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

Date: 28/11/2016

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 reply to "Prosecution's response to Bemba's application to present additional evidence in the 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. INTRODUCTION

1. Pursuant to Regulation 24(5) of the Regulations of the Court, Mr. Jean-Pierre Bemba (“the Appellant”) seeks leave of the Appeals Chamber to reply to the “Prosecution’s response to Bemba’s application to present additional evidence in the appeal” (“Prosecution Response”).¹ The Defence submits that a focused and limited reply to the arguments contained in the Prosecution Response will assist the Appeals Chamber in its determination of the Application.²

B. PROCEDURAL BACKGROUND

2. On 21 March 2016, Trial Chamber III convicted the Appellant of the charges against him.³

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

4. On 19 September 2016, the Appellant filed his document in support of appeal (“Appeal Brief”).⁵ On the same day, the Appellant filed an application requesting the Appeals Chamber to admit 23 documents (“23 Documents”) as additional evidence in the appeal against the Judgment (“the Application”).⁶

5. On 3 October 2016, the Legal Representative of Victims (“LRV”) requested access to the 23 Documents.⁷ On 17 October 2016, the Appeals Chamber granted the request⁸ and ordered the Prosecution to file a response by 21 November 2016, and

¹ ICC-01/05-01/08-3471-Conf

² ICC-01/05-01/08-3435-Conf.

³ ICC-01/05-01/08-3343.

⁴ ICC-01/05-01/08-3348.

⁵ ICC-01/05-01/08-3434-Conf.

⁶ ICC-01/05-01/08-3435-Conf.

⁷ ICC-01/05-01/08-3438-Conf.

⁸ ICC-01/05-01/08-3445-Conf, subject to any authorisation that may be necessary from Trial Chamber VII. The Appellant seek this authorisation on 25 October 2016, ICC-01/05-01/13-1991. It was granted on 2 November 2016, ICC-01/05-01/13-2000.

the LRV to file observations presenting their views and concerns by 22 December 2016.⁹

6. On 7 November 2011 the Appellant requested the Appeals Chamber to modify the access rights to the 23 Document in eCourt to give the LRV and Appeals Chamber direct access to both the content and metadata of these documents.¹⁰ The Appeals Chamber granted this request on 9 November 2016.¹¹

7. On 21 November 2016, the Prosecution filed both its response to the Appeal Brief (“Prosecution’s Response Appeal Brief”)¹² and the Prosecution Response.¹³

C. LEVEL OF CONFIDENTIALITY

8. A public redacted version of the Application was filed on 2 November 2016,¹⁴ pursuant to the Appeals Chamber’s order.¹⁵ Despite the confidential classification of relevant Appeals Chamber decisions¹⁶ and the Prosecution Response, the Appellant respectfully submits that nothing in the present document justifies a confidential classification, and files the document publicly.

D. SUBMISSIONS

9. The Prosecution Response contains a number of arguments to which the Appellant submits a right of reply would be in the interests of justice:

⁹ ICC-01/05-01/08-3446-Conf.

¹⁰ ICC-01/05-01/08-3464.

¹¹ ICC-01/05-01/08-3465.

¹² ICC-01/05-01/08-3472-Conf.

¹³ ICC-01/05-01/08-3471-Conf.

¹⁴ ICC-01/05-01/08-3435-Red.

¹⁵ ICC-01/05-01/08-3446-Conf.

¹⁶ ICC-01/05-01/08-3445-Conf; ICC-01/05-01/08-3446-Conf.

(i) Whether the Prosecution's submissions are consistent with the Court's statutory framework, particularly Regulation 62(1) of the Regulations of the Court, jurisprudence, and/or its own previously advocated practice;

(ii) Whether the test now advocated by the Prosecution properly applies to documents already in the parties' possession and merely illustrative of procedural aspects of the trial rather than evidence undermining findings of fact;

(iii) Whether a prolonged period of non-disclosure as identified by the Trial Chamber itself is relevant to the Prosecution's arguments based on an alleged failure by the Appellant to have raised certain issues before the Trial Chamber;

(iv) Whether the Prosecution's conduct under the rubric of the Article 70 Case can properly be hermetically sealed from the assessment of the fairness of the Main Case; and

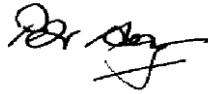
(v) The impact of the Prosecution's submission that the Appeals Chamber maintain a strict separation between the Article 70 Case and the Main Case on the Prosecution's own reliance on and references to the Article 70 conviction throughout the Prosecution's Response Appeal Brief.

E. RELIEF SOUGHT

10. For all the reasons set out above, the Appellant respectfully requests that the Appeals Chamber:

GRANT the Appellant's request for leave to reply to the
Prosecution Response.

The whole respectfully submitted.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 28 November 2016

It is hereby certified that this document contains a total of 804 words and complies
in all respects with the requirements of regulation 36 of the Regulations of the
Court.