

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 October 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

Confidential document

**Decision on the Request of Legal Representative of Victims for Access to
Documents**

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Counsel for the Defence
Mr Peter Haynes
Ms Kate Gibson

Legal Representative of Victims
Ms Marie-Edith Douzima-Lawson

The Office of Public Counsel for Victims
Ms Paolina Massidda

The Office of Public Counsel for the Defence
Mr Xavier-Jean Keita

REGISTRY

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 “Requête de la Représentante légale des victimes relative à «Defence application to present additional evidence in the appeal against the Judgment pursuant to Article 74 of the Statute»” of 3 October 2016 (ICC-01/05-01/08-3438-Conf),

Renders the following

DECISION

1. Mr Jean-Pierre Bemba Gombo shall file in the record of the present case the 23 documents sought to be introduced as additional evidence (ICC-01/05-01/08-3435-Conf) such that they are available to the Appeals Chamber and all parties and participants, subject to any authorisation that may be necessary from Trial Chamber VII.
2. Mr Jean-Pierre Bemba Gombo and the Prosecutor shall certify that the documents are copies of the documents that were disclosed or otherwise received by either party in *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*
3. The victims, Mr Jean-Pierre Bemba Gombo and the Prosecutor are directed to file, by 16h00 on 9 November 2016, public redacted versions of the filings: ICC-01/05-01/08-3438-Conf, ICC-01/05-01/08-3440-Conf and ICC-01/05-01/08-3441-Conf, or seek the reclassification of those filings.

REASONS

I. PROCEDURAL HISTORY

1. On 19 September 2016, Mr Jean-Pierre Bemba Gombo (“Mr Bemba”) requested the Appeals Chamber to admit 23 documents (“23 documents”) as additional evidence on appeal¹ (“Additional Evidence Application”).
2. On 3 October 2016, the legal representative of victims (“Victims”) requested access to the 23 documents² (“Victims’ Request to Access Documents”).
3. On 5 October 2016, Mr Bemba³ and the Prosecutor⁴ responded to the Victims’ Request to Access Documents.

II. MERITS

4. The Victims argue that without consulting the documents in question they are unable to ascertain whether the 23 documents affect their personal interests.⁵ They submit that they should be in a position to discuss any evidence that could tend to invalidate the conviction decision as reparations are dependent on the conviction.⁶ Finally, the Victims submit that, in order for them to be in a position to submit observations on the admissibility of the 23 documents, the documents must be disclosed to them.⁷

5. Mr Bemba objects to the Victims’ Request to Access Documents on the grounds that: (i) the Victims have no standing to file motions seeking specific relief before the Appeals Chamber; (ii) the request is not properly filed before the Appeals Chamber as the material to which access is sought is confidential to the parties in the case of *The*

¹ “Defence application to present additional evidence in the appeal against the *Judgment pursuant to Article 74 of the Statute*, ICC-01/05-01/08-3343”, ICC-01/05-01/08-3435-Conf (A).

² “Requête de la Représentante légale des victimes relative à «Defence application to present additional evidence in the appeal against the Judgment pursuant to Article 74 of the Statute»”, ICC-01/05-01/08-3438-Conf (A).

³ “Defence’s Response to ‘Requête de la Représentante légale des victimes relative à «Defence application to present additional evidence in the appeal against the Judgment pursuant to Article 74 of the Statute»””, ICC-01/05-01/08-3440-Conf (A) (“Mr Bemba’s Response”).

⁴ “Prosecution’s response to the Legal Representative of Victims’ request for access to documents relating to Bemba’s application to present additional evidence in the appeal”, ICC-01/05-01/08-3441-Conf (A) (“Prosecutor’s Response”).

⁵ Victims’ Request to Access Documents, para. 11.

⁶ Victims’ Request to Access Documents, para. 12.

⁷ Victims’ Request to Access Documents, para. 13.

Prosecutor v. Jean-Pierre Bemba Gombo et al. (“Article 70 Case”) by order of Trial Chamber VII; and (iii) the Victims have not demonstrated their personal interest in the disclosure of materials.⁸

6. The Prosecutor does not object to the Victims’ Request to Access Documents, provided the confidentiality of the documents is maintained.⁹ However, she suggests that Trial Chamber VII “may be the appropriate authority to address the requested access to the 23 documents”.¹⁰

7. The Appeals Chamber notes that the proposed additional evidence supports the first ground of appeal, wherein Mr Bemba argues that the proceedings were rendered unfair by alleged violations of his rights related to the investigation in the Article 70 Case. Mr Bemba argues that nothing less than a stay of proceedings and his immediate release is required to vindicate his fair trial rights in view of “the Prosecutor’s fault in these violations” and the “extraordinary duration of proceedings to date”.¹¹

8. As the proposed additional evidence is adduced to support arguments on the basis of which Mr Bemba seeks “to vacate the [conviction decision]”,¹² the Appeals Chamber considers that the personal interests of victims are affected by its admission. Accordingly, the Appeals Chamber finds that the Victims should in principle have access to the 23 documents and may participate by submitting observations in relation to the Additional Evidence Application insofar as their personal interests are affected. The Appeals Chamber shall specify the modalities of their participation in a separate decision.

9. The Appeals Chamber notes that Mr Bemba has not appended the 23 documents to the Additional Evidence Application and that he submits that the items sought to be adduced are part of the casefile of the Article 70 Case,¹³ to which neither the Appeals

⁸ Mr Bemba’s Response, paras 7-13.

⁹ Prosecutor’s Response, para. 2.

¹⁰ Prosecutor’s Response, para. 2.

¹¹ “Appellant’s document in support of the appeal”, 19 September 2016, ICC-01/05-01/08-3434-Conf (A); a public redacted version was registered on 28 September 2016 (ICC-01/05-01/08-3434-Red (A)) (“Document in Support of the Appeal”), para. 114.

¹² Document in Support of the Appeal, para. 114.

¹³ Additional Evidence Application, para. 5.

Chamber nor the Victims have access. It appears from the submissions of the parties that the 23 documents may be confidential by order of Trial Chamber VII.¹⁴ In view of these circumstances, it is necessary for Mr Bemba to supplement his Additional Evidence Application by filing the 23 documents in the record of the present case such that they are available to the Appeals Chamber and all parties and participants, subject to any authorisation that may be necessary from Trial Chamber VII.

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



Judge Christine Van den Wyngaert
Presiding Judge

Dated this 17th October 2016

At The Hague, The Netherlands

¹⁴ Prosecutor's Response, para. 2; Mr Bemba's Response, paras 9-10.