

**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 Procedure for Mr Bemba's Additional Evidence Request
of 19 September 2016**

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 Keïta

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 “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” of 19 September 2016 (ICC-01/05-01/08-3435-Conf),

Renders, pursuant to regulation 62 of the Regulations of the Court and rule 91 (2) of the Rules of Procedure and Evidence, the following

DECISION

1. The Appeals Chamber will rule on the admissibility of the additional evidence specified in the above-mentioned application jointly with the other issues raised in the appeal.
2. The Prosecutor is directed to file a response setting out arguments on the above-mentioned application and adduce any evidence in response by 16h00 on 21 November 2016.
3. The victims are directed to file, by 16h00 on 22 December 2016, observations presenting their views and concerns with respect to the above-mentioned application insofar as their personal interests are affected.
4. Mr Jean-Pierre Bemba Gombo and the Prosecutor may each reply to the victims’ observations by 16h00 on 26 January 2017.
5. Mr Jean-Pierre Bemba Gombo is directed to file a public redacted version of the above-mentioned application or seek its reclassification by 16h00 on 2 November 2016.
6. The Prosecutor is directed to file a public redacted version of filing ICC-01/05-01/08-3443-Conf or seek its reclassification by 16h00 on 9 November 2016.

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 5 October 2016, in her response to a request by the legal representative of victims (“Victims”),² the Prosecutor made submissions on the procedure for the determination of admissibility of the 23 documents³ (“Prosecutor’s Submissions”).
3. On 11 October 2016, the Prosecutor filed the “Prosecution’s notice of its intended response to Bemba’s application to present additional evidence in the appeal”, wherein the Prosecutor notified the Appeals Chamber that she intends to respond to the Additional Evidence Application as per the time limit that the Appeals Chamber will set.⁴

II. MERITS

4. The Prosecutor requests the Appeals Chamber to require that her response to and the Victims’ observations on the Additional Evidence Application be filed by 21 November 2016.⁵ She submits that this will allow the Appeals Chamber to examine the application and the related response and observations in light of her response to the document in support of the appeal.⁶ The Prosecutor also requests that her response be a discrete filing, rather than being part of her response to the document in support

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»”, 3 October 2016, ICC-01/05-01/08-3438-Conf (A).

³ “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).

⁴ ICC-01/05-01/08-3443-Conf (A).

⁵ Prosecutor’s Submissions, para. 3.

⁶ Prosecutor’s Submissions, para. 4.

of the appeal.⁷ She proposes that Mr Bemba and she be allowed to file a reply to the Victims' observations by 22 December 2016.⁸

5. The Appeals Chamber notes that the Additional Evidence Application relates to the first ground of appeal, wherein Mr Bemba argues that the trial proceedings were rendered unfair by alleged violations of his rights related to the investigation of the article 70 proceedings. Mr Bemba relies upon the additional evidence sought to be admitted in order to substantiate certain events and arguments set out in the first ground of appeal. The Appeals Chamber considers that, in view of the nature of the first ground of appeal and the intended use of the additional evidence, it is appropriate to follow the procedure set out in regulation 62 (2) (b) of the Regulations of the Court. It will therefore rule on the admissibility of the additional evidence specified in the Additional Evidence Application jointly with the other issues raised in the appeal.

6. The Appeals Chamber considers the time limit for the Prosecutor's response proposed in the Prosecutor's Submissions to be conducive to a proper determination of the Additional Evidence Application. The Prosecutor is therefore directed to both file a response setting out her arguments on that application and to adduce any evidence in response by 16h00 on 21 November 2016. The Victims are directed to file, by 16h00 on 22 December 2016, observations presenting their views and concerns with respect to the Additional Evidence Application insofar as their personal interests are affected. Mr Bemba and the Prosecutor may each reply to the Victims' observations by 16h00 on 26 January 2017.

7. The Appeals Chamber does not find it appropriate in the circumstances to require that the above-mentioned submissions be included in the parties and participants' filings related to the document in support of the appeal. These submissions should be contained in separate filings.

8. The Appeals Chamber notes that, contrary to the requirement set out in regulation 23 *bis* (1) of the Regulations of the Court, the Additional Evidence Application was filed and marked as "confidential" without stating the factual and

⁷ Prosecutor's Submissions, para. 4.

⁸ Prosecutor's Submissions, para. 4.

legal basis for the chosen classification. Mr Bemba is directed to file a public redacted version of the Additional Evidence Application or seek its reclassification by 16h00 on 2 November 2016. The Prosecutor is directed to file a public redacted version of filing ICC-01/05-01/08-3443-Conf or seek its reclassification by 16h00 on 9 November 2016.

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