

Pursuant to Appeals Chamber's order ICC-01/05-01/08-1781-Conf OA7, dated 23 September 2011, this document is reclassified as "Public"

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/05-01/08 OA 7

Date: 1 August 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

Decision on the Participation of Victims in the Appeal against the "Decision on Applications for Provisional Release" of Trial Chamber III

Partly Dissenting Opinion of Judge Song

shs

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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

Legal Representatives of Victims

Ms Marie-Edith Douzima-Lawson
Mr Assingambi Zarambaud

Registrar

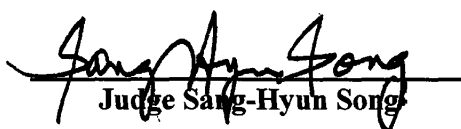
Ms Silvana Arbia

Shs

1. I append this partly dissenting opinion to the Appeals Chamber's "Decision on the Participation of Victims in the Appeal against the 'Decision on Applications for Provisional Release' of Trial Chamber III", which was issued on 14 July 2011.¹

2. As expressed in my Separate Opinion to the "Order on applications for victim participation" of 5 July 2011,² I disagree with the approach taken by the majority regarding victim participation in appeals brought under article 82 (1) (b) of the Statute. In my view, victims who have been permitted to participate in proceedings giving rise to an appeal under that provision are participants within the meaning of regulations 64 (4) and 65 (5) of the Regulations of the Court.³ As participants, they therefore have the right to file a response to the document in support of appeal. There is need neither for them to apply for participation nor for the Appeals Chamber to rule on such applications. Accordingly, the majority erred in denying participation to the victims covered by the application of Ms Marie-Edith Douzima-Lawson.⁴ Previously recognized participants are entitled to continue their involvement in the proceedings; the adequacy of the application is irrelevant and has no impact upon the victims' right to participate. For these same reasons I agree that the victims covered by the application of Mr Zarambaud Assingambi⁵ are entitled to participate before the Appeals Chamber.

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



Judge Sang-Hyun Song

¹ ICC-01/05-01/08-1597-Conf (OA 7).

² ICC-01/05-01/08-1587-Conf (OA 7), p. 6.

³ As constantly expressed since my first dissenting opinion in *Prosecutor v. Thomas Lubanga Dyilo*, "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 (OA 7), pp. 55-57.

⁴ "Réponse de la Représentante légale de victimes à 'Order on applications for victim participation'", 7 July 2011, ICC-01/05-01/08-1588-Conf.

⁵ "Demande du Représentant légal de victimes, Maître Zarambaud Assingambi à participer aux procédures d'appel", 7 July 2011, ICC-01/05-01/08-1589-Conf.

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Dated this 1st day of August 2011

At The Hague, The Netherlands