

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08 OA8

Date: 08 September 2011

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding Judge
Judge Erkki Kourula
Judge Akua Kuenyehia
Judge Anita Ušacka
Judge Daniel David Ntanda Nsereko

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

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

Confidential

**Prosecution's Response to the Victims Legal Representative Mr Zarambaud
Assingambi's Application for Participation (ICC-01/05-01/08-1704-Conf) and
Observations (ICC-01/05-01/08-1714-Conf) to the Defence Document in Support of
against the Summary and Decision on the
"Demande de mise en liberté provisoire de M. Jean-Pierre Bemba
Gombo afin d'accomplir ses devoirs civiques en République Démocratique du
Congo" (ICC-01/05-01/08-1702-Conf)**

Source: Office of the Prosecutor

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

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Unrepresented Victims

**Unrepresented Applicants for
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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 30 August and 2 September 2011 Trial Chamber III issued a summary and a reasoned decision, respectively, whereby it rejected the request of Mr Bemba ("the Appellant") for temporary release to allow him to return to the DRC to obtain a voting card and register his candidacy for the upcoming presidential and parliamentary elections ("the Decision").¹
2. On 5 September 2011 the Appellant filed his document in support of appeal against the Summary and the Decision, in which he alleges that the Trial Chamber committed two errors of fact ("Appeal Brief").²
3. Also on 5 September 2011, the legal representative of victims, Mr Zarambaud Assingambi ("the Legal Representative"), requested to participate in the appeal proceedings ("Victims' Request to Participate").³ On 7 September the Legal Representative filed his observations whereby he requested the dismissal of the Appeal Brief because it was filed prematurely and, in the alternative, due to the lack of a new circumstance with respect to the prior decision on release ("Victims' Observations").⁴
4. On 7 September 2011 the Prosecution filed its response to the Appeal Brief whereby it submitted that the Appeal Brief should be dismissed as the Trial Chamber made no factual errors in concluding that the circumstances justifying the Appellant's detention remain unchanged ("Prosecution's Response").⁵

¹ ICC-01/05-01/08-1691-Conf. A public redacted version of the Decision has been filed (ICC-01/05-01/08-1691-Red). Pursuant to Regulation 23*bis*(2) of the Regulations of the Court, the Prosecution files this appeal confidential as it follows the same confidential level of the filings before the Trial Chamber and that of the Appeal Brief, Victims' Request to Participate and Observations.

² ICC-01/05-01/08-1702-Conf.

³ ICC-01/05-01/08-1704-Conf.

⁴ ICC-01/05-01/08-1714-Conf, para.18

⁵ ICC-01/05-01/08-1715-Conf.

5. Pursuant to the Chamber's Order,⁶ the Prosecution herewith requests that the Chamber allow the victims to participate in these appeal proceedings and entertain their observations.

Victims' Request to Participate

6. With respect to the Victims' Request, the Prosecution notes that the victims represented by the Legal Representative meet the requirements set out by the Appeals Chamber to participate in appeal proceedings, namely that (i) they are victims in the case or situation out of which the appeal arises (an assessment made by a Pre-Trial or Trial Chamber);⁷ (ii) their personal interests are affected by the issues on appeal; (iii) their participation is appropriate; and (iv) the manner of participation – namely the written submission of the Observations – is not prejudicial to or inconsistent with the rights of the Appellant and a fair and impartial trial.⁸ In addition, the issue in this appeal, namely whether the Trial Chamber correctly decided that the Appellant remain in custody, affects the personal interests of the victims. The Appeals Chamber has previously recognised that issues arising in an appeal regarding interim release of an accused may well affect the personal interests of victims⁹ and determined that it is appropriate for victims to participate in an appeal against a decision regarding the detention of an accused.¹⁰

Victims' Observations

7. The Prosecution disagrees that the Appellant's Brief was premature, given the unique circumstances of this litigation and the need for expedition. The

⁶ ICC-01/05-01/08-1711.

⁷ ICC-02/05-01/09-48 OA, para.10; ICC-01/04-01/06-1335 OA 9 and OA 10, para.40.

⁸ ICC-01/04-01/06-1335 OA9 and OA10, paras. 35, 36; ICC-01/04-503 OA4 OA5 OA6, paras.35, 90; ICC-01/04-01/06-1453 OA 13, para.7; ICC-01/04-01/06-1452 OA12, para.7; ICC-02/04-164 OA, para.7; ICC-02/04-01/05-324 OA2, para.8; ICC-01/05-01/08-566 OA2, para.8. See also ICC-01/04-01/06-824 OA7, paras.2, 44 and 46; ICC-01/04-01/06-925 OA8, para.23.

⁹ "The Appeals Chamber considered that the personal interests of the victims were affected by the circumstances of the current case, having regard to the nature of the appeal itself" (ICC-01/04-01/06-824 OA7, para.54); "Secondly, the personal interests of the four victims are affected by the principal issue on appeal, namely whether Mr. Lubanga Dyilo should be released" (ICC-01/04-01/06-1452 OA12, para.9).

¹⁰ ICC-01/04-01/06-824 OA7, para.54; ICC-01/05-01/08-566 OA2, para.17.

Prosecution, however, concurs with the Legal Representative that the Appellant failed to demonstrate any changed circumstance sufficient to require his temporary release and to establish that he no longer poses a risk of abscondment.¹¹ In addition, the Prosecution concurs with the Legal Representative's observation that the 22 August letter of the President of the Senate cannot be construed as an agreement of the DRC government to implement surveillance and security measures or to ensure his return to the seat of the Court.¹²

Conclusion

8. For the reasons set out above, the Prosecution requests that the Appeals Chamber grant the Victims' Request to participate in this appeal, that it entertain the Victims' Observations, and that it dismiss the Appellant's Brief on the merits.



Luis Moreno-Ocampo,
Prosecutor

Dated this 8th day of September 2011

At The Hague, The Netherlands

¹¹ Victims' Observations, para.18bis. See ICC-01/05-01/08-1565-Red.

¹² Ibid., paras.26-29.