



Original: **English**

No.: **ICC-01/05-01/08 OA9**

Date: **20 December 2011**

THE APPEALS CHAMBER

Before: Judge Erkki Kourula, Presiding Judge
Judge Sang-Hyun Song
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

Public Redacted

Prosecution's Response to the 'Observations de Maître Zarambaud Assingambi, Représentant légal de victimes sur le document de la Défense du 3 octobre 2011 à l'appui de sa requête d'appel' (ICC-01/05-01/08-1860-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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Other

Submissions

1. On 26 September 2011 Trial Chamber III issued its “Decision on the accused’s application for provisional release in light of the Appeals Chamber’s judgment of 19 August 2011” (“Decision”), whereby it rejected the application for release to [REDACTED] during Court recesses longer than three consecutive days filed by the Defence for Jean Pierre Bemba (the “Appellant”) and ruled that he was to remain in detention.¹

2. On 3 October 2011 the Appellant appealed the Decision on three grounds (“Appeal Brief”). First, the Appellant argues that the Trial Chamber failed to identify the conditions that [REDACTED] should implement - if the Appellant was to be released in its territory, to seek further submissions [REDACTED], and to request observations from [REDACTED] on its willingness and ability to implement other measures than those described in rule 119. Second, the Appellant argues that the Chamber erred when it found that the conditions imposed by [REDACTED] did not eliminate the Appellant’s risk of flight. And third, the Appellant submits that the Chamber also erred when it found that the conditions proposed by [REDACTED] are not sufficient to eliminate the risk of intimidation of witnesses.²

3. On 19 October 2011 the Prosecution responded to the Appeal Brief and requested the Appeals Chamber to dismiss it as the Appellant had failed to identify any reversible error in the Chamber’s reasoning and findings (“Prosecution’s Response”).³ Among other points, the Prosecution submitted that the Chamber had correctly applied the Appeals Chamber’s OA7 Bemba judgment and did not need to request for further submissions from [REDACTED] as the guarantees provided were specific and the Chamber had before it all necessary information to issue an informed decision. In addition, the Chamber correctly assessed

¹ ICC-01/05-01/08-1789-Red.

² ICC-01/05-01/08-1812-ConfOA9.

³ ICC-01/05-01/08-1836-ConfOA9.

relevant factors that led to its conclusion that the Appellant's release to [REDACTED] entailed risks of abscondment and witness interference.

4. On 24 October 2011 Mr Zarambaud Assingambi, a legal representative of victims ("Legal Representative"), after being granted leave by the Appeals Chamber, provided observations on the Appeal Brief ("Victims' Observations").⁴
5. The Legal Representative argues that the Chamber was correct when it did not request further observations from [REDACTED] as it had the sufficient information to issue an informed decision.⁵ He also argues, *inter alia*, that the Chamber correctly considered relevant facts and incidents of witnesses' threats to conclude that the Appellant's release would entail a risk of witness interference and that the objective nature of the witnesses' fears had been demonstrated in the Decision.⁶
6. The Legal Representative concurs with the Prosecution's Response and the arguments advanced therein, namely that [REDACTED] guarantees were specific and clear; that additional submissions were therefore not necessary for the Chamber to issue an informed decision;⁷ and that the Chamber had correctly evaluated the facts and circumstances of the case and reasonably determined that there was a possibility that if released the Appellant could pose a risk of witness interference.⁸

Confidentiality Level

7. Pursuant to Regulation 23*bis*(2) of the Regulations of the Court, the Prosecution files this document confidentially due to references to [REDACTED] and because the Appeal Brief, Prosecution's Response and Victims' Observations were also filed on confidential basis.

⁴ ICC-01/05-01/08-1860-ConfOA9.

⁵ Victims' Observations, paras.14-16.

⁶ Victims' Observations, paras.18-20.

⁷ Prosecution's Response, paras.23-26.

⁸ *Ibid.*, paras.40-44.

Relief Sought

8. The Prosecution requests the Appeals Chamber to consider the Victims' Observations and reiterates its request for dismissal of the Appeal Brief.



Luis Moreno-Ocampo, Prosecutor

Dated this 20th day of December 2011

At The Hague, The Netherlands