understanding of the issues on appeal and favour judicial economy”.<sup>11</sup> The Prosecutor contends that in the document in support of the appeal Mr Bemba asserts multiple errors of law, fact and procedure, and that he “has articulated as broad an appeal as he

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<sup>4</sup> [ICC-01/05-01/08-3456 \(A\)](#).

<sup>5</sup> [ICC-01/05-01/08-3462 \(A\)](#).

<sup>6</sup> [Decision on Extension of Page Limit](#), para. 10.

<sup>7</sup> [Decision on Extension of Page Limit](#), para. 10.

<sup>8</sup> [Decision on Extension of Page Limit](#), para. 11.

<sup>9</sup> [Decision on Extension of Page Limit](#), para. 14.

<sup>10</sup> [Request for Extension of Page Limit](#), paras 1, 13.

<sup>11</sup> [Request for Extension of Page Limit](#), para. 4.

possibly can”.<sup>12</sup> She submits that the submissions of Mr Bemba frequently require the Prosecutor to provide a clear explanation of the context, for which more space is required than for simply challenging a particular issue.<sup>13</sup> The Prosecutor gives three examples that she argues demonstrate why the Appeals Chamber should exceptionally grant the extension of pages sought, submitting that the approach underlying them is “perceptible through much of the appellant’s brief”: (i) allegations concerning the extent of notice of the charges against Mr Bemba, in response to which she will need to show that “adequate notice was provided”, (ii) Mr Bemba’s challenge to the standard employed in the causation analysis, a response to which must, in the view of the Prosecutor, “engage with the legal premise underlying this challenge”, and (iii) allegations of a lack of material reasoning, which will “typically require much greater detail in response”.<sup>14</sup> With regard to the first and second of these arguments of Mr Bemba, the Prosecutor observes that they are presented in “just five pages” and “just four pages”, respectively, and that the latter argument is “pithy”.<sup>15</sup>

9. The Prosecutor submits that if her response makes a greater use of footnotes than the document in support of the appeal, which increases the number of words per page, she will be unable to file the same number of pages.<sup>16</sup> She also argues that “well developed written arguments assist the Appeals Chamber in conducting this appeal”.<sup>17</sup> The Prosecutor makes the following stipulations in the context of arguing that Mr Bemba is not disadvantaged by granting the extension of pages that she seeks: that she will not oppose leave being granted to reply regarding the meaning of the reference to causation in article 28 of the Statute and that she will not oppose a 20% extension of the page limit for the reply.<sup>18</sup>

10. Mr Bemba requests the Appeals Chamber to reject the Request for Extension of Page Limit.<sup>19</sup> He observes that, despite having been on notice of which findings of the Trial Chamber Mr Bemba intended to challenge on appeal since 20 June 2016, the

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<sup>12</sup> [Request for Extension of Page Limit](#), para. 6.

<sup>13</sup> [Request for Extension of Page Limit](#), para. 7.

<sup>14</sup> [Request for Extension of Page Limit](#), para. 8.

<sup>15</sup> [Request for Extension of Page Limit](#), para. 8.

<sup>16</sup> [Request for Extension of Page Limit](#), paras 9-10.

<sup>17</sup> [Request for Extension of Page Limit](#), para. 11.

<sup>18</sup> [Request for Extension of Page Limit](#), para. 12.

<sup>19</sup> [Mr Bemba’s Response](#), paras 5, 16.

Prosecutor submitted in her response to Mr Bemba's request for an extension of the page limit for the document in support of the appeal that no exceptional circumstances existed.<sup>20</sup> Mr Bemba contends that the Request for Extension of Page Limit is untimely, as the Prosecutor has been in receipt of the document in support of the appeal since 19 September 2016 and her request was filed three weeks prior to the due date for the filing of her response.<sup>21</sup>

11. Mr Bemba argues that the Request for Extension of Page Limit does not establish exceptional circumstances warranting an extension beyond the 200 pages set by the Appeals Chamber.<sup>22</sup> He submits that his arguments are "pithy" because he was required to present them within a prescribed page limit.<sup>23</sup> Mr Bemba contends that "[t]here is no precedent in international criminal law for the responding party to have a greater opportunity to present arguments than the party challenging the judgment at first instance".<sup>24</sup> Responding to the Prosecutor's stipulation regarding Mr Bemba's reply to the Prosecutor's response to the document in support of the appeal, Mr Bemba submits that the Prosecutor cannot offer something "which is uniquely within the gift of the Appeals Chamber".<sup>25</sup> Regarding the use of footnotes, Mr Bemba argues that "[d]ense footnotes do not provide a basis for exceptional circumstances warranting an extension of the page limit".<sup>26</sup>

12. The Appeals Chamber recalls that, as indicated earlier, it already extended, by 100 pages, the page limit for the Prosecutor's response to the document in support of the appeal as a result of granting the equivalent extension to Mr Bemba, thereby ensuring that the two appellate briefs were of the same extended length. The extension currently sought by the Prosecutor is thus in addition to the one already granted and would result in the Prosecutor filing a greater number of pages in her response than that permitted to be filed by Mr Bemba, despite the Appeals Chamber previously deciding that 200 pages was the appropriate page limit for each party in those

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<sup>20</sup> [Mr Bemba's Response](#), paras 6-7 referring to "Filing in compliance with decision ICC-01/05-01/08-3370", 20 June 2016, [ICC-01/05-01/08-3398 \(A\)](#), and "Response to request for an extension of the page limit", 1 July 2016, [ICC-01/05-01/08-3401 \(A\)](#).

<sup>21</sup> [Mr Bemba's Response](#), para. 11.

<sup>22</sup> [Mr Bemba's Response](#), para. 11.

<sup>23</sup> [Mr Bemba's Response](#), para. 12.

<sup>24</sup> [Mr Bemba's Response](#), para. 13.

<sup>25</sup> [Mr Bemba's Response](#), para. 13.

<sup>26</sup> [Mr Bemba's Response](#), para. 14.

documents and Mr Bemba having complied with that page limit for the purpose of making his own submissions on appeal. It is against that background that the Appeals Chamber needs to consider whether the Prosecutor has demonstrated that exceptional circumstances exist to justify a further extension of the 200 page limit in the current context.

13. The Appeals Chamber takes note of the Prosecutor's intention to offer an explanation of the context of Mr Bemba's arguments, where such context is, in the view of the Prosecutor, not sufficiently set out and where such an explanation is required in view of the nature of his arguments. The Appeals Chamber, however, notes that, on its own, the fact that certain arguments may merit a response that is longer than the original argument as put by the appellant is not an exceptional circumstance. The Appeals Chamber takes into account that the Prosecutor has been permitted a total of 200 pages in which to respond to the entire document in support of the appeal and that the number of arguments to which the Prosecutor refers is not unusually high in the context of a document spanning 200 pages, and certainly not such as to constitute exceptional circumstances.

14. The Appeals Chamber is likewise unpersuaded that the Prosecutor's intention to make a greater use of footnotes than Mr Bemba in his document in support of the appeal and the resulting increase in the number of words make the circumstances exceptional. As correctly observed by Mr Bemba, the restriction as to the average number of words per page, set out in regulation 36 (3) of the Regulations of the Court, applies to all documents filed with the Court.

15. With respect to the Prosecutor's stipulations regarding the anticipated request of Mr Bemba for leave to reply, the Appeals Chamber notes that it is not known whether Mr Bemba will seek leave to reply. Nor is it appropriate for the Appeals Chamber to anticipate what its decision might be if any such request for leave is made. In any event, the Prosecutor's stipulations do not appear to be relevant to the question of whether exceptional circumstances are made out in this instance.

16. For the foregoing reasons, the Appeals Chamber does not find there to be exceptional circumstances warranting a further extension of the page limit for the

Prosecutor's response to Mr Bemba's document in support of the appeal. The Request for Extension of Page Limit is therefore rejected.

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



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**Judge Christine Van den Wyngaert**  
**Presiding Judge**

Dated this 4<sup>th</sup> day of November 2016

At The Hague, The Netherlands