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

Date: 26 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**

Public redacted version

Defence response to the "Observations du Représentant légal Maître Zarambaud Assingambi sur le « Document of Defense Appeal against Trial Chambre III's Decision on Applications of Provisional Release Dated 27 June 2011 » Présenté par la Défense du Sieur Jean-Pierre Bemba Gombo"

Source: Defence for Mr Jean-Pierre Bemba Gombo

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

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Legal Representatives of Victims

Mr Zarambaud Assingambi

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

Republic [REDACTED]

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Ms Silvana Arbia & Mr Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

A. INTRODUCTION

1. On 29 June 2011, the Defence filed its “Notice of Appeal” against the decision of Trial Chamber III (“Trial Chamber”) of 27 June 2011.¹

2. On 1 July 2011, the Defence filed its “Document in support of Defence Appeal against Trial Chamber III's decision on Applications for Provisional Release”.²

3. On 14 July 2011, the Appeals Chamber authorised one of the Legal Representative for Victims to participate in the appeal process initiated by the Defence. The Appeals Chamber ordered the Legal Representative in question to file his observations by 20 July 2011.³

4. On 15 July 2011, the Legal Representative for Victims filed a request for an extension of time, and the provision of a French version of the “Document in support of Defence Appeal against Trial Chamber III's decision on Applications for Provisional Release.”⁴

5. On 19 July 2011, this request was rejected by the Appeals Chamber.

6. On 20 July 2011, the Legal Representative filed his observations on the “Document in support of Defence Appeal against Trial Chamber III's decision on Applications for Provisional Release.”

¹ ICC-01/05-01/08-1573-Conf OA7 : Notification d'Appel de la Défense contre la décision de la Chambre de Première Instance III du 27 Juin 2011 intitulée "Decision on Applications for Provisional Release".

² ICC-01/05-01/08-1586-Conf - OA7 - Document in support of Defence Appeal against Trial Chamber III's decision on Applications for Provisional Release, dated 27 June 2011.

³ ICC-01/05-01/08-1597-Conf OA7: Decision on the Participation of Victims in the Appeal against the "Decision on Applications for Provisional Release" of Trial Chamber III.

⁴ ICC-01/05-01/08-1602-Conf + An OA7 - Requête aux fins de communication de la version française du document d'appel de la défense, ainsi que de la décision d'appel du 14 juillet 2011 et subséquemment de prorogation du délai de dépôt des observations du Représentant légal soussigné, du 15 juillet 2011.

B. SUBMISSIONS

7. The Defence notes at the outset that its request for permission to travel to the territory of the Democratic Republic of Congo remains valid and pending. This follows from the letter of the “*Commission électorale Nationale et indépendante*” (“CENI”), which provides that Mr. Bemba continues to retain the possibility of enrolling to vote; the final cut-off date not having yet been fixed, and the possibility that this could be in the month of August or September 2011:

*« Toutefois, il est possible d’acquérir la qualité d’électeur pour se faire identifier et enrôler lors du dépôt de sa candidature (Art. 9 point 5 de la Loi No. 06/0006 du 9 Mars 2006 pour tant organisation des élections présidentielles, législatives, provinciales, urbaines, municipales et locales). A toutes fins utiles, nous joignons à la présente le calendrier électoral publié par notre institution le 30 avril 2011 ».*⁵

8. As such, the claim by the Legal Representative that the Defence request has become moot⁶ is without foundation.

9. The Defence also notes that the Legal Representatives submissions should be dismissed as irrelevant, as they neither relate to nor address the specific errors of law and fact raised by the Defence in its three grounds of appeal.⁷

10. The Defence firstly argued that the Trial Chamber erroneously evaluated the guarantees provided by [REDACTED], which should have been read together with the correspondence provided by the Defence which addressed the specific measures which would be taken in order to negate the accused’s risk of flight.⁸

11. The Legal Representative failed to comment on this ground of appeal raised by the Defence, but rather provided observations on the alleged trial of a politician

⁵ ICC-01/05-01/08-1501-Conf-AnxA, 10-06-2011, 3/4 FB, point 6. See also « Document in support of Defence Appeal against Trial Chambers III’s Decision on Applications for Provisional Release, date 27J’une 2011, ICC-01/05-01/08-1586-Conf, 01-07-2011 17/18 EO T OA7, para. 39.

⁶ ICC-01/05-01/08-1609-Conf 20-07-2011 6/9 FB T OA7, para. 14.

⁷ Document in support of Defence Appeal against Trial Chamber III’s decision on Applications for Provisional Release, dated 27 June 2011, ICC-01/05-01/08-1586-Conf.

⁸ Idem, para 2 to 19

living in [REDACTED],⁹ which has no connection to the grounds raised by the Defence in its appeal. The Legal Representative merely described a guarantee provided by [REDACTED], without providing any justification for the conclusion which it subsequently reached.

12. As its second ground of appeal, the Defence argued that the Trial Chamber erred in finding a possibility that, if released, the accused may interfere with witnesses, without identifying any foundation or basis for this conclusion, in a manner inconsistent with the jurisprudence of both the ICTY and the ICC.¹⁰

13. The Legal Representative failed to respond to this ground of appeal, and merely made a general assertion that the provisional release of Mr. Bemba would endanger the victims he represents.¹¹ This assertion was completely unfounded, and no explanation or logical reasons were given in support of the conclusion.

14. Finally, in its third ground of appeal, the Defence submitted that the Trial Chamber committed an error of law by failing to consult with the Democratic Republic of Congo as required by Rule 119(3). The Defence also contested the Chamber's finding that no legal basis was given for its request for authorisation for Mr. Bemba to travel to the Democratic Republic of Congo, given that the Defence relied on Article 25 of the International Covenant on Civil and Political Rights, together with Articles 21 and 64 of the Rome Statute of the International Criminal Court.¹²

15. The Legal Representative has failed to adequately respond to the abovementioned errors of law and fact raised by the Defence in its third ground of appeal, and has merely speculated about prior political events in the Democratic

⁹ ICC-01/05-01/08-1609-Conf 20-07-2011 6/9 FB T OA7, para. 18.

¹⁰ Document in support of Defence Appeal against Trial Chamber III's decision on Applications for Provisional Release, dated 27 June 2011, ICC-01/05-01/08-1586-Conf, para 20 to 31

¹¹ ICC-01/05-01/08-1609-Conf 20-07-2011 7/9 FB T OA7, para. 32 to 40

¹² Document in support of Defence Appeal against Trial Chamber III's decision on Applications for Provisional Release, dated 27 June 2011, ICC-01/05-01/08-1586-Conf, para. 36.

Republic of Congo from which he draws conclusions which are irrelevant to the arguments presented by the Defence.

For all of the above reasons,

16. The Defence respectfully requests that the Appeals Chamber reject the observations of the Legal Representative for Victims and grant the relief requested in the “Document in support of Defence Appeal against Trial Chambers III’s Decision on Applications for Provisional Release, date 27 June 2011. »



Aimé Kilolo Musamba
Associate Counsel

Dated this Tuesday, 26th of July 2011

At The Hague, The Netherlands