

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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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**

**Response of the Legal Representative of Victims to the “Urgent Motion for  
Provisional Release”, ICC-01/05-01/08-3211**

**Source:** Ms Marie-Edith Douzima-Lawson, Legal Representative of Victims

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

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## I. INTRODUCTION

1. On 5 December 2014, the Defence for Mr Jean-Pierre Bemba Gombo filed an “Urgent Motion for Provisional Release”<sup>1</sup> (“the Motion”) requesting Trial Chamber III (“the Chamber”) to grant the Accused provisional release in Belgium or Portugal during the deliberations, until a judgment is rendered pursuant to article 74 of the Statute; or, alternatively, to grant the Accused provisional release during the winter judicial recess and at the weekends until a judgment is rendered.
2. On 8 December 2014, the Chamber ordered that any response to the Defence motion must be filed by 12 December 2014.<sup>2</sup>
3. The Legal Representative of Victims notes the opportunity that she is being given to respond to the Defence motion and, in this respect, refers to article 68(3) of the Statute, permitting the views and concerns of the victims to be presented where their personal interests are affected.

## II. SUBMISSIONS

4. The Legal Representative of Victims generally considers that the Defence’s submissions in its Motion to justify the merits of granting the Accused provisional release are based essentially on the length of time that Mr Jean-Pierre Bemba has been in detention.
5. The Legal Representative recalls the terms of articles 58(1)(b) and 60(3) of the Statute and argues that the Defence has not demonstrated that any changes of

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<sup>1</sup> “Urgent Motion for Provisional Release”, 5 December 2014, ICC-01/05-01/08-3211.

<sup>2</sup> *Order shortening the time limit for observations on “Urgent Motion for Provisional Release”*, ICC-01/05-01/08-3212, 8 December 2014.

circumstances have arisen since the most recent ruling of the Chamber on the matter.<sup>3</sup> The Defence's submissions, in particular those referring to the length of detention, indicate no changes of circumstance whatsoever since the most recent ruling of the Chamber on the matter. In this respect, it should be recalled that the Appeals Chamber had already decided that "the requirement of 'changed circumstances' imports either a change in some or all the facts underlying a previous decision on detention or a new fact satisfying a Chamber that a modification to its prior ruling is necessary".<sup>4</sup> The Legal Representative of Victims submits, therefore, that no change in circumstances which would justify granting the Accused provisional release has been identified.

6. On the contrary, several pieces of evidence tendered by the Prosecution to date militate in favour of Mr Jean-Pierre Bemba Gombo's continued detention, in view of the crimes with which he has been charged.

**A. The submission according to which the "end of the trial" is a change of circumstance**

7. The Legal Representative of Victims points out that the submission that the trial has ended and the presence of the Accused<sup>5</sup> is, therefore, no longer required is not relevant. From a strictly procedural and terminological perspective, the trial phase has not yet ended since the proceedings pertaining to reparations for victims, if the Accused is convicted, pursuant to article 75 of the Statute, and

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<sup>3</sup> ICC-01/05-01/08-1565-Conf, 27 June 2011.

<sup>4</sup> See *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'"*, and see also *Judgment on the appeal of the Prosecutor against Pre-Trial Chamber I's "Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa"* (Appeals Chamber), ICC-01/05-01/08-631-Red OA2, 2 December 2009, paras. 1 and 60; *Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 18(2) of the Rules of Procedure and Evidence* (Pre-Trial Chamber II), ICC-01/05-01/08-743, 1 April 2010, para. 26.

<sup>5</sup> Defence Motion, paras. 35-45.

those pertaining to sentencing under article 76 of the Statute appear in Part VI of the Rome Statute entitled "The trial". Accordingly, the trial has not ended and this submission must be dismissed.

8. Secondly, the Defence alleges that any consultation with its client during the deliberations could be carried out from a distance, whereas the Legal Representative of Victims points out that this is pure speculation as there is no reason in this case to infer that subsequent proceedings will not require the presence of the Accused. In addition, the possibility that consultations might be carried out at a distance between a Defence team and their client is not in itself a legal argument capable of calling into question the criteria set out in article 58(1)(b) of the Statute, does not provide sufficient grounds for an application to grant provisional release and must, therefore, be dismissed by the Chamber.

**B. The agreement between Belgium and the International Criminal Court on the interim release of detainees, cited as a changed circumstance**

9. In addition, the agreement between the Government of the Kingdom of Belgium and the International Criminal Court (ICC) on the interim release of detainees cannot be a valid argument for claiming "changed circumstances" within the meaning of article 60(3) of the Statute. The Legal Representative of Victims submits that the existence of this agreement does not guarantee that Mr Jean-Pierre Bemba will appear at future proceedings, nor that he will not obstruct ongoing proceedings before the Court; there are, therefore, grounds for his continued detention under article 58(1)(b) of the Statute. Furthermore, the Defence does not put forward any reasons why an agreement of this kind may be regarded as a changed circumstance specifically with respect to the Accused.
10. Accordingly the existence of this agreement alone does not make it possible to infer any changed circumstance and, therefore, does not warrant the Chamber's

attention when it assesses the request to grant the Accused provisional release. This submission must therefore be dismissed.

**C. The processing delays concerning the filings submitted by Mr Bemba with regard to abuse of process, cited as a changed circumstance**

11. In the view of the Legal Representative of Victims the delay alleged by the Defence in the processing of its abuse of process application is not relevant in this case.<sup>6</sup>
12. The Defence condemns the way in which its application requesting the suspension of proceedings is being processed and has been addressed by the Chamber. Without establishing any link between the delays alleged by the Defence and the merits of granting provisional release, the Defence summarily assumes that there has been a change of circumstance enabling the Accused to be granted provisional release during the deliberations.
13. The Legal Representative of Victims submits that even if the Defence's application requesting a suspension of proceedings had been processed more quickly, there is no reason at present to infer that Mr Jean-Pierre Bemba would have been granted provisional release. This submission does not provide specific reasons as to why the delay should be accepted as a changed circumstance grounding the provisional release of the Accused. This submission is not relevant in this case and must therefore be dismissed.

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<sup>6</sup> Defence Motion, paras. 48-50.

**D. With respect to the possible risk to the victims, witnesses and other persons were the Accused to be granted provisional release**

14. In addition, as the Legal Representative of Victims has already stated in previous filings,<sup>7</sup> the Accused still receives significant backing from his supporters and has access to considerable financial means, which the Chamber must bear in mind when it comes to assess the risks of provisional release to victims and witnesses, wherever the Accused is released.
15. The Legal Representative of Victims submits that the Defence claim based on the distance that would separate the Accused from the victims and witnesses is invalid. Present-day technical means, and the social and political network of contacts to which Mr Jean-Pierre Bemba Gombo continues to have access, are more than sufficient for protected persons to be put at risk.
16. In this respect, it might be recalled that the Single Judge in the case of *The Prosecutor v. Laurent Gbagbo* reaffirmed, in accordance with the established case law of this Court, that “the suspect's past and present political and professional position, international contacts and ties, financial situation and resources, and availability of the necessary network and financial resources are relevant factors to the determination of the existence of a risk of flight”.<sup>8</sup> In the light of this information, Mr Jean-Pierre Bemba Gombo still seems to enjoy support and have access to a political network. His financial situation and resources are also relevant to this case with regard to a ruling by the Chamber on the existence of a risk of flight.

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<sup>7</sup> See, *inter alia*, “Observations of the Legal Representatives of Victims regarding the review of the detention of Mr. Jean-Pierre Bemba Gombo”, ICC-01/05-01/08-703, 24 February 2010, para. 12; “Observations of the Legal Representative regarding the review of the detention of Mr. Jean-Pierre Bemba Gombo”, ICC-01/05-01/08-825, 15 July 2010, para. 15.

<sup>8</sup> *Decision on the “Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo”*, ICC-02/11-01/11-180-Red, 13 July 2012, para. 57. See also: *Ngudjolo* Judgment on Appeal, para. 21; *Bemba* Judgment on Appeal (OA), para. 5; *Lubanga* Judgment on Appeal, para. 136; *Bemba* Judgment on Appeal (OA), para. 5; and *Bemba* Judgment on Appeal (OA2), paras. 67 and 70.

17. In this respect, the Legal Representative of Victims draws the Chamber's attention to the strong influence that the Accused continues to exert within his party, as attested by a recent press article from Radio Okapi, the main information outlet in the Democratic Republic of the Congo, founded at the instigation and with the support of the United Nations through the Organization Mission in the Democratic Republic of the Congo (MONUC). The Chamber will see, in that article, that despite his detention the Accused was able to issue instructions to MLC officials at the time of a government reshuffle in the Democratic Republic of the Congo<sup>9</sup>, undeniable proof that his political authority remains effective.
18. In addition, the Legal Representative of Victims draws the Chamber's attention to the fact that article 68 of the Rome Statute refers specifically to the nature of crimes, in particular where the crime involves "sexual or gender violence or violence against children". In the present case, many of the crimes held against the Accused are of a sexual nature and have also been committed against minors. The Legal Representative submits that, even if the identity of the victims is protected, in practice victims are not always safe as many of them, including those also having witness status, might well be accessible.
19. Lastly, the Legal Representative of Victims repeats that the views expressed by victims during recent missions conducted in the Central African Republic strengthen the need for Mr Jean-Pierre Bemba to remain in detention. They all spoke of fears for their safety, which cannot be guaranteed, all the more so in view of the critical situation facing the country.

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<sup>9</sup> "DRC: MLC members in the new Government expelled from the party", Radio Okapi, 8 December 2014, "[TRANSLATION] The signatories of this declaration include three of the four deputy secretaries-general, **Fidèle Babala**, Jacques Lungwana and Alexis Lenga, with the support of other party officials. They claim that they are acting **on the orders of the MLC President, Senator Jean-Pierre, in detention at the ICC for six years**. The new ministers are rebuked for having agreed to take part in the Government 'without the agreement of the MLC or its leader, Bemba'" [<http://radiookapi.net/actualite/2014/12/08/rdc-les-membres-du-mlc-au-nouveau-gouvernement-exclus-du-parti/>], consulted on 11 December 2014.



20. The financial and human resources to which Mr Jean-Pierre Bemba has access would make it easy for him to contact the protected victims and witnesses directly or indirectly, putting them at genuine risk and endangering their physical and psychological well-being as well as their safety.

#### **E. The risk of flight by the Accused**

21. Lastly, the Defence submission that Mr Jean-Pierre Bemba could not abscond is not persuasive. The Legal Representative of Victims submits that the risk of flight persists. The seriousness of the charges against the Accused, the impending judgment and the potential for a substantial sentence in the event of conviction constitute powerful incentives for him to abscond, especially now that he faces parallel proceedings in case ICC-01/05-01/13.

22. In this respect, while the Legal Representative of Victims takes account of the Chamber's instructions not to refer to case ICC-01/05-01/13 here, it wishes to respond to the Defence submissions referring to procedures under article 70 to support its motion for provisional release.<sup>10</sup>

23. Although the Defence was unable to substantiate the exact relevance of submissions concerning proceedings initiated in case ICC-01/05-01/13, it concluded that there were grounds for granting the Accused provisional release.

24. However, these submissions have no legal basis with regard to the specific nature of the motion in which they were made. It is not possible to invoke parallel proceedings in which an accused person is involved to justify an application for provisional release, as in this case. The parallel proceedings preclude any finding of "changed circumstance" pursuant to article 60(3) of the Statute and in any event must be dismissed by the Chamber.

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<sup>10</sup> Defence Motion, paras. 16 *et seq.*

25. Indeed, the proceedings relating to case ICC-01/05-01/13 only provide further grounds for Mr Jean-Pierre Bemba Gombo to remain in detention in The Hague. Without any violation of his right to the presumption of innocence, the Legal Representative of Victims recalls that Pre-Trial Chamber II confirmed the charges against the Accused as recently as 11 November 2014 for: the offence of corruptly influencing witnesses; soliciting the commission of the offence of corruptly influencing witnesses; the offence of presenting false evidence; soliciting the commission of the offence of presenting false evidence with regard to several witnesses; and soliciting the commission by several witnesses of the offence of giving false testimony while under an obligation to tell the truth “[...] by way of planning and coordinating with the other suspects the perpetration of this offence”.<sup>11</sup>

26. This decision confirming the charges demonstrates that at this stage there are reasonable grounds to believe that Jean-Pierre Bemba may have committed the offences for which he has been charged. In any event this circumstance should be borne in mind by the Chamber to the extent that these offences were committed against witnesses called in these proceedings and it demonstrates that there are reasonable grounds to believe that the Accused could compromise the proper conduct of the proceedings. Consequently, if the Accused were to be granted provisional release the victims and witnesses of these proceedings would be put at genuine risk.

27. Lastly, the Legal Representative submits that the Accused must remain in detention since the conditions prescribed by article 58(1) of the Rome Statute continue to be met and no change has arisen since the most recent ruling of the Chamber on the matter, other than the confirmation of new charges against him, thereby providing an additional circumstance which the Chamber could consider,

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<sup>11</sup> Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute, ICC-01/05-01/13, 11 November 2014.

using its discretionary power, when assessing the risks that granting the Accused provisional release would create, if it deems it relevant in this case.

**IN THE LIGHT OF THE FOREGOING**, the Legal Representative of Victims respectfully requests the Chamber to:

**DISMISS** the Defence Motion in its entirety

[signed]

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Ms Marie-Edith Douzima-Lawson

Dated this 12 December 2014

At The Hague, The Netherlands