

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

Public

Public Redacted Version of Prosecution's Response to the Defence "*Demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d'accomplir ses devoirs civiques en République Démocratique du Congo*" (ICC-01/05-01/08-1661-Conf)

Source: The Office of the Prosecutor

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

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I. Introduction

1. On 24 August 2011, the Defence submitted an urgent filing requesting that Mr. Jean-Pierre Bemba Gombo (“Accused”) be granted temporary provisional release to the Democratic Republic of the Congo (“DRC”), prior to 5 September 2011, for a total period of 15 hours in order to obtain a voting card and register his candidacy for the upcoming presidential and parliamentary elections (“Defence Application”).¹ The Defence advances that the physical presence of the Accused for a maximum period of one hour on the territory of the DRC is a necessary pre-requisite for registration, which has been extended to 5 September 2011 as the last day of registration.² The Defence Application, grounded in Article 60(3) of the Rome Statute (“Statute”), asserts that the letter of 22 August 2011 from the President of the DRC Senate constitutes a material change in circumstances as it represents the DRC government’s lack of objection and therefore agreement that the Accused can enter its territory to register at the time of submitting his application.³

2. The Office of the Prosecutor (“Prosecution”) opposes the Defence Application and submits that it essentially amounts to a request for reconsideration of Trial Chamber III (“Chamber”)’s decision on the same issue,⁴ which was recently upheld by the Appeals Chamber.⁵ The Prosecution submits that although the letter from the Senate

¹ ICC-01/05-01/08-1639-Conf + Conf-Anxs A~C & Conf-Anx1, *Demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d’accomplir ses devoirs civiques en République Démocratique du Congo*, 24 August 2011, at para. 1.

² ICC-01/05-01/08-1639-Conf, at paras. 2 and 3.

³ ICC-01/05-01/08-1639-Conf, at para. 5; ICC-01/05-01/08-1639-Conf-AnxB.

⁴ ICC-01/05-01/08-1565-Conf, Decision on Applications for Provisional Release, 27 June 2011.

⁵ ICC-01/05-01/08-1626-Conf OA7, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled “Decision on Applications for Provisional Release”, 19 August 2011, at paras. 84 and 85.

President constitutes a new fact,⁶ it has no bearing on the conditions justifying detention under Article 58(1) of the Statute and thus does not warrant a modification of the Accused's detention.⁷ In fact, it is irrelevant to the Defence Application as the Chamber determined that the Accused "constitutes a flight risk" which would be heightened if he were released "to a State in which he enjoys considerable power and influence" and thus declined to exercise its discretion to consider conditional release.⁸ Moreover, the Prosecution is concerned that the temporary provisional release of the Accused to the DRC at this stage of the trial could endanger the court's proceedings by increasing the possibility of threats or interference with witnesses.⁹ Consequently, the detention of the Accused should be continued.

3. Pursuant to Regulation 24(1) of the Regulations of the Court ("Regulations") and the Chamber's order,¹⁰ the Prosecution hereby submits its response.

II. Request for confidentiality

4. The Prosecution requests that this document be received as "Confidential" as it responds to the Defence Application which is currently classified as confidential.

III. Prosecution's response

⁶ The Prosecution challenges that the Senate President – a political ally of the Accused - is the competent authority to provide observations on behalf of the DRC on this issue.

⁷ ICC-01/05-01/08-1565-Conf, at para. 58: [REDACTED]

⁸ ICC-01/05-01/08-1565-Conf, at para. 71.

⁹ ICC-01/04-01/07-572 OA6, Judgment In the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre- Trial Chamber I on the Application of the Appellant for Interim Release, 09 June 2008, at para. 21: "What may justify arrest (and, in this context, continued detention) under article 58(1)(b) of the Statute is that it must 'appear' to be necessary. The question revolves around the possibility, not the inevitability, of a future occurrence".

¹⁰ ICC-01/05-01/08-1649-Conf, Decision requesting observations on, and setting a briefing schedule for, the "*Demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d'accomplir ses devoirs civiques en République*", 25 August 2011, at para. 6 (a).

5. At the outset, in light of the fact that it has previously provided observations on the same issue, the Prosecution incorporates those submissions herein.¹¹ The letter from the President of the DRC Senate, which the Defence submits constitutes a material change in circumstances, merely states that the Deputy Prime Minister of the DRC believes that the Accused can enter DRC territory in order to register on the electoral roll and submit his candidacy. The Prosecution submits that this letter is irrelevant. Release was not previously denied because the Chamber was unsure whether the Accused could lawfully return to the DRC; the Chamber explained instead that [REDACTED].¹²

6. Additionally, far from providing an agreement to the Defence request, the letter neither articulates willingness nor the ability of the DRC government to enforce conditions to ensure that the Accused returns to the seat of the Court and prevent any possible interference with witnesses. In fact, the letter from the Senate President does not address the issue which was specifically requested in the Defence letter, concerning the implementation of security and monitoring mechanisms.¹³ Therefore, as noted above, the letter does not change the reasons underpinning the Chamber's decision not to exercise its discretion to grant temporary provisional release. The record and previous submissions show that the Accused still remains a flight risk. As a result, the issue of seeking observations from the DRC authorities or convening a status conference to discuss modalities of the Accused possible transfer does not arise.¹⁴

¹¹ [REDACTED]

¹² ICC-01/05-01/08-1565-Conf, at para. 71.

¹³ ICC-01/05-01/08-1639-Conf-AnxA.

¹⁴ ICC-01/05-01/08-1626-Conf OA7, at para. 82: "The Appeals Chamber finds Mr Bemba's submissions that the Trial Chamber erred in failing to seek the views of the DRC before dismissing the Third Requests to be without merit", "... rule 119(3) does not apply to requests for interim release generally, but to a situation where a Chamber is considering the *conditional* release of a detained person or the amendment of conditions already imposed", and "Since conditions of release were not being considered, the Chamber was not obliged to seek views under rule 119(3) of the Rules of Procedure and Evidence". See also, ICC-01/05-01/08-1565-Conf, at paras. 71 and 73.

7. Conversely, the Defence Application confirms the Prosecution's previous submissions that the Accused has access to the necessary means to abscond and further supports the Chamber's decision that the Accused remains a flight risk.¹⁵

8. Lastly, the Prosecution submits that temporary provisional release of the Accused to the DRC will increase the possibility of further threats to witnesses and therefore obstruct court proceedings.

IV. Conclusion

9. In light of the foregoing, the Prosecution respectfully requests the Chamber to reject the Defence Application.



Luis Moreno-Ocampo, Prosecutor

Dated this 12th Day of September 2011

At The Hague, The Netherlands

¹⁵ ICC-01/05-01/08-1639-Conf, at para. 27: "Les membres de famille et les amis de Monsieur Jean-Pierre Bemba Gombo prendront en charge les frais afférents au transfert et au voyage qui pourrait être organisé"