

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **5 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

**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**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Mr James Stewart
Ms Helen Brady

Counsel for the Defence

Mr Peter Haynes
Ms Kate Gibson
Mr Kai Ambos
Mr Michael A. Newton

Legal Representatives of the Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section **Other**

Submissions

1. On 3 October 2016, the Legal Representative of Victims in the *Bemba* Main case sought access to 23 documents from the *CAR Article 70* case record that the Bemba Defence seeks to present as additional evidence on appeal.¹ The LRV intends to file observations on the admissibility of the 23 documents.²
2. This Appeals Chamber has previously found that “[the] victims who participated in the trial proceedings may participate in the appeal proceedings against the Conviction Decision, as, in principle, their personal interests are affected by the appeal in the same way as during trial.”³ On this basis, and if the Chamber were minded to grant the LRV its requested access to the documents, the Prosecution does not object to the LRV’s access *per se*, provided the confidentiality of the documents is maintained. However, it appears that Trial Chamber VII, currently seised of the article 70 case, may be the appropriate authority to address the requested access to the 23 documents.⁴
3. Furthermore, the Prosecution notes that the Appeals Chamber, under regulation 62(3) of the Regulations of the Court, is required to set a time-limit for responses to motions presenting additional evidence. To allow for the efficient conduct of these appeal proceedings, the Prosecution requests the Chamber to require its response to, and the LRV’s observations on, the Defence Application to be filed by Monday, 21 November 2016.⁵ The Defence and the Prosecution, as rule 91(2)

¹ ICC-01/05-01/08-3438-Conf A (“LRV’s Request”). See also ICC-01/05-01/08-3435-Conf A (“Defence Application”) and ICC-01/05-01/08-3439-Conf A (“Order shortening time-limit”).

² LRV’s Request, para. 13.

³ ICC-01/05-01/08-3369 A (“AC Decision on victim participation on appeal”), para. 3. See also para. 4, noting “[s]hould the need arise to specify the modalities of victims’ participation in the pending appeal further, the Appeals Chamber will give supplementary directions, either upon its own motion or upon application by the legal representative of victims.”

⁴ See *by analogy* regulation 42(3).

⁵ The Prosecution’s response to the Defence conviction appeal is also due on 21 November 2016.

of the Rules of Procedure and Evidence permits,⁶ may file a reply, if any, to the LRV's observations on the Defence Application within 30 days, *i.e.*, Thursday, 22 December 2016.

4. The Prosecution notes that although the Appeals Chamber in *Lubanga* had directed the participants on appeal to address their arguments on one additional evidence motion in their response briefs, it permitted the participants to respond to other additional evidence motions on a standalone basis.⁷ To expedite these proceedings and to allow the Chamber to make the necessary interlocutory decisions on the Defence Application and the proposed additional evidence,⁸ the Prosecution requests the Chamber to maintain the Application, and any responses to it, as standalone motions on appeal, rather than as part of the briefs themselves. In any event, if the Chamber were to accept the Prosecution's proposed schedule, it will be able to examine the Application, and the responses/observations, in light of the Prosecution's response to Mr Bemba's conviction appeal, due on 21 November 2016.

5. For the reasons above,

- i. If the appropriate Chamber is minded to grant access, the Prosecution does not object to the LRV's access to the documents relating to the Defence Application on a confidential basis; and
- ii. The Prosecution respectfully requests the Appeals Chamber to require all responses/observations relating to the Defence Application to be filed by **Monday, 21 November 2016**, and any

⁶ Rule 91(2) states *inter alia* that the Prosecutor and the defence shall be allowed to reply to any oral or written observation by the legal representative for victims. See also AC Decision on victim participation on appeal, para. 4, also referring to rule 91(2) and allowing Mr Bemba and the Prosecutor to respond to the victims' observations.

⁷ See ICC-01/04-01/06-2958 A5 A6 ("*Lubanga* Decision of 21 December 2012"), paras. 9-10. See also ICC-01/04-01/06-3121-Red A5 ("*Lubanga* AJ"), paras. 12 and 13, noting the procedural history of the appeal where standalone motions, and responses, relating to proposed additional evidence were permitted; ICC-01/04-01/06-3121-Anx3 A5, paras. 16-17, fn. 52.

⁸ See *Lubanga* Decision of 21 December 2012, para. 8.

replies to the LRV's observations on the Defence Application to be filed by **Thursday, 22 December 2016**.

Level of Confidentiality

6. The Prosecution files this submission as "Confidential" pursuant to regulation 23*bis*(2), since it responds to a confidential submission.

Word count: 937⁹



Fatou Bensouda, Prosecutor

Dated this 5th day of October 2016

At The Hague, The Netherlands

⁹ The Prosecution hereby makes the required certification: ICC-01/11-01/11-565 OA6, para. 32.