



**Original: English**

**No. ICC-01/05-01/13 A4**

**Date: 4 September 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**

**Decision on Mr Bemba's request for leave to reply to the "Prosecution's  
Response to Bemba's 'Request for Additional Evidence on 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, 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**

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**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 “Defence Request for Leave to reply to the ‘Prosecution’s Response to Bemba’s Request for Additional Evidence on Appeal’” of 18 August 2017 (ICC-01/05-01/13-2200 (A4)),

Pursuant to regulation 24 (5) of the Regulations of the Court,

*Renders* the following

## DECISION

Mr Jean-Pierre Bemba Gombo’s request for leave to reply to the “Prosecution’s response to Bemba’s ‘Request for Additional Evidence on Appeal’” is rejected.

## REASONS

1. On 12 July 2017, Mr Jean-Pierre Bemba Gombo (“Mr Bemba”) filed an application seeking the admission, as additional evidence on appeal, of two decisions issued by a Dutch District Court in October 2013 and a letter from the Dutch Prosecutor dated 19 February 2014<sup>1</sup> (“Application For Additional Evidence”).
2. On 18 July 2017, the Appeals Chamber issued its directions concerning the Application For Additional Evidence, in which it: (i) stated that it would rule on the admissibility of Mr Bemba’s proposed additional evidence jointly with the other

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<sup>1</sup> “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 \(A4\)](#)).

issues raised in his appeal; and (ii) directed the Prosecutor to file a response to the Application For Additional Evidence by 14 August 2017.<sup>2</sup>

3. On 14 August 2017, the Prosecutor filed her response to the Application For Additional Evidence (“Response”).<sup>3</sup>

4. On 18 August 2017, Mr Bemba filed a request seeking leave to reply to the Response on two discrete issues (“Request”).<sup>4</sup> First, he states that if leave to reply were granted, he would submit a statement attesting to the fact that, contrary to the Prosecutor’s assertion in the Response, the emails exchanged between the Dutch Public Prosecutor and the Prosecutor of the Court were transmitted to Mr Michiel Pestman for the preparation of his “legal opinion on matters of Dutch law related to the interception of communications in the Article 70 case”.<sup>5</sup> Second, Mr Bemba seeks to reply – by providing the full context of the Trial Chamber’s decisions “from which the Prosecution has selectively quoted” – to the Prosecutor’s claim that the Trial Chamber found that his defence team failed to exercise due diligence when seeking to obtain the Dutch case file.<sup>6</sup>

5. The Appeals Chamber notes that according to regulation 24 (5) of the Regulations of the Court, leave of the Chamber is required to reply to a response. The Appeals Chamber recalls 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.<sup>7</sup>

6. Upon consideration of the issues on which Mr Bemba seeks leave to reply, the Appeals Chamber is of the view that the submissions that Mr Bemba requests to be authorised to make would not be of assistance for its eventual decision on the Application For Additional Evidence. The Request is accordingly rejected.

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<sup>2</sup> “Directions regarding Mr Bemba’s application for additional evidence filed pursuant to regulation 62 of the Regulations of the Court”, [ICC-01/05-01/13-2176](#).

<sup>3</sup> “Prosecution’s response to Bemba’s ‘Request for Additional Evidence on Appeal’”, ICC-01/05-01/13-2194-Conf (A4).


<sup>4</sup> “Defence Request for Leave to Reply to the ‘Prosecution’s Response to Bemba’s Request for Additional Evidence on Appeal’”, [ICC-01/05-01/13-2200 \(A4\)](#).

<sup>5</sup> Request, paras 3-5. Mr Pestman’s “legal opinion” was filed by Mr Bemba in the record of the case as document ICC-01/05-01/13-1799-Conf-AnxC.

<sup>6</sup> Request, paras 6, 7.

<sup>7</sup> See e.g. *Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on Mr Bemba’s request for leave to reply to the Prosecutor’s response to the additional evidence request”, 2 December 2016, [ICC-01/05-01/08-3479 \(A\)](#), para. 7.

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

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**Judge Silvia Fernández de Gurmendi**  
**Presiding Judge**

Dated this 4th day of September 2017

At The Hague, The Netherlands