

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/05-01/08 OA 4

Date: 18 August 2010

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

Decision on the Participation of Victims in the Appeal against the “Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence” of Trial Chamber III

AG.

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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Mr Fabricio Guariglia

Counsel for the Defence

Mr Nkwebe Liriss

Mr Aimé Kilolo Musamba

The Office of Public Counsel for Victims

Ms Paolina Massidda

Registrar

Ms Silvana Arbia

AS:

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 “Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence” of 28 July 2010 (ICC-01/05-01/08-843),

Having before it the “Requête du BCPV en tant que représentant légal des victimes aux fins de participation à l’appel interlocutoire interjeté par la Défense à l’encontre de la décision de la Chambre de première instance III du 28 juillet 2010” of 5 August 2010 (ICC-01/05-01/08-848),

After deliberation,

Unanimously,

Renders the following

DECISION

(i) The victims represented by the Office of Public Counsel for Victims, who have applied to participate in the present appeal, are granted the right to participate for the purpose of presenting their views and concerns with respect to their personal interests in the issues raised on appeal. They may file their submissions by 16h00 on 24 August 2010.

(ii) Mr Bemba and the Prosecutor may file their responses to the submissions presented by the aforesaid victims by 16h00 on 30 August 2010.

REASONS

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 28 July 2010, Trial Chamber III (hereinafter: “Trial Chamber”) issued its “Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to

Rule 118(2) of the Rules of Procedure and Evidence”¹ (hereinafter: “Impugned Decision”) in which the Trial Chamber held that Mr Bemba will remain in custody since “there has been neither a material change in circumstances since the last review of detention nor inexcusable delay attributable to the prosecution, and [...] the requirements of Article 58(1)(b)(i) of the Statute apply.”²

2. On 29 July 2010, Mr Bemba filed an appeal against the Impugned Decision³ and on 4 August 2010 he filed his document in support of the appeal⁴.

3. On 5 August 2010, victims a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08, a/0467/08, a/0511/08, a/0512/08, a/0513/08, a/0515/08, a/0516/08, a/0562/08, a/0563/08, a/0564/08, a/0565/08, a/0566/08, a/0567/08, a/0568/08, a/0569/08, a/0570/08, a/0571/08, a/0572/08, a/0130/09, a/0131/09, a/0132/09, a/0133/09, a/0134/09, a/0135/09, a/0136/09, a/0137/09, a/0138/09, a/0139/09, a/0141/09, a/0427/09, a/0432/09, a/0651/09, a/0652/09 and a/0653/09 (hereinafter: “Victims”) participating in the proceedings before the Trial Chamber and represented by the Office of Public Counsel for Victims filed an application to participate in the present appeal (hereinafter: “Victims’ Application”).⁵

4. The Victims submit that they have been recognised as victims in the present case.⁶ They further submit that the Appeals Chamber has already recognised that

¹ ICC-01/05-01/08-843.

² Impugned Decision, para. 39.

³ “Acte d’Appel de la Défense contre la décision de la Chambre de Première Instance III du 28 Juillet 2010 intitulée ‘Decision on the review of the Detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence’”, ICC-01/05-01/08-844.

⁴ “Mémoire à l’Appui de l’Acte d’Appel de la Défense contre la décision de la Chambre de Première Instance III du 28 Juillet 2010 intitulée ‘Decision on the review of the Detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence’”, ICC-01/05-01/08-847.

⁵ “Requête du BCPV en tant que représentant légal des victimes aux fins de participation à l’appel interlocutoire interjeté par la Défense à l’encontre de la décision de la Chambre de première instance III du 28 juillet 2010”, ICC-01/05-01/08-848.

⁶ Victims’ Application, para 6; victim status was granted in the following decisions: “Fourth Decision on Victims’ Participation”, 15 December 2008, ICC-01/05-01/08-320, pages 37-38, “Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties’ observations on applications for participation by 86 applicants”, ICC-01/08-01/05-699, 22 February 2010 para 23, “Corrigendum to the Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings”, ICC-01/05-01/08-807-Corr, 12 July 2010. ICC-01/05-01/08-807-Corr

victims' personal interests are affected by the issue of the detention of suspects and accused persons.⁷ Moreover, in light of the issues at stake in this appeal, and pursuant to article 68 (3) of the Statute which accords victims the right to be heard at all stages of the proceedings including interlocutory appeals, they consider their participation to be appropriate.⁸ Lastly, noting that the accused will in any event be able to respond to the Victims' observations, they contend that their participation would not be prejudicial to or inconsistent with the rights of the accused and a fair trial.⁹

5. On 16 August 2010, Mr Bemba and the Prosecutor filed their responses to the Victims' Application. Mr Bemba is opposed to the participation of the Victims in the present appeal on the basis that the Victims have not adequately demonstrated their personal interests in participating in this appeal and that the grounds of appeal address issues of a technical or procedural nature that do not affect their personal interests.¹⁰ The Prosecutor has no objection to the participation of the Victims, submitting that the issue on appeal "plainly affects the personal interests of the victims".¹¹

II. DETERMINATION BY THE APPEALS CHAMBER

6. For the following reasons, the Appeals Chamber decides that the Victims may participate in the present appeal.

7. The Appeals Chamber has consistently held that with respect to victims' participation in appeals brought under article 82 (1) (b) of the Statute, the following four cumulative criteria must be fulfilled: (i) the individuals seeking participation must be victims in the case; (ii) their personal interests must be affected by the issues on appeal; (iii) their participation must be at an appropriate stage of the proceedings; and lastly (iv) the manner of participation should neither cause prejudice to nor be inconsistent with the rights of the accused and a fair and impartial trial.¹²

⁷ Victims' Application, paras 13-14.

⁸ Victims' Application, paras 18-20.

⁹ Victims' Application, para 25.

¹⁰ "Réponse de la Défense à la requête du Bureau du Conseil Public pour les Victimes (BPCV) du 5 Août 2010", ICC-01/05-01/08-853, para 4.

¹¹ "Prosecution's response to request by victims to participate in appeal against the 'Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence'", ICC-01/05-01/08-854, para 10.

¹² "Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo'", 13 February 2007, ICC-01/04-01/06-824, para 44-45, and "Reasons for the 'Decision on the Participation

8. In the present case, all four criteria for participation are fulfilled. As to the first criterion, the Appeals Chamber notes that the Trial Chamber has recognised the Victims as victims in the case against Mr Bemba.¹³

9. As to their personal interests, the Appeals Chamber recalls that “any determination [...] of whether the personal interests of victims are affected in relation to a particular appeal will require careful consideration on a case-by-case basis”.¹⁴ Furthermore the Appeals Chamber has emphasised that “[i]n seeking to demonstrate that their personal interests are affected, victims should generally ensure, *inter alia*, that express reference is made to the specific facts behind their individual applications, and the precise manner in which those facts are said to fall within the issue under consideration on appeal.”¹⁵

10. In the present case, the Appeals Chamber notes that the Victims’ submissions on their personal interests are limited to a re-statement of the Appeals Chamber’s previous fact-specific jurisprudence and that they do not indicate its specific relevance to the issues under consideration in the present appeal. The facts or issues underlying one appeal on interim release may be different from another and thus it is necessary for victims, in future applications, to demonstrate with sufficient particularity and clarity the link between the specific issues on appeal and the effect of such issues on their personal interests. Notwithstanding this concern, the Appeals Chamber observes that the subject-matter of the present appeal involves a review of a decision denying the release of Mr Bemba, on the basis that (i) there are no changed circumstances warranting his release and (ii) that his detention is necessary to ensure his appearance at trial. The Appeals Chamber recalls that it has previously held that where the

of Victims in the Appeal against the “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”, 20 October 2009, ICC-01/05-01/08-566 OA 2, para 15.

¹³ *Supra*, note 6.

¹⁴ *Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, “Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the ‘Directions and Decision of the Appeals Chamber’ of 2 February 2007”, 13 June 2007, ICC-01/04-01/06-925 OA 8, para. 28.

¹⁵ “Decision on the Participation of Victims in the Appeal”, 27 October 2008, ICC-02/04-01/05-324 OA 2 para. 13; “Decision on Participation of Victims in the Appeal”, 27 October 2008, ICC-02/04-164 OA, para. 11; and “Reasons for the ‘Decision on the Participation of Victims in the Appeal against the ‘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’”, 20 October 2009, ICC-01/05-01/08-566 OA 2, para 15.

underlying issue on appeal was whether the accused would stand trial, this issue affects a victim's personal interest. This is because if an accused does not appear for trial, the victim will neither have an opportunity to present his or her views and concerns nor present a claim for reparations against the accused, should he or she be convicted.¹⁶ For these reasons the Appeals Chamber is not persuaded by the arguments of Mr Bemba and finds that the issues on appeal will have an affect on the Victims' personal interests.

11. In addition, the Appeals Chamber considers that the present appeal is at a stage of the proceedings in which the participation of the Victims is appropriate, in particular, in light of the consequences that the outcome of the present appeal may have. As to the manner of participation, the Appeals Chamber considers that the participation of the Victims in the present appeal will be limited to the written presentation of their views and concerns with respect to their personal interests relating to the issues raised in this appeal, and therefore, is consistent with the rights of the accused and a fair and impartial trial. Furthermore, Mr Bemba and the Prosecutor will be permitted to reply to the Victims' views and concerns, in accordance with rule 91 (2) of the Rules of Procedure and Evidence.

Judge Sang-Hyun Song appends a separate opinion in relation to this decision.

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



Judge Akua Kuenyehia
Presiding Judge

Dated this 18th day of August 2010

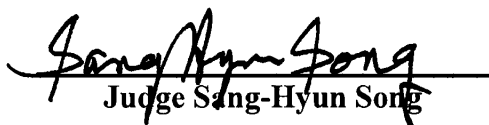
At The Hague, The Netherlands

¹⁶ *Prosecutor v. Thomas Lubanga Dyilo*, "Decision on the participation of victims in the appeal", 6 August 2008, ICC-01/04-01/06-1453 (OA 13), para 11.

Separate Opinion of Judge Sang-Hyun Song

I agree with the majority of the Appeals Chamber that the Victims who seek to participate in the present appeal should be allowed to make submissions. However, as constantly expressed since my first dissenting opinion of 13 February 2007,¹ I am still of the view that the victims have a right to make their submissions under regulation 64 (4) and (5) of the Regulations of the Court because they participated in the proceedings that gave rise to the present appeal. Therefore, in my opinion, there is neither a need for them to apply for participation, nor for the Appeals Chamber to rule on such applications.

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


Judge Sang-Hyun Song

Dated this 18th day of August 2010

At The Hague, The Netherlands

¹ *Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo’”, 13 February 2007, ICC-01/04-01/06-824 (OA7), pp. 54-57.