

**Cour
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**International
Criminal
Court**



Original: **English**

No.: **ICC-01/05-01/08 OA7**

Date: **11 July 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

Confidential

**Consolidated Prosecution's response to requests by victims to participate in appeal
against the "*Decision on Applications for Provisional Release*" (ICC-01/05-01/08-
1565-Conf)**

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

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Introduction

1. Jean-Pierre Bemba Gombo ("Appellant") appeals the Trial Chamber III's decision of 27 June 2011 denying the Appellant's applications for release and ordering that he remain in custody.
2. Victims represented by Ms Douzima-Lawson and Mr Zaramboud Assingambi ("Legal Representatives"), seek to participate in the appeal proceedings (OA7) and submit that they fulfil the criteria for participation in this instance.
3. Given the nature of the issue in this appeal, and in line with the Appeals Chamber's prior jurisprudence, the Prosecution does not oppose the applications.

Procedural Background

4. On 27 June 2011 Trial Chamber III issued its "Decision on Applications for Provisional Release" ("Decision"), whereby it rejected the three applications for release filed by the Appellant.¹
5. On 29 June 2011, the Appellant filed an appeal against the Decision.² On 1 July 2011, the Appellant filed his document in support of the appeal against the Decision.³ The Prosecution has filed its response on 11 July 2011.
6. On 7 July 2011, the Legal Representatives of the victim applicants filed two requests to participate in this appeal on the victims' behalf ("Victims' Requests").⁴
7. With the Appeals Chamber's authorization,⁵ the Prosecution hereby files its response to the Victims' Requests.⁶

¹ ICC-01/05-01/08-1565-Conf.

² ICC-01/05-01/08-1573-Conf.

³ ICC-01/05-01/08-1586-ConfOA7 ("Appeal Brief").

⁴ ICC-01/05-01/08-1588-ConfOA7; ICC-01/05-01/08-1589-ConfOA7.

⁵ ICC-01/05-01/08-1587-ConfOA7. The Prosecution understands that the Appeals Chamber has decided to proceed on the basis of written submissions on expedited basis, and has not entertained the alternative request of the Appellant to make oral submissions (see Appeal Brief, para.41).

Submissions

8. The Appeals Chamber has set out the requirements for victims' participation in interlocutory appeals, which have been consistently applied.⁷ Accordingly, 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."⁸ The Appeals Chamber further requires that the victims demonstrate that: (i) the individual seeking participation is a victim in the case or situation out of which the appeal arises (an assessment to be made by a Pre-Trial or Trial Chamber);⁹ (ii) the individual has personal interests which are affected by the issues on appeal; (iii) the individual's participation is appropriate; and (iv) the manner of participation is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.¹⁰

(a) The applications meet the requirements for victims to participate in the appeal

9. Once victims have been admitted to participate in the relevant situation or case, they do not need to demonstrate again to the Appeals Chamber that they meet the definition of "victim" under Rule 85.¹¹ In the context of this case, the Trial Chamber has already recognized as victims the persons on whose behalf the Victims' Requests have been submitted.¹²

⁶ Pursuant to Regulation 23bis(2) of the Regulations of the Court, the Prosecution files this document confidentially as it responds to a document that bears the same confidential status.

⁷ "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." See ICC-01/04-01/06-824 OA7, para. 38, see also paras. 40, 43.

⁸ ICC-01/04-01/06-824 OA7, para. 40; ICC-01/04-503 OA4 OA5 OA6, para. 36; ICC-01/05-01/08-566 OA2, para. 14.

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

¹⁰ 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.

¹¹ ICC-01/04-01/06-824 OA7, paras. 44, 45; ICC-01/04-503 OA4 OA5 OA6, para. 92.

¹² The Appeals Chamber has requested legal representatives to indicate (1) the victims they are representing; and (2) the decisions that granted the victims such status. See: ICC-01/04-01/06-2555 OA17, para.13; ICC-01/04-01/07-2124 OA11, para.6 (on the need to specify the decisions). The Prosecution notes that Mr Zarambaud Assingambi has indicated the victims that he represents (see ICC-01/05-01/08-1589-Conf-Anx1) but it has not identified the decisions that awarded the victims such status. Ms Douzima-Lawson has indicated neither.

10. The Prosecution considers that the issue in this appeal, namely whether the Trial Chamber correctly decided that the Appellant remain in custody, plainly 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 victims.¹³
11. The Prosecution further considers it appropriate for victims to be allowed to present their views and concerns on the issues in this appeal. This is consistent with the Appeals Chamber's prior determination that it is appropriate for victims to participate in an appeal against a decision regarding the detention of an accused.¹⁴

(b) The modalities of participation

12. The Prosecution submits that the victims should be permitted to present their views and concerns regarding the issue under appeal in writing, through their Legal Representatives. 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."¹⁵
13. Furthermore, as mandated by Rule 91(2), the Prosecution and the Defence must have an opportunity to respond to the 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 rights of the Accused and a fair and impartial trial.¹⁶

¹³ "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).

¹⁴ ICC-01/04-01/06-824 OA7, para. 54; ICC-01/05-01/08-566 OA2, para.17.

¹⁵ ICC-01/04-503 OA4 OA5 OA6, para. 101; ICC-01/04-01/06-1335 OA9 and OA10, para. 50. See also ICC-01/04-01/06-824 OA7, para. 55: "Observations to be received by the victims [are] limited and [must be] specifically relevant to the issues arising in the appeal rather than more generally".

¹⁶ 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", ICC-01/04-01/06-824 OA7, para. 49.

Conclusion

14. For the reasons set out above, the Prosecution requests that the Appeals Chamber grant the Victims' Requests to participate in this appeal, in accordance with the modalities of participation proposed above.



Luis Moreno-Ocampo, Prosecutor

Dated this 11th day of July 2011

At The Hague, The Netherlands