

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 05/10/2016

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

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»"

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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I. INTRODUCTION

1. On 21 March 2016, Trial Chamber III delivered its Judgement under article 74 of the Statute. The Trial Chamber convicted Mr. Jean-Pierre Bemba Gombo (“the Appellant”) of the charges against him.¹

2. On 4 April 2016, the Appellant filed a notice of appeal against the Judgment pursuant to Rule 150(1) of the Rules of Procedure and Evidence, and Regulation 57 of the Regulations of the Court.²

3. On 15 April 2016, the Appeals Chamber rendered a decision on the participation of victims in the appeal against Trial Chamber III’s “Judgment pursuant to Article 74 of the Statute” in which it authorised the Legal Representative of Victims (“LRV”) to participate in the appeal proceedings “for the purpose of presenting their views and concerns in respect of their personal interests in the issues on appeal”.³

4. On 19 September 2016, the Appellant filed his document in support of appeal⁴ and an application to present additional evidence in the appeal against the Judgment.⁵

5. On 3 October 2016, the LRV filed a document in relation to the Defence application to present additional evidence, requesting that the 23 documents concerned by this application be disclosed to her (“LRV Request”).⁶

6. By the present response the Appellant requests the Appeals Chamber to reject the LRV Request.

¹ ICC-01/05-01/08-3343.

² ICC-01/05-01/08-3348.

³ ICC-01/05-01/08-3369.

⁴ ICC-01/05-01/08-3434.

⁵ ICC-01/05-01/08-3435-Conf.

⁶ ICC-01/05-01/08-3438-Conf.

II. SUBMISSIONS

A. The LRV has no standing to file the instant application

7. The LRV is not a party to the appeal. Its participation in the appeal is limited by the order of the Appeals Chamber allowing it.⁷ The LRV “may file observations within 30 days of the notification of the response to the document in support of the appeal and these observations may be no longer than 60 pages.”⁸ That is the extent of its permitted participation in the appeals process.

8. The LRV is not thereby empowered to file substantive motions generally before the Appeals Chamber, whether relating to alleged issues of disclosure or any other matter. The LRV may of course, with further leave of the Chamber, file observations on any motion filed by a party to the appeal. However, absent such leave, it has no right to file observations, nor to file motions seeking specific relief *proprio motu*.

B. The application is not properly filed before the Appeals Chamber

9. The material which is the subject of the Appellant’s substantive motion for the admission of further evidence on appeal is confidential to the parties to case number ICC-01/05-01/13 by reason of orders of Trial Chamber VII.

10. The current application is therefore in an inappropriate form. An application to Trial Chamber VII for their partial reclassification was necessary to permit their disclosure to any person, not a party to those proceedings. An order against the Appellant for their disclosure to the LRV is of no effect without an order of the Chamber who determined that the documents should be confidential in the first place.

⁷ ICC-01/05-01/08-3369.

⁸ ICC-01/05-01/08-3369, p. 3.

C. The LRV has demonstrated no personal interest of its victims in the disclosure of the materials

11. The bald assertion of the LRV that “*si la décision sur la culpabilité était modifiée, les intérêts de ses clients en seraient nécessairement affectés*” is palpably insufficient to demonstrate that the personal interests of victims lie in favour of granting the relief sought in this motion.

12. The material in question is being presented to substantiate a wholly procedural issue and forms part of the record of proceedings to which the LRV is not a party. This can be distinguished from a situation where the material in question was already available to the LRV and concerned, for example, whether purported child soldiers were in fact children.⁹

13. If, indeed, there was a personal interest in presenting the views and concerns of victims merely by way of a connection to the outcome of the appeal proceedings, then there would be no issue in the appeal proceedings in which the victims would not have a personal interest.

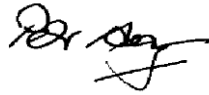
III. RELIEF SOUGHT

14. In view of the above submissions, the Defence respectfully requests the Appeals Chamber to:

DENY the LRV Request.

The whole respectfully submitted.

⁹ See ICC-01/04-01/06-2942-Red; ICC-01/04-01/06-2966-Corr-tENG, paras. 114-118.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 5 October 2016

It is hereby certified that this document contains a total of 908 words and complies in all respects with the requirements of regulation 36 of the Regulations of the Court.