

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05-01/08**
Date: **12 December 2014**

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 Document

Prosecution's Response to the Defence Urgent Motion for Provisional Release

Source: The 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

Ms Fatou Bensouda

Mr James Stewart

Mr Jean-Jacques Badibanga

Counsel for the Defence of Jean-Pierre Bemba

Mr Peter Haynes

Ms Kate Gibson

Ms Melinda Taylor

Legal Representatives of Victims

Ms Marie-Edith Douzima-Lawson

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

Mr Xavier-Jean Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Other Section

I. Introduction

1. On 5 December 2014, the Defence of Jean-Pierre Bemba Gombo ("Accused") filed an urgent motion seeking provisional release of the Accused to either Portugal or Belgium for the period of deliberations, pending the issuance of the Judgement or, in the alternative, for the period of the upcoming winter judicial recess and during the weekends for the duration of the deliberations period ("Defence Motion").¹

2. The Defence identifies changed circumstances as being that the trial process has now been completed; there exists an agreement between the ICC and Belgium to facilitate the release of detainees into Belgian territory; the delay in the resolution of Bemba's submissions on abuse of process, and his request for a stay of proceedings. The Defence further argues that the Accused does not pose a danger to victims, witnesses or any other person and does not constitute a flight risk.

3. Contrary to the Defence assertions, no changed circumstances exist. The factual findings previously considered by Trial Chamber III ("Chamber")² and upheld by the Appeals Chamber,³ remain unaltered. The Accused's continued detention is therefore still necessary. The conditions of release proposed by the Defence do not sufficiently mitigate his flight risk.

4. The Defence Motion should be rejected in its entirety.

¹ ICC-01/05-01/08-3211, "Defence Urgent Motion for Provisional release", 5 December 2014, para. 11.

² ICC-01/05-01/08-2034-Red, Public Redacted Version of the 6 January 2012 Decision on the defence's 28 December 2011 "Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo", 19 January 2012.

³ ICC-01/05-01/08-2151-Conf, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 6 January 2012 entitled "Decision on the defence's 28 December 2011 'Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo'", 5 March 2012.

II. Submissions

5. A Chamber may modify an earlier order on detention pursuant to Article 60(3) of the Rome Statute ("Statute") only if it is satisfied that changed circumstances so require". The Appeals Chamber has specified that "the requirement of changed circumstances imports either a change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary." ⁴

6. The Chamber previously held that the Accused's detention was necessary to ensure his appearance at trial based on the following factors, which indicate that Bemba constituted a flight risk: (i) the final dismissal of the Defence's challenge to the admissibility of the case and the commencement of the trial; (ii) the gravity of the charges confirmed against the accused; (iii) the potential substantial sentence in case of conviction; and (iv) the financial and material support from which the Accused benefits.⁵

7. These factors remain unaltered. The Defence has identified no changed circumstances that would warrant the Accused's provisional release.

8. The Defence incorrectly argues, *inter alia*, that the Accused's detention is no longer needed to ensure his appearance at trial, as the trial process has now concluded.⁶ The jurisprudence of this Court clearly establishes that the trial continues during the

⁴ ICC-01/05-01/08-1019 OA4, Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo against the Decision of Trial Chamber III of 28 July 2010 entitled "Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence, 19 November 2010, para. 52.

⁵ ICC-01/05-01/08-2034-Red, paras. 7 and 8.

⁶ ICC-01/05-01/08-3211, para. 35.

deliberations.⁷ Indeed, the fact that the Accused is now closer to receiving the judgment on the charges against him, in itself *increases* his risk of absconding to avoid a potentially long sentence in case of a conviction.

9. In substantiating its interim release request during the deliberations period, the Defence speculates that there will be a relatively lengthy period of deliberations.⁸ However, the Defence's estimate that the judgment will be delivered in the summer of 2015 is unfounded and cannot justify an interim release request.

10. The Defence further portrays as a changed circumstance the existence of an agreement between the ICC and Belgium to facilitate the release of detainees to Belgium.⁹ The Chamber has already considered the Accused's prior requests for interim release based on guarantees provided by a State, and has found that those guarantees did not warrant interim release.¹⁰ The agreement between the ICC and Belgium should likewise have no bearing on the fact that the Accused continues to pose a flight risk and should not alter any of the factors upon which the Chamber based its previous detention decisions.

11. The Defence also argues that the delay in resolving Mr. Bemba's submissions on an alleged abuse of process is another changed circumstance which warrants the Accused's

⁷ See, for example, the Appeals Chamber's Judgment on the Decision on the implementation of Regulation 55 in the case of *The Prosecutor v. Katanga*, ICC-01/04-01/07-3363 OA13, 27 March 2013, paras. 17, 20: "Pursuant to Regulation 55 (2) of the Regulations of the Court, notice of a possible re-characterization may be given 'at any time during the trial'". The Appeals Chamber observed that, at the time the Impugned Decision was rendered, the trial was at the deliberations stage and no decision under Article 74 of the Statute had yet been rendered. Furthermore, nothing in the Statute, the Rules of Procedure and Evidence or the RoC prevents the Trial Chamber from re-opening the hearing of evidence at the deliberations stage of the proceedings. The Appeals Chamber therefore concluded that, for the purposes of Regulation 55 of the RoC, the trial was ongoing at that time. The timing of the Impugned Decision was therefore not incompatible with Regulation 55 of the RoC."

⁸ ICC-01/05-01/08-3211, para. 39.

⁹ ICC-01/05-01/08-3211, para. 40.

¹⁰ ICC-01/05-01/08-2034-Red. para.9.

provisional release.¹¹ However, this argument wrongly seeks to convert the Defence's own breach of Regulation 37 of the Regulations of the Court (RoC) – through filing an application which significantly exceeded the 20 page limit¹² – into a circumstance now justifying the Accused's interim release. Such a breach of the regulations by the Defence cannot result in the Accused's provisional release, and this argument is evidently without merit.

12. In arguing that the Accused does not pose a danger to victims, witnesses or any other person, the Defence notes that the "trial has now finished" and that the Accused would be located far from all victims and witnesses. The Prosecution opposes the Defence contention. The trial has not "finished," and victims and witnesses living in the Central African Republic ("CAR") are still exposed and vulnerable to potential threats and revenge. Some witnesses are living in places other than the CAR and could be even more accessible by the Accused, if released. In any event, the Defence's argument does not assist him as the Chamber's previous detention decision¹³ was based on his flight risk, a factor which the Defence has not shown to have changed so as to warrant provisional release.

13. Nothing in the Defence submissions justifies a modification of the previous Chamber's findings that the Accused remains a flight risk. The Defence relies on the fact that he has no prior criminal record, has significant responsibilities as the head of his family,¹⁴ and is willing to provide personal guarantees.¹⁵ However, the fact that he has no prior criminal record cannot mitigate the established risk of his flight. Nor do any

¹¹ ICC-01/05-01/08-3211, paras. 48-50.

¹² ICC-01/05-01/08-3203-Conf, Defence Request for Relief for Abuse of Process, 11 November 2014.

¹³ ICC-01/05-01/08-2022-Red, Public redacted version of the 19 December 2011 Decision on the «Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo», 3 January 2012, para 14.

¹⁴ ICC-01/05-01/08-3211, paras 53 and 54.

¹⁵ ICC-01/05-01/08-3211, para 55.

personal guarantees he could give mitigate the flight risk. Most significantly, the Accused's trial is still ongoing and the gravity of the charges against him has not changed. Nor has the related possibility of a long term of imprisonment, in case of conviction. Finally, there is no suggestion that the Accused's access to financial and material support has decreased.¹⁶

14. In addition, as a further factor to be considered when assessing the Accused's flight risk, Pre-Trial Chamber II in *Prosecutor v. Jean-Pierre Bemba Gombo et al* recently confirmed charges against Bemba for offences against the administration of justice.¹⁷ These confirmed charges point to a central role played by Bemba in planning and coordinating activities amounting to Article 70 offences. Therefore, in addition to a potential sentence in this case, the Accused is now facing another potentially long term of imprisonment in the related case. This new circumstance further increases the risk of flight, should the Accused be released.

15. Furthermore, although the Chamber has the discretion to order conditional release pursuant to Rule 119, it has previously declined to do so based on its determination that the Accused constitutes a flight risk. Nothing put forward by the Defence in its present motion establishes changed circumstances such that this determination should change.

16. To the contrary, Pre-Trial Chamber II in the related proceedings found substantial grounds to believe that Bemba committed offences against the administration of justice. As stated by the Appeals Chamber, any determination of whether or not a suspect or an accused is likely to abscond, necessarily involves an element of prediction.¹⁸ Although

¹⁶ ICC-01/05-01/08-3211, para 55.

¹⁷ ICC-01/05-01/13-749, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute, 11 November 2014, pages 47-48 ("Confirmation Decision").

¹⁸ ICC-01/04-01/06-824 OA7, 13 February 2007, para.137.

Bemba obviously enjoys the presumption of innocence, the fact that, after scrutiny of relevant evidence, the charges against him in the related case were confirmed, is significant, and impacts on the question of whether Bemba would abide by any order setting the terms of the release, or would rather abscond, if conditionally released. As the Appeals Chamber has found, "... the question revolves around the possibility, not the inevitability of a future occurrence".¹⁹ The above circumstances strongly suggest that the potential for Bemba to violate the terms of any conditional release and abscond is more than a possibility.

III. Requested relief

17. For the above reasons, the Prosecution respectfully requests that the Chamber reject the Defence Motion in its entirety.



Fatou Bensouda, Prosecutor

Dated this 12th Day of December 2014
At The Hague, The Netherlands

¹⁹ ICC-01/04-01/07-572 OA6, 9 June 2008, para.21.