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Date: 31 August 2009

THE APPEALS CHAMBER

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Sang-Hyun Song
Judge Erkki Kourula
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 Document

**Prosecution's Response to the Observations of the Legal Representatives of
Victims on their Participation in the Prosecution Appeal against the
Decision on the Interim Release of Jean-Pierre Bemba Gombo**

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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Introduction

1. The Prosecution has appealed against the Decision of the Single Judge of Pre-Trial Chamber II which ordered that Jean-Pierre Bemba Gombo be conditionally released, with the conditions and State of release to be determined in the future.
2. The Legal Representatives of victims authorized to participate in the case of *The Prosecutor v Jean-Pierre Bemba Gombo* seek to participate in the current appeal proceeding.¹ The Legal Representatives argue that they are entitled to respond to the Prosecution's Appeal as of right; and that no application is needed as the Appeals Chamber has ruled that the issue of the release of an accused affects the personal interests of victims. In the alternative, if the Appeals Chamber finds that an application is required, the Legal Representatives submit that the victims who they represent fulfill the criteria for participation in this instance.
3. Consistent with the established jurisprudence of the Appeals Chamber, the victims must apply for leave to participate in an interlocutory appeal, including an appeal against a decision on interim release. In this instance, the Prosecution considers that the victims have demonstrated that their personal interests may be affected by the substance of the appeal, namely the possible release of the Accused, and that their participation is appropriate. The Prosecution therefore does not object to the Appeals Chamber granting the victims leave to submit their views and concerns on this appeal, subject to the parties being given an opportunity to respond.

Procedural Background

4. On 12 December 2008, a number of victims were granted the status of victims under Rule 85 authorized to participate in proceedings in this case.²
5. On 14 August 2009, the Single Judge granted conditional release of Jean-Pierre Bemba Gombo ("the Accused"), but deferred implementation of the decision until she determined which State the Accused will be released to and what conditions will be imposed.³

¹ ICC-01/05-01/08-479-tENG ("Victims' Observations").

² ICC-01/05-01/08-320.

³ "Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa" ("Appealed Decision"), ICC-01/05-01/08-475.

6. On 14 August 2009, the Prosecution filed an appeal against that Decision pursuant to Article 82(1)(b).⁴ The Prosecution filed its Document in Support of Appeal on 24 August 2009.⁵
7. On 18 August 2009, the Legal Representatives of victims filed observations before the Appeals Chamber.⁶
8. Pursuant to an order of the Appeals Chamber, dated 26 August 2009,⁷ the Prosecution hereby responds to the Victims' Observations.

Victims must be granted leave to participate in an interlocutory appeal

9. The Appeals Chamber has already set out the requirements for victim participation in interlocutory appeals. These principles were first developed in an appeal under Article 82(1)(b) against a decision on interim release,⁸ and have been consistently followed.⁹
10. According to these decisions, "An interlocutory appeal [...], in which a particular issue requires specific consideration, is a separate and distinct stage of the proceedings",¹⁰ and that as a result Article 68(3) "mandates a specific determination by the Appeals Chamber that the participation of victims is appropriate in the particular interlocutory appeal under consideration."¹¹
11. Victims who have already been granted the right to participate in the situation or case need not demonstrate again that they meet the definition of "victim" under Rule 85.¹² However, in order to participate in an interlocutory appeal, they must demonstrate that their personal interests are affected by the issue on appeal, their participation is

⁴ ICC-01/05-01/08-476.

⁵ ICC-01/05-01/08-483-Conf-Exp. A public redacted version of the Appeal Brief was also filed on 24 August 2009, and was notified to the parties and participants on 25 August 2009 – ICC-01/05-01/08-485.

⁶ ICC-01/05-01/08-479-tENG OA2 ("Victims' Observations").

⁷ ICC-01/05-01/08-486.

⁸ "In order for victims to participate in an appeal under article 82 (1) (b) of the Statute, an application seeking leave to participate in the appeal must be filed." - *Prosecutor v. Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 38, see also paras. 40, 43.

⁹ "The Appeals Chamber finds these procedures adopted in respect of interlocutory appeals pursuant to article 82 (1) (b) of the Statute to be equally applicable to the instant interlocutory appeals arising under article 82 (1) (d) of the Statute" - *Situation in the DRC*, ICC-01/04-503 OA4 OA5 OA6, 30 June 2008, para. 37; ICC-01/04-01/06-1335 OA9 and OA10, 16 May 2008, paras. 12-13. See also, e.g., *Prosecutor v. Lubanga*, ICC-01/04-01/06-925 OA8, 13 June 2007, para. 23; *Prosecutor v. Lubanga*, ICC-01/04-01/06-1452 OA12, 6 August 2008, para. 7.

¹⁰ *Prosecutor v. Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 43.

¹¹ *Prosecutor v. Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 40; *Situation in the DRC*, ICC-01/04-503 OA4 OA5 OA6, 30 June 2008, para. 36.

¹² See e.g. *Prosecutor v. Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, paras. 44 and 45; *Situation in the DRC*, ICC-01/04-503 OA4 OA5 OA6, 30 June 2008, para. 92.

appropriate, and the manner of participation will not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.¹³

The victims appear to meet the requirements to participate in this case

12. The victims represented by the Legal Representatives have been recognised as victims in the context of this case.¹⁴
13. The Prosecution considers that the issues in this appeal – whether the circumstances have changed so as to warrant the release of the Accused; and whether his conditional release can be ordered without determining the conditions which shall be imposed, and the country to which he will be released and which shall enforce the conditions – do affect the personal interests of the victims. The Appeals Chamber has previously recognised that issues arising in an appeal regarding interim release may well affect the personal interests of victims.¹⁵ The Appealed Decision also recognises the impact that the Decision has on the interests of victims.¹⁶
14. The Prosecution further considers that the presentation of the views and concerns of the victims on the issues in this appeal, under appropriate modalities, is appropriate.

The modalities of participation

15. The Prosecution submits that given the nature of the issues in this appeal, the victims should be permitted to present their views and concerns regarding those issues in writing, through their Legal Representatives. Consistent with the jurisprudence of this Chamber, such views and concerns “must be specifically relevant to the issues arising in the appeal and to the extent that their personal interests are affected by the proceedings.”¹⁷

¹³ *Prosecutor v. Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, paras. 2, 44 and 46; *Prosecutor v. Lubanga*, ICC-01/04-01/06-925 OA8, 13 June 2007, para. 23; *Prosecutor v. Lubanga*, ICC-01/04-01/06-1335 OA9 and OA10, 16 May 2008, paras 35 and 36; *Situation in the DRC*, ICC-01/04-503 OA4 OA5 OA6, 30 June 2008, paras. 35, 90; *Prosecutor v. Lubanga*, ICC-01/04-01/06-1452 OA12, 6 August 2008, para. 7; *Prosecutor v. Lubanga*, ICC-01/04-01/06-1453 OA 13, 6 August 2008, para. 7; *Situation in Uganda*, ICC-02/04-164 OA 27 October 2008, para. 7; *Prosecutor v. Kony et. al.*, ICC-02/04-01/05-324 OA2, 27 October 2008, para 8.

¹⁴ ICC-01/05-01/08-320, 12 December 2008; cited in Victims’ Observations, para. 1.

¹⁵ “The Appeals Chamber considers 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” - *Prosecutor v. Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, 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” - *Prosecutor v. Lubanga*, ICC-01/04-01/06-1452 OA12, 6 August 2008, para. 9; see also jurisprudence cited in Victims’ Observations, paras. 13-15.

¹⁶ Appealed Decision, para. 99.

¹⁷ *Situation in the DRC*, ICC-01/04-503 OA4 OA5 OA6, 30 June 2008, para. 101; *Prosecutor v. Lubanga*, ICC-01/04-01/06-1335 OA9 and OA10, 16 May 2008, para. 50. See also *Prosecutor v. Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 55: “Observations to be received by the victims are [...] limited to, and must be specifically relevant to, the issues arising in the appeal, rather than more generally”.

16. Furthermore, as recognised by the Legal Representatives¹⁸ and as mandated by Rule 91(2), the Prosecution and the Defence must have an opportunity to respond to any views and concerns presented by victims in this appeal. Under these circumstances, the participation of the victims in this appeal would not be prejudicial to or inconsistent with the fairness of the proceedings.¹⁹

Conclusion

17. For the reasons set out above, the Prosecution does not object to the participation of the victims in this appeal.

18. The Prosecution requests that the Appeals Chamber orders that any victims participating in this appeal to file their views and concerns in writing within a defined period; and permits the Prosecution and Defence to respond to those views and concerns with a deadline prescribed by the Chamber.



Luis Moreno-Ocampo,
Prosecutor

Dated this 31st day of August 2009

At The Hague, The Netherlands

¹⁸ Victims' Observations, para. 20.

¹⁹ The Appeals Chamber has previously recognised that if victims are permitted to participate, "the Prosecutor and the Defence shall be allowed to reply to any filing of the victims in accordance with the provisions of rule 91(2) of the Rules of Procedure and of Evidence" - *Prosecutor v. Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 49.