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

Date: 30/11/2016

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***

Public

**Appellant's request for leave to file a reply to the "Prosecution's Response to
Appellant's Document in Support of Appeal"**

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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A. PROCEDURAL BACKGROUND

1. On 21 March 2016, Trial Chamber III convicted Mr. Jean-Pierre Bemba (“the Appellant”) of the charges against him.¹

2. On 4 April 2016, the Appellant filed his notice of appeal.²

3. On 5 April 2016, the Appellant filed a request for a variation of the time limit within which to file its document in support of appeal (“Appeal Brief”).³ The Appeals Chamber granted this request on 15 April 2016.⁴ In the same decision, the Appellant was ordered to inform the Appeals Chamber of “at the very least, the legal findings in the Conviction Decision that he intends to challenge within the 90 day time limit prescribed in regulation 58 of the Regulations”.⁵

4. Accordingly, on 20 June 2016, the Appellant filed an outline of the grounds he anticipated contesting on appeal, in compliance with the Appeals Chamber’s order.⁶

5. On 28 June 2016, the Appellant filed a request for an extension of the page limit for his Appeal Brief.⁷ On 11 July 2016, the Appeals Chamber granted an extension of 100 pages for the Appeal Brief and for the Prosecutor’s response.⁸

6. On 19 September 2016, the Appellant filed his Appeal Brief.⁹ On the same day, he filed an application to present additional evidence in the appeal against the Judgment.¹⁰

¹ ICC-01/05-01/08-3343.

² ICC-01/05-01/08-3348.

³ ICC-01/05-01/08-3353.

⁴ ICC-01/05-01/08-3370.

⁵ ICC-01/05-01/08-3370, para. 9.

⁶ ICC-01/05-01/08-3398.

⁷ ICC-01/05-01/08-3400.

⁸ ICC-01/05-01/08-3405.

⁹ ICC-01/05-01/08-3434-Conf.

¹⁰ ICC-01/05-01/08-3435-Conf.

7. On 31 October 2016, the Prosecution filed a request for a 20% extension of the page limit to file a response to the Appeal Brief.¹¹ On 4 November 2016, the Appeals Chamber denied this request.¹²

8. On 21 November 2016, the Prosecution filed its response to the Appeal Brief (“Prosecution Response Brief”)¹³ and its response to the Defence application to present additional evidence.¹⁴

9. By the present application, the Appellant seeks leave to file a reply to the Prosecution Response Brief.

B. APPLICABLE LAW

10. Pursuant to regulation 60(1) of the Regulations of the Court, should the Appeals Chamber consider it “necessary in the interests of justice, it may order the appellant to file a reply” within a specified time-limit.

11. Although not specifically mentioned in regulation 60 of the Regulations of the Court, an appellant may request, and accordingly, trigger the powers of the Appeals Chamber to order the filing of a reply.¹⁵

12. In *Lubanga*, the Appeals Chamber granted Lubanga’s request to reply to the Prosecution’s response briefs on conviction, and sentence.¹⁶ A reply was considered to be in the interests of justice because the Prosecutor had adduced evidence, to

¹¹ ICC-01/05-01/08-3456.

¹² ICC-01/05-01/08-3463.

¹³ ICC-01/05-01/08-3472-Conf.

¹⁴ ICC-01/05-01/08-3471-Conf.

¹⁵ ICC-01/04-01/06-2982, para. 6.

¹⁶ ICC-01/04-01/06-2982.

which Lubanga “should be given an opportunity to respond.”¹⁷ The Appeals Chamber also considered that granting leave to reply was consistent with the fact that it had granted extensions of page limits to the parties on three occasions.¹⁸

13. Furthermore, although referring to closing statements, Rule 141(2) of the Rules of Procedure and Evidence provides that the “defence shall always have the opportunity to speak last.” The Appeals Chamber has recognised the application of this principle in the appellate phase. In *Ngudjolo*, the Prosecution was granted the right by the Appeals Chamber to reply to the Defence’s response to its Appeal Brief, but the Defence was, by the same token, granted the right to respond to this reply.¹⁹

C. SUBMISSIONS

14. The Prosecution asserts in response that Article 28 of the Statute does not require that a superior causally contributed to the occurrence of the crimes for which they are held responsible.²⁰ In submissions spanning 30 pages, the Prosecution makes detailed arguments, never advanced at trial, as to the alleged proper interpretation of Article 28 of the Statute.

15. At the very least, the Appellant should be afforded an opportunity to respond to the propriety of the Prosecution, (i) having not appealed the Judgment, alleging that the Trial Chamber erred in law in finding that the crimes must have been a result of Mr. Bemba’s failure to exercise control over the MLC troops, and (ii) asserting a position in response on appeal which it never presented to the finder of fact at first instance, and which is inconsistent with its position at trial.

¹⁷ ICC-01/04-01/06-2982, para. 7.

¹⁸ *Ibid.*

¹⁹ See ICC-01/04-02/12-126-Red2 and ICC-01/04-02/12-134-Red-tENG.

²⁰ ICC-01/05-01/08-3472-Conf, paras. 220-273.

16. Other factors warrant the granting of leave to reply. The Prosecution's submissions as to the proper practice for disclosure of materials obtained pursuant to Article 70 of the Statute are misconceived.²¹ They, moreover, reveal an institutional inconsistency in the practice adopted by the Office of the Prosecutor in this Court, which has arisen since the filing of the Appeal Brief.²² The Appellant should be afforded an opportunity to make submissions as to the significance of this inconsistency to the arguments advanced in Ground One of his appeal.

17. More generally, the Appellant's review of the Prosecution Response Brief has revealed a significant volume of misstatements of evidence, and assertions which are inconsistent with, or have no basis in, the evidentiary record of the present case. The Appellant accordingly requests an opportunity to complete and correct the assertions presented by the Prosecution on appeal, which can be done without any repetition of the submissions made in the Appeal Brief.

D. RELIEF SOUGHT

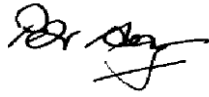
18. For the reasons outlined above, the Appellant respectfully requests that the Appeals Chamber:

GRANT the Appellant's request for leave to file a reply to the "Prosecution's response to Appellant's document in support of the appeal".

The whole respectfully submitted.

²¹ ICC-01/05-01/08-3472-Conf, paras. 49, 53-59.

²² ICC-01/04-02/06-1616, paras. 3-4.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 30 November 2016

It is hereby certified that this document contains a total of 1,109 words and complies in all respects with the requirements of regulation 36 of the Regulations of the Court.