



Original: English

No.: ICC-01/05-01/08 OA2

Date: 14 September 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

**Prosecution's Response to the Observations of the Legal Representatives of
Victims on the Prosecution's 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:

The Office of the Prosecutor

Counsel for the Defence

Mr Nkwebe Liriss

Mr Karim A.A. Khan

Mr Aimé Kilolo-Musamba

Mr Pierre Legros

Legal Representatives of Victims

Ms Marie Edith Douzima-Lawson

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Competent authorities of:

The Kingdom of Belgium,

The Republic of France,

The Federal Republic of Germany,

The Italian Republic,

The Kingdom of the Netherlands,

The Republic of Portugal,

The Republic of South Africa

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Prosecution has appealed¹ against the Decision of the Single Judge of Pre-Trial Chamber II² 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 have been granted leave to participate in this appeal,³ and have filed their observations on the appeal.⁴ Pursuant to the order of the Appeals Chamber, the Prosecution hereby responds to the Victims' Observations.
3. The Legal Representatives largely agree with the arguments raised by the Prosecution in both grounds of appeal.⁵
4. With regard to the First Ground of Appeal, the Legal Representatives concur with the Prosecution that there had been no change of circumstances which warrants the release of the Accused; and that the only significant intervening factor, the issuance of the decision confirming the charges against the Accused, confirms and increases the risks posed by the Accused if released.⁶
5. The Legal Representatives also support the Prosecution's Second Ground of Appeal that the Single Judge erred in ordering conditional release without specifying the conditions, identifying a State that is willing to accept the Accused, and satisfying herself that the State is willing and capable of ensuring compliance with the conditions.⁷ Their observations are based largely on Rule 119(3) of the Rules of Procedure and Evidence, which obliges the Pre-Trial Chamber to seek the views of, among others, "victims that have communicated with the Court in that case and whom the Chamber considers could be at risk as a result of a release or conditions imposed". The Legal Representatives argue that "...puisque ladite norme fait obligation à la Chambre compétente de consulter les victimes auxquelles la mise en liberté ou les conditions imposées pourraient faire courir un risque, *a fortiori* lesdites conditions devraient être fixées préalablement à la décision de remise en liberté elle-même, faute de quoi les victimes ne seront pas en mesure de formuler leurs observations."⁸

¹ Appeal: ICC-01/05-01/08-476 OA2, 14 August 2009. Document in Support of Appeal: ICC-01/05-01/08-483-Conf-Exp OA2, 25 August 2009 (public redacted version – ICC-01/05-01/08-485 OA2, 25 August 2009).

² ICC-01/05-01/08-475, 14 August 2009 ("Appealed Decision").

³ ICC-01/05-01/08-500 OA2, 3 September 2009.

⁴ ICC-01/05-01/08-507-Corr-Anx, 7 September 2009 ("Victims' Observations").

⁵ Victims' Observations, paras. 13, 14, 16.

⁶ Victims' Observations, paras. 14-15.

⁷ Victims' Observations, paras. 17-19, 21.

⁸ Victims' Observations, para. 21.

6. The Prosecution concurs generally with the Victims' Observations and requests that the Appeals Chamber reverse the Appealed Decision and order the continued detention of the Accused.



Luis Moreno-Ocampo,
Prosecutor

Dated this 14th day of September 2009
At The Hague, The Netherlands