

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/05-01/08**
Date: **11 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 notice of its intended response 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

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Ms Helen Brady

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REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section **Other**

Submissions

1. On 19 September 2016, the Defence filed a motion to present additional evidence on appeal.¹ On 5 October 2016, the Prosecution, pursuant to regulation 62(3) of the Regulations of the Court, requested the Appeals Chamber to set a time-limit for its response to the Defence Application.² In particular, the Prosecution requested the Appeals Chamber to require all responses/observations relating to the Defence Application to be filed by Monday, 21 November 2016. The Prosecution also requested the Appeals Chamber to maintain the Defence Application, and any responses thereto, as standalone motions, and not as part of the briefs, so as to expedite these proceedings and to allow the Chamber to make the necessary interlocutory decisions on the Defence Application and the proposed additional evidence³ (including whether the procedure in regulation 62(2)(a) should be adopted). As of the date of this filing, the Appeals Chamber has not yet set such a time-limit for the Prosecution's response.

2. The Prosecution notes that regulation 62(3) appears to be the *lex specialis* governing the procedure on appeal for considering additional evidence. The language of regulation 62(3) is mandatory.⁴ The Appeals Chamber's directions on the time-limits for responses trigger the course for any such litigation on additional evidence, and are critical to determining how the parties should proceed. The practice of the one earlier case on appeal where additional evidence was at issue (*Lubanga*) mirrors this understanding.⁵ Indeed, it appears that a party cannot proceed in the absence of such directions.

¹ ICC-01/05-01/08-3435-Conf A ("Defence Application").

² ICC-01/05-01/08-3441-Conf A ("Prosecution Request"), paras. 3-5.

³ Prosecution Request, paras. 3-5.

⁴ Regulation 62(3) states "[t]he responses described in sub-regulation 2 shall be filed within a time-limit specified by the Appeals Chamber and shall be set out and numbered, to the extent possible, in the same order as in the application to present evidence" (emphasis added).

⁵ See e.g., ICC-01/04-01/06-2958 A5 A6 ("*Lubanga* Decision of 21 December 2012"), where, following the Prosecution's request for instructions under regulation 62(2) and for permission to respond within 21 days, the Appeals Chamber directed the Prosecution to respond to the additional evidence motion in its response brief. See

3. Nevertheless, the Prosecution notes that responses to motions on appeal (other than additional evidence) are governed by regulation 34(b), and should be filed within the 21 day time-limit. That time-limit expires today (11 October 2016). Since the Prosecution's request to the Appeals Chamber to set the time-limit under regulation 62(3) is pending, and to avoid rendering the Appeals Chamber's decision unnecessarily moot, the Prosecution will refrain from filing its response to the Defence Application within the 21 day time-limit. The Prosecution, however, respectfully files this notice to preserve its future response to the Defence Application. It notifies the Chamber that it intends to respond to the Defence Application as per the time-limit that the Chamber will set.

Level of Confidentiality

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

Word count: 741⁶



Fatou Bensouda, Prosecutor

Dated this 11th day of October 2016

At The Hague, The Netherlands

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.

⁶ The Prosecution hereby makes the required certification: ICC-01/11-01/11-565 OA6, para. 32.