



Original: **English**

No.: **ICC-01/05-01/08 OA9**

Date: **20 December 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

Prosecution's response to "Application of Legal Representative of Victims Mr Zarambaud Assingambi for leave to participate in the appeals proceedings following the Defence appeal of 27 September 2011" (ICC-01/05-01/08-1817-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

Counsel for the Defence

Mr Nkwebe Liriss

Mr Aimé Kilolo-Musamba

Legal Representatives of Victims

Ms Marie Edith Douzima-Lawson

Mr Assingambi Zarambaud

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. Jean-Pierre Bemba Gombo (“Appellant”) appeals the Trial Chamber III’s decision of 26 September 2011 denying the Appellant’s application for release and ordering that he remain in custody.
2. Victims represented by Mr Zarambaud Assingambi (“Legal Representative”), seek to participate in the appeal proceedings (OA9) 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 application.

Procedural Background

4. On 26 September 2011, the Trial Chamber issued its decision following the OA7 Appeal’s Judgment, whereby it rejected the application for release filed by the Appellant (“the Decision”).¹
5. On 27 September 2011, the Appellant filed an appeal against the Decision.² On 3 October, the Appellant filed his document in support of the appeal against the Decision.³ The Prosecution filed its response on 10 October 2011.⁴
6. On 4 October 2011, the Legal Representative of the victim applicants, Mr Zarambaud Assingambi, filed a request to participate in this appeal on behalf of the victims that he represented (“Victims’ Request”).⁵
7. With the Appeals Chamber’s authorization,⁶ the Prosecution hereby files its response to the Victims’ Request.

¹ ICC-01/05-01/08-1789-Red.

² ICC-01/05-01/08-1793-RedOA9.

³ ICC-01/05-01/08-1812-ConfOA9.

⁴ ICC-01/05-01/08-1836-ConfOA9.

⁵ ICC-01/05-01/08-1817-ConfOA9. On 11 October an English translation (ICC-01/05-01/08-1817-Conf-tENGOA9) was notified to the parties.

⁶ ICC-01/05-01/08-1837-ConfOA9.

Confidentiality Level

8. Pursuant to Regulation 23*bis*(2) of the Regulations of the Court, the Prosecution files this document confidentially as it is responding to a document with same level of confidentiality and the filing contains references to [REDACTED].⁷

Submissions

9. The Appeals Chamber has set out the requirements for victims' participation in interlocutory appeals, which have been consistently applied:⁸ 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."⁹ 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);¹⁰ (ii) the individual has a personal interest which is 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.¹¹

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

10. 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

⁷ ICC-01/05-01/08-1781-ConfOA7- [REDACTED]

⁸ "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.

⁹ 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.

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

¹¹ ICC-01/05-01/08-1597OA7, para.7; ICC-01/04-01/06-1335OA9 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.

definition of “victim” under Rule 85.¹² In this case, the Trial Chamber has already recognized as victims the persons on whose behalf this Victims’ Request is submitted.¹³

11. The Prosecution considers that the issue in this appeal, namely whether the Trial Chamber correctly decided that the Appellant should remain in custody, does affect the personal interests of the victims.¹⁴ The Appeals Chamber has previously recognised that issues arising in an appeal regarding interim release of an accused affect the personal interests of victims.¹⁵
12. The Prosecution further considers it appropriate for victims to be allowed to present their views and concerns on the issues in this appeal at this stage of the proceedings.¹⁶

(b) The modalities of participation

13. 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 Representative. 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.”¹⁷
14. 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

¹² ICC-01/04-01/06-824 OA7, paras. 44, 45; ICC-01/04-503 OA4 OA5 OA6, para. 92.

¹³ 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-01/04-01/06-2555OA17, para.13; ICC-01/04-01/07-2124OA11, para.6 (on the need to specify the decisions). The Prosecution notes that the Legal Representative indicated the victims that he represents (see ICC-01/05-01/08-1817-Conf-Anx1). In ICC-01/05-01/08-1597OA7, para.8, the Appeals Chamber noted that the Trial Chamber had recognized these Victims as victims in the case against the Appellant.

¹⁴ The Legal Representative presents several arguments to support that the Decision affects the Victims’ interests: see Victims’ Request, paras.17-22.

¹⁵ ICC-01/05-01/08-1597OA7, para.10. See also ICC-01/04-01/06-824OA7, para.54; ICC-01/04-01/06-1452 OA12, para.9.

¹⁶ ICC-01/05-01/08-1597OA7, para.11; ICC-01/04-01/06-824 OA7, para.54; ICC-01/05-01/08-566OA2, para.17.

¹⁷ ICC-01/04-503 OA4 OA5 OA6, para.101; ICC-01/04-01/06-1335 OA9 and OA10, para.50; ICC-01/05-01/08-1597OA7, para.12. See also ICC-01/04-01/06-824OA7, 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”.

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.¹⁸

Conclusion

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



Luis Moreno-Ocampo,
Prosecutor

Dated this 20th day of December 2011

At The Hague, The Netherlands

¹⁸ 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. See also ICC-01/05-01/08-1597OA7, para.12.