



Original: English

No. ICC-01/05-01/13 A A2 A3 A4 A5

Date: 18 July 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

**Directions regarding Mr Bemba's application for additional evidence filed
pursuant to regulation 62 of the Regulations of the Court**

Directions 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 Jean-Pierre Bemba Gombo
Ms Melinda Taylor
Ms Mylène Dimitri

Counsel for Aimé Kilolo Musamba
Mr Michael G. Karnavas

Counsel for Jean-Jacques Mangenda Kabongo
Mr Christopher Gosnell
Mr Peter Robinson

Counsel for Fidèle Babala Wandu
Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido
Mr Charles Achaleke Taku
Ms Beth Lyons

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu, and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute” of 19 October 2016 (ICC-01/05-01/13-1989-Red),

Having before it the “Request for Additional Evidence on Appeal” of 12 July 2017 (ICC-01/05-01/13-2172-Conf (A4)),

Pursuant to regulation 62 of the Regulations of the Court,

Issues the following

DIRECTIONS

1. The Appeals Chamber will rule on the admissibility of the additional evidence sought in the above-mentioned application jointly with the other issues raised in the appeal of Mr Jean-Pierre Bemba Gombo.
2. The Prosecutor is directed to file a response setting out arguments on the above-mentioned application and to adduce any evidence in response by 16h00 on Monday, 14 August 2017.

REASONS

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 19 October 2016, Trial Chamber VII (“Trial Chamber”) rendered its “Judgment pursuant to Article 74 of the Statute” (“Conviction Decision”), in which Mr Jean-Pierre Bemba Gombo (“Mr Bemba”) was convicted of three offences against the administration of justice.¹

¹ ICC-01/05-01/13-1989-Conf; a public redacted version was registered on the same date ([ICC-01/05-01/13-1989-Red](#)), p. 455.

2. Mr Bemba filed an appeal against the Conviction Decision on 7 November 2016,² and, on 24 April 2017, submitted his document in support of the appeal³ (“Document in Support of the Appeal”).

3. On 12 July 2017, Mr Bemba filed an application in which he requests the Appeals Chamber to admit as additional evidence on appeal three documents,⁴ (“Application”) which concern two decisions that were issued by a Dutch District Court in October 2013, and are annexed to the Document in Support of the Appeal⁵ (“Dutch Decisions”), as well as a letter from the Dutch Prosecutor, dated 19 February 2014⁶ (together “Requested Evidence”).⁷ Mr Bemba submits that the Requested Evidence is probative of the issue as to whether the Trial Chamber failed to exclude or lessen the weight of telephone intercepts related to one specific telephone number between 30 August and 30 September 2013, intercepts on which the Trial Chamber relied to convict him.⁸ Mr Bemba avers further that the Requested Evidence was not available at trial for reasons unrelated to his due diligence.⁹

II. MERITS

4. The Appeals Chamber notes that the Requested Evidence relates to Mr Bemba’s sub-ground 3.3 of his third ground of appeal, wherein Mr Bemba submits that the Pre-Trial Chamber failed to rule on or remedy the ineffectiveness of a system on the vetting of privilege regarding intercepts.¹⁰ Mr Bemba argues that the Requested Evidence, if admitted, will undermine “the admissibility of key evidence” that the Trial Chamber relied upon to convict him and will “ensure the veracity of the

² “Notice of Appeal”, 7 November 2016, [ICC-01/05-01/13-2012 \(A4\)](#).

³ “Defence Document in Support of the Appeal”, ICC-01/05-01/13-2144-Conf (A4); a public redacted version was registered on 4 May 2017 ([ICC-01/05-01/13-2144-Red \(A4\)](#)).

⁴ “Request for Additional Evidence on Appeal”, with annexes, ICC-01/05-01/13-2172-Conf (A4); a public redacted version was registered on 14 July 2017 ([ICC-01/05-01/13-2172-Red \(A4\)](#)).

⁵ See Annex I, ICC-01/05-01/13-2144-Conf-AnxI (A4).

⁶ The Appeals Chamber notes that the Dutch Prosecutor’s letter contained in Annex C of the Application is dated 19 February 2014 rather than 12 February 2014 as indicated in the Application. See [Application](#), para. 48; Annex C to the Application (ICC-01/05-01/13-2172-Conf-AnxC (A4)).

⁷ [Application](#), paras 1, 48.

⁸ [Application](#), paras 1-2.

⁹ [Application](#), para. 4.

¹⁰ See [Document in Support of the Appeal](#), paras 164-179. See also [Application](#), fns. 5-6, referring to [Document in Support of the Appeal](#), paras 164-165, 170-175, 178-179, 184. The Appeals Chamber notes that the Dutch Decisions are specifically referenced at fns. 325-326 of the Document in Support of the Appeal.

record”.¹¹ The Appeals Chamber considers that, given the nature of Mr Bemba’s arguments raised under his sub-ground 3.3 of his third ground of appeal and the intended use of the Requested Evidence, it is appropriate to follow the procedure set out in regulation 62 (2) (b) of the Regulations of the Court. Accordingly, the Appeals Chamber shall provide directions concerning its ruling on the admissibility of the Requested Evidence in the Application jointly with the other issues raised in Mr Bemba’s appeal.

5. In that regard, the Appeals Chamber directs the Prosecutor to file a response setting out her arguments on the Application and to adduce any evidence in response by 16h00 on Monday, 14 August 2017.

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



Judge Silvia Fernández de Gurmendi
Presiding Judge

Dated this 18th day of July 2017

At The Hague, The Netherlands

¹¹ [Application](#), paras 3-4.