



Original: English

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

Date: 30 October 2017

THE APPEALS CHAMBER

Before:

**Judge Christine Van den Wyngaert, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Chile Eboe-Osuji
Judge Piotr Hofma ski**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

Public document

Order for submissions on the contextual elements of crimes against humanity

Order 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 the Defence
Mr Peter Haynes
Ms Kate Gibson

Legal Representative of Victims
Ms Marie-Edith Douzima-Lawson

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III entitled “Judgment pursuant to Article 74 of the Statute” of 21 March 2016 (ICC-01/05-01/08-3343),

Issues the following

ORDER

1. Mr Jean-Pierre Bemba Gombo shall file, by 16h00 on 13 November 2017, submissions on the issues related to his ground of appeal on the contextual elements of crimes against humanity, as identified in paragraph 3 of the reasons set out below.
2. The Prosecutor shall file, by 16h00 on 27 November 2017, a response to Mr Bemba’s filing.
3. The legal representative of victims shall file, by 16h00 on 4 December 2017, observations, if any, on the parties’ filings on the contextual elements of crimes against humanity.
4. The parties shall file, by 16h00 on 11 December 2017, responses, if any, to the above-mentioned observations of the legal representative of victims.

REASONS

1. On 21 March 2016, Trial Chamber III (“Trial Chamber”) delivered the “Judgment pursuant to Article 74 of the Statute”¹ (“Conviction Decision”) in which Mr Jean-Pierre Bemba Gombo (“Mr Bemba”) was convicted *inter alia* of the crimes against humanity of murder and rape under article 28 of the Statute.²
2. On 19 September 2016, Mr Bemba filed the “Appellant’s document in support of the Appeal”³ (“Appeal Brief”), arguing *inter alia* that an organizational policy to commit an attack directed against the civilian population, as an element of the

¹ [ICC-01/05-04/08-3343](#).

² [Conviction Decision](#), para. 752.

³ ICC-01/05-01/08-3434-Conf (A); a public redacted version was filed on 28 September 2016 ([ICC-01/05-01/08-3434-Red](#) (A)).

contextual elements of crimes against humanity, was not established in the present case.⁴

3. The Appeals Chamber considers it appropriate to receive further submissions on the contextual elements of crimes against humanity, and, in particular, on legal and factual aspects of the organisational policy that have not yet been addressed, and on the widespread nature of the attack. Therefore, pursuant to regulation 28 of the Regulations of the Court, the Appeals Chamber orders further submissions from the parties on the following questions:

- (i) How should a “policy” be understood: can it be inferred from the manner in which the crimes were committed or does it require something more?;
- (ii) Whether a policy to attack the civilian population was adequately described in the present case;
- (iii) What was the organizational policy in the present case?;
- (iv) Whether the factors relied upon by the Trial Chamber cumulatively provided a sufficient basis for its finding that there was an organizational policy in this case;
- (v) Whether, on the basis of the evidence accepted as credible in this case, it was erroneous for the Trial Chamber to have concluded that there was an attack directed against a civilian population, i.e. a course of conduct involving the *multiple* commission of criminal acts against a civilian population;
- (vi) Whether, on the basis of the evidence accepted as credible in this case, it was erroneous for the Trial Chamber to have concluded that the attack was *widespread*; and
- (vii) Whether, in respect of questions v and vi, it was erroneous for the Trial Chamber to have reached its conclusions on the evidence before it (i.e.

⁴ [Appeal Brief](#), paras 422-444.

“testimony, as corroborated by media articles, NGO reports, and the *procès verbaux d’audition de victime*”⁵).

4. The above-mentioned submissions shall be filed in accordance with the schedule set out in the operative part of this order and shall not exceed 20 pages each.

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



Judge Christine Van den Wyngaert
Presiding Judge

Dated this 30th October 2017

At The Hague, The Netherlands

⁵ [Conviction Decision](#), para. 563.