



Original: English

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

Date: 2 December 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 Mr Bemba's request for leave to reply to the Prosecutor's response
to the additional evidence request**

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

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 “Appellant’s request for leave to reply to ‘Prosecution’s response to Bemba’s application to present additional evidence in the appeal’” of 28 November 2016 (ICC-01/05-01/08-3473),

Renders the following

DECISION

Mr Jean-Pierre Bemba Gombo may file, by 16h00 on 9 December 2016, a reply not exceeding ten pages to the “Prosecution’s response to Bemba’s application to present additional evidence in the appeal”.

REASONS

I. PROCEDURAL HISTORY

1. On 19 September 2016, Mr Jean-Pierre Bemba Gombo (“Mr Bemba”) requested the Appeals Chamber to admit 23 documents as additional evidence on appeal¹ (“Additional Evidence Application”).
2. On 21 November 2016, the Prosecutor responded to Mr Bemba’s Additional Evidence Application² (“Prosecutor’s Response to the Additional Evidence Application”).
3. On 28 November 2016, Mr Bemba requested leave to reply to the Prosecutor’s Response³ (“Request for Leave to Reply”).

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); a public redacted version was registered on 2 November 2016 (ICC-01/05-01/08-3435-Red (A)).

² “Prosecution’s response to Bemba’s application to present additional evidence in the appeal”, 21 November 2016, ICC-01/05-01/08-3471-Conf (A).

4. On 1 December 2016, the Prosecutor responded to Mr Bemba's Request for Leave to Reply⁴ ("Prosecutor's Response to Request for Leave to Reply").

II. MERITS

5. Mr Bemba submits that it would be in the interests of justice to grant leave to reply to five arguments contained in the Prosecutor's Response to the Additional Evidence Application related to the statutory framework for consideration of additional evidence requests and the relationship between the present case and the proceedings against Mr Bemba in relation to offences under article 70 of the Statute.⁵

6. The Prosecutor objects to Mr Bemba's Request for Leave to Reply on the grounds that Mr Bemba has advanced no reason to allow a reply.⁶ The Prosecutor submits that Mr Bemba failed to specify which submissions contained in the Prosecutor's Response to the Additional Evidence Application raise new issues warranting a reply, why these issues were not addressed in the Additional Evidence Application itself, or the relevance of the issues to the Prosecutor's Response to the Additional Evidence Application.⁷ She argues that the Request for Leave to Reply is an impermissible effort to bolster the initial application.⁸

7. The Appeals Chamber notes that regulation 24 (5) of the Regulations of the Court provides that leave of the Chamber is required to reply to a response. The Appeals Chamber considers that the question of whether leave to reply should be granted lies within its discretionary powers and must be considered on a case-by-case basis. In the circumstances of the present case, the Appeals Chamber is persuaded by Mr Bemba's submission that "a focused and limited reply" on the identified issues will assist the Appeals Chamber in its determination of the additional evidence application.⁹ However, the Appeals Chamber emphasises that the reply should not be

³ "Appellant's request for leave to reply to 'Prosecution's response to Bemba's application to present additional evidence in the appeal'", 28 November 2016, ICC-01/05-01/08-3473 (A).

⁴ "Prosecution's response to Bemba's request for leave to reply to 'Prosecution's response to Bemba's application to present additional evidence in the appeal'", 1 December 2016, ICC-01/05-01/08-3476-Conf (A).

⁵ Request for Leave to Reply, para. 9.

⁶ Prosecutor's Response to Request for Leave to Reply, para. 3.

⁷ Prosecutor's Response to Request for Leave to Reply, paras 4-11.

⁸ Prosecutor's Response to Request for Leave to Reply, paras 5, 7, 9.

⁹ Request for Leave to Reply, para. 1.

repetitive of arguments already adduced in the Additional Evidence Application or in Mr Bemba's document in support of the appeal.

8. Given the length of the Prosecutor's Response to the Additional Evidence Application and the issues Mr Bemba has indicated that he wishes to canvas, the Appeals Chamber considers it appropriate to limit Mr Bemba's reply to no more than ten pages.

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



Judge Christine Van den Wyngaert
Presiding Judge

Dated this 2nd December 2016

At The Hague, The Netherlands