

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 23 December 2008

**PRE-TRIAL CHAMBER III**

**Before: Judge Ekaterina Trendafilova, Single Judge**

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

**Public Document**

**Decision Requesting Observations on the Defence's Application for Interim  
Release**

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

**The Office of the Prosecutor**

Fatou Bensouda, Deputy Prosecutor  
Petra Kneuer, Senior Trial Lawyer

**Counsel for the Defence**

Nkwebe Liriss  
Karim A. A. Khan  
Aimé Kilolo-Musamba

**Legal Representatives of the Victims**

Mr Nganatouwa Goungaye Wanifiyo  
Ms Marie Edith Douzima-Lawson

**Legal Representatives of the 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**

Competent authorities of  
the Republic of Portugal  
the Kingdom of Belgium  
the Kingdom of the Netherlands

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**Judge Ekaterina Trendafilova**, acting as Single Judge on behalf of Pre-Trial Chamber III (the “Chamber”) of the International Criminal Court (the “Court”)<sup>1</sup> received on 22 December 2008 an application for interim release with three annexes (the “Third Application”)<sup>2</sup> from the Defence of *Jean-Pierre Bemba Gombo* (“Mr Jean-Pierre Bemba”).

1. On 23 May 2008 the Chamber issued a warrant of arrest for Mr Jean-Pierre Bemba,<sup>3</sup> which was replaced by another warrant of arrest on 10 June 2008.<sup>4</sup>

2. On 24 May 2008 Mr Jean-Pierre Bemba was arrested in the Kingdom of Belgium and on 3 July 2008 he was surrendered and transferred to the seat of the Court where his first appearance took place before the Chamber on 4 July 2008.<sup>5</sup>

3. On 23 July 2008 the Defence filed a first “Application for interim release” in which it requested *inter alia* the immediate release of Mr. Jean-Pierre Bemba or, in the alternative, his interim release with or without conditions and to designate a host country for him.<sup>6</sup>

4. On 20 August 2008 Judge Hans-Peter Kaul, acting as single judge for the Chamber,<sup>7</sup> issued the “Decision on application for interim release” in which he rejected the Defence’s application and decided that Mr Jean-Pierre Bemba shall continue to be detained.<sup>8</sup>

5. On 3 November 2008 the Defence filed a second “Requête de Mise en Liberté Provisoire” (the “Defence’s Second Application”) in which it requested *inter alia* the release of Mr Jean-Pierre Bemba or alternatively his interim release, with or without

<sup>1</sup> « Decision Designating a Single Judge », ICC-01/015-01/08-293.

<sup>2</sup> « Demande de Mise en Liberté Provisoire » ICC-01/05-01/08-333-Conf; ICC-01/05-01/08-333-Conf-AnxA-C.

<sup>3</sup> ICC-01/05-01/08-1.

<sup>4</sup> ICC-01/05-01/08-15

<sup>5</sup> ICC-01/05-01/08-T-3-ENG ET.

<sup>6</sup> ICC-01/05-01/08-49, para. 33.

<sup>7</sup> ICC-01/05-01/08-53.

<sup>8</sup> ICC-01/05-01/08-73-Conf, p. 21.

conditions, to the Kingdom of Belgium or, in the alternative, to the Republic of Portugal or the Kingdom of the Netherlands.<sup>9</sup>

6. On 24 and 25 November 2008 the Registrar filed respectively the observations received from the Kingdom of Belgium<sup>10</sup> and the observations received from the Kingdom of The Netherlands.<sup>11</sup>

7. On 16 December 2008 Judge Ekaterina Trendafilova, acting as Single Judge on behalf of the Chamber,<sup>12</sup> issued the “Decision on Application for Interim Release” (the “Decision on the Defence’s Second Application”) in which *inter alia* she rejected the said application, decided that Mr Jean-Pierre Bemba shall continue to be detained and that the 120 days period for review set out in rule 118(2) of the Rules of Procedure and Evidence (the “Rules”) shall start running anew as of the date of notification of the Decision on the Defence’s Second Application.<sup>13</sup>

8. On 17 December 2008 the Registry received the observations of the Republic of Portugal.<sup>14</sup>

9. On 22 December 2008 the Defence filed the Third Application in which it requested *inter alia* the interim release of Mr Jean-Pierre Bemba, with conditions,<sup>15</sup> to

<sup>9</sup> ICC-01/05-01/08-200, paras. 59 and 66 to 68.

<sup>10</sup> “Second report of the Registrar concerning the Observations Received on the Defence’s Application for Interim Release of Mr. Jean-Pierre Bemba Gombo”, ICC-01/05-01/08-280 and its annexes.

<sup>11</sup> “Additional Observations received in relation to the ‘Second report of the Registrar concerning the Observations Received on the Defence’s Application for Interim Release of Mr. Jean-Pierre Bemba Gombo’”, ICC-01/05-01/08-288 and its annex.

<sup>12</sup> ICC-01/05-01/08-293.

<sup>13</sup> ICC-01/05-01/08-321.

<sup>14</sup> ICC-01/05-01/08-326 and its annex.

<sup>15</sup> Although the conditions, in case of interim release, have to be decided upon by the Chamber, the Defence is suggesting in paragraphs 63 to 68 of its application the following: a) to live under the protection and supervision of the Portuguese authorities, under house arrest, in Portugal, b) to be prohibited from leaving the residence except when summoned before the Court; c) to be prohibited from receiving visitors with the sole exception of his family members, namely his wife, his five children, his father and his younger brother, these family visits being subject to prior authorization by the Court and monitored if the Court deems it necessary; d) to have his residence under round-the-clock police surveillance as was the case in Portugal before his arrest, e) to wear an electronic monitoring device, and f) to have his phone calls made through a single number which could be subject to electronic monitoring and under the supervision of Portuguese police officers posted to his residence, if need be

the Republic of Portugal, or, alternatively, to the Kingdom of Belgium. The Third Application was notified the following day.

10. On 23 December 2008 the Defence filed a corrigendum to its Third Application (the "Corrigendum").<sup>16</sup>

11. The Single Judge notes articles 60(2), 60(4) and 67(1) of the Rome Statute, rules 118 and 119 of the Rules, regulations 23 *bis* (1), 23 *bis* (3), 34 and 51 of the Regulations of the Court (the "Regulations") and regulation 14 of the Regulations of the Registry.

12. According to rule 118(1) of the Rules and regulation 51 of the Regulations, the Single Judge shall decide upon a request for interim release without delay, after seeking the views of the Prosecutor and observations from the host State and from the State to which the person seeks to be released. The Single Judge therefore considers that in order to be in a position to decide on the Third Application it is necessary to receive their observations.

13. The Single Judge notes that the Third Application and its three annexes were filed as confidential without stating the factual and legal basis for the chosen classification as required by regulation 23 *bis* (1) of the Regulations. It is only in the Corrigendum that the Defence justified the reasons for the chosen classification. After reviewing the content of the Third Application itself, the Single Judge finds that the Third Application refers to confidential information or "ICC restricted" evidence. Thus, the Single Judge considers that the references made in the Third Application are sufficient reasons to maintain the existing classification of the said application as confidential at this stage.

14. However, the Single Judge finds no reason to maintain the level of confidentiality of the annexes to the "Third Application" since they are public documents and press

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<sup>16</sup> ICC-01/05-01/08-333-Conf-Corr

articles to be found on the Internet. The Single Judge thus considers that fairness and the principle of publicity of proceedings dictate that the three annexes to the Third Application be made available to the public.<sup>17</sup>

#### **FOR THESE REASONS THE SINGLE JUDGE**

**a) decides** to reclassify as public documents:

- (i) ICC-01/05-01/08-333-Conf-AnxA;
- (ii) ICC-01/05-01/08-333-Conf-AnxB;
- (iii) ICC-01/05-01/08-333-Conf-AnxC.

**b) requests** the Prosecutor to submit observations on the Third Application for interim release by **Friday 9 January 2009, 16h00**.

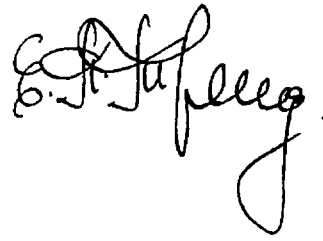
**c) orders** the Registrar to notify the relevant authorities of the Republic of Portugal, the Kingdom of Belgium and the Kingdom of the Netherlands of the present decision.

**d) invites** the relevant authorities of the Republic of Portugal, the Kingdom of Belgium and the Kingdom of the Netherlands to submit observations by **Friday 16 January 2009** on the conditions, if any, that would have to be met to enable the States to which Jean-Pierre Bemba Gombo seeks to be released to accept him.

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<sup>17</sup> ICC-01/05-01/08-80.

Done in both English and French, the English version being authoritative.



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**Judge Ekaterina Trendafilova**  
**Single Judge**

Dated this Tuesday 23 December 2008

At The Hague, The Netherlands