



Original: English

**No. ICC-01/05-01/13 A A2 A3 A4 A5
Date: 17 May 2017**

THE APPEALS CHAMBER

**Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Geoffrey A. Henderson
Judge Piotr Hofmański**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO,
AIMÉ KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO,
FIDÈLE BABALA WANDU AND NARCISSE ARIDO**

Public document

Decision on Mr Bemba's "Request for Judicial Notice"

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Counsel for Jean-Pierre Bemba Gombo
Ms Melinda Taylor
Ms Sarah Codde

Counsel for Aimé Kilolo Musamba
Mr Michael G. Karnavas

Counsel for Jean-Jacques Mangenda Kabongo
Mr Christopher Gosnell
Mr Peter Robinson

Counsel for Fidèle Babala Wandu
Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido
Mr Charles Achaleke Taku
Ms Beth Lyons

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu, and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute” of 19 October 2016 (ICC-01/05-01/13-1989-Red),

Having before it the “Request for judicial notice” of 28 April 2017 (ICC-01/05-01/13-2150-Conf (A4)),

Having before it the “Request for Leave to Reply to the ‘Prosecution’s Response to Bemba’s ‘Request for Judicial Notice’” of 8 May 2017 (ICC-01/05-01/13-2156 (A4)),

Renders the following

DECISION

1. The request for judicial notice is rejected.
2. The request for leave to reply to the Prosecutor’s response is rejected.
3. The Registrar is instructed to reclassify as public filing ICC-01/05-01/13-2152-Conf.

REASONS

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 19 October 2016, Trial Chamber VII (“Trial Chamber”) rendered its “Judgment pursuant to Article 74 of the Statute”¹ (“Conviction Decision”).
2. Mr Jean-Pierre Bemba Gombo (“Mr Bemba”) filed an appeal against the Conviction Decision on 7 November 2016,² and, on 24 April 2017, submitted his document in support of the appeal³ (“Document in Support of the Appeal”). As one of

¹ ICC-01/05-01/13-1989-Conf; a public redacted version was registered on the same date ([ICC-01/05-01/13-1989-Red](#)).

² “Notice of Appeal”, 7 November 2016, [ICC-01/05-01/13-2012 \(A4\)](#).

³ “Defence Document in Support of the Appeal”, ICC-01/05-01/13-2144-Conf (A4). A public redacted version was filed on 4 May 2017 ([ICC-01/05-01/13-2144-Red \(A4\)](#)).

the annexes to the Document in Support of the Appeal, Mr Bemba filed two decisions that had been issued by a Dutch District Court in October 2013 in relation to the transmission to the Court of some evidence collected following the monitoring of certain telecommunications⁴ (“Dutch Decisions”).

3. On 28 April 2017, Mr Bemba filed a request, seeking that the Appeals Chamber take judicial notice under article 69 (6) of the Statute of the Dutch Decisions, noting that Mr Bemba’s defence team, during the preparation of the Document in Support of the Appeal, had been able to locate them within the material made available to it in the course of the trial proceedings⁵ (“Request for Judicial Notice”). Mr Bemba argues that the Appeals Chamber should take judicial notice of the Dutch Decisions under article 69 (6) of the Statute because their existence and date “cannot reasonably be questioned”,⁶ they “do not concern an issue pertaining to the charges”, and “the Defence is not seeking the[ir] [...] admission for the ‘truth’ of their contents”.⁷

4. On 3 May 2017, the Prosecutor filed her response in which she submits that the Request should be dismissed on the grounds that Mr Bemba has not discharged his burden to justify the introduction of additional material on appeal⁸ (“Response”).

5. On 8 May 2017, Mr Bemba filed a request, seeking leave to reply to the Response in relation to three issues⁹ (“Request for Leave to Reply”).

⁴ ICC-01/05-01/13-2144-Conf-AnxI (A4).

⁵ “Request for judicial notice”, ICC-01/05-01/13-2150-Conf (A4), paras 1, 21-23, 26, 35. A public redacted version was filed on 10 May 2017 ([ICC-01/05-01/13-2150-Red \(A4\)](#)).

⁶ Request for Judicial Notice, para. 29.

⁷ Request for Judicial Notice, para. 30.

⁸ “Prosecution’s Response to Bemba’s ‘Request for Judicial Notice’”, ICC-01/05-01/13-2152-Conf (A4), paras 1, 5.

⁹ “Request for Leave to Reply to the ‘Prosecution’s Response to Bemba’s ‘Request for Judicial Notice’”, [ICC-01/05-01/13-2156 \(A4\)](#).

II. MERITS

6. As a preliminary point, having considered the issues that Mr Bemba seeks to address in reply to the Prosecutor's Response,¹⁰ the Appeals Chamber does not find that it would be materially assisted by any further submission in its determination of the Request for Judicial Notice. Mr Bemba's Request for Leave to Reply is therefore rejected.

7. The Appeals Chamber notes that the two Dutch Decisions to which the Request for Judicial Notice relates were not submitted before the Trial Chamber and, as such, were not part of the evidentiary record available to the Trial Chamber when it rendered the Conviction Decision. Mr Bemba wishes the Appeals Chamber to consider this material in the disposal of the appeal after taking judicial notice of it pursuant to article 69 (6) of the Statute.


8. The Appeals Chamber is of the view that the Request for Judicial Notice is ill-founded for the following reasons. Article 69 (6) of the Statute provides that "[t]he Court shall not require proof of facts of common knowledge but may take judicial notice of them". The purpose of article 69 (6) of the Statute is to avoid the need to introduce evidence going to the proof of facts that are already notorious. Thus, judicial notice requires that the facts at issue are well known to, at least, the Chamber applying article 69 (6) of the Statute. It is evident that this does not apply to the facts at issue here: until the filing of the two Dutch Decisions by Mr Bemba as an annex to the Document in Support of the Appeal, the Appeals Chamber was unaware of their existence and content. Indeed, the very fact that Mr Bemba's defence team "discovered" the Dutch Decisions only recently highlights that their existence and content are not of "common knowledge". Accordingly, the Request for Judicial Notice is rejected.

9. The Appeals Chamber observes that Mr Bemba's request is limited to arguments concerning the purported appropriateness to take judicial notice of the Dutch Decisions under article 69 (6) of the Statute. The Appeals Chamber clarifies that the present decision is thus limited to a determination that article 69 (6) of the Statute is not a suitable legal basis for the introduction of the material at issue.

¹⁰ Request for Leave to Reply, para. 10.

10. Finally, the Appeals Chamber observes that the Response was filed confidentially given that the Request for Judicial Notice was classified as confidential. The Appeals Chamber notes the Prosecutor's submission that she does not object to the reclassification of the Response as public once the public redacted version of the Request for Judicial Notice is made available,¹¹ which was done in the meantime.¹² In light of this, the Appeals Chamber, acting pursuant to regulation 23 *bis* (3) of the Regulations of the Court, directs the Registrar to reclassify as public the Response.

Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge

Dated this 17th day of May 2017

At The Hague, The Netherlands

¹¹ Response, para. 4.

¹² *See supra* fn. 5.