

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 23 May 2011

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 Redacted Version

**Observations of Mr Zarambaud Assingambi, Legal Representative of Victims, on
the "Application for the interim release of Mr Jean-Pierre Bemba Gombo filed by
the Defence on 3 May 2011"**

Source: Mr Zarambaud, 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. SUBMISSIONS OF THE DEFENCE

1. In an application dated 3 May 2011, the Defence for Mr Jean-Pierre Bemba Gombo applied to Trial Chamber III for his interim release, relying on article 60(3) of the Statute and recalling that Mr Jean-Pierre Bemba Gombo is currently detained on the basis of the Trial Chamber's decision of 17 December 2010, rendered pursuant to the judgment on appeal of 19 November 2010.
2. The Defence argues that the Chamber's decision means that Mr Jean-Pierre Bemba Gombo must remain in detention solely on the ground that there had not been a sufficient change of circumstances since the last review of its request for interim release, but also because the Chamber was satisfied that the requirements of article 58(1)(b)(i) of the Statute were fulfilled, namely that detention was necessary to secure the Accused's appearance at trial.
3. The Defence accordingly infers that "the sole ground for the Applicant's continued detention is the risk that he will abscond, or rather, the need to secure his appearance at trial", given that "the Prosecutor has already called almost all of his vulnerable witnesses to testify before the Chamber, the sole exception being Witness CAR-OTP-WWWW-0069" and subsequently given that "the remaining witnesses, some of whom hold official positions, in no way meet the vulnerability criteria of the Victims and Witnesses Unit".
4. The Defence submits that "by letter of 20 September 2010, the Defence contacted the [REDACTED] [...] in order to seek [REDACTED]'s agreement to receive the Applicant on its national territory and to propose a protocol for securing his appearance at trial by means of some monitoring system in the event of his interim release".

5. Putting its own construction on [REDACTED]'s reply of 25 October 2010, notified in March 2011, the Defence implicitly argues that [REDACTED] would, in a manner of speaking, be inclined to look with favour upon the implementation of conditions for interim release on its territory and that “[REDACTED]'s willingness is in and of itself a new development [...]”. The Defence further argues, again on the basis of its own interpretation, that “[REDACTED] also takes the view that in the legal armoury of the Rome Statute, a State’s guarantee of appearance is presented as a requirement for release [...]”.
6. Having come to the implicit conclusion that, given its letter of 25 October 2010 which was apparently notified in March 2011, [REDACTED] would be prepared to receive Mr Jean-Pierre Bemba Gombo on its territory in the event that Mr Bemba Gombo were to be granted interim release, and maintaining that this constitutes a new development, the Defence sent a direct request to the [REDACTED] on 4 April 2011. [REDACTED] replied to this request by letter on 8 April 2011, stating that, subject to a decision granting release rendered by the Chamber, the measures that might be required to guarantee the appearance of the Accused should not be paid for by local taxpayers.
7. On 18 March 2011, subsequent to the responses from the British, Swiss, Belgian, Dutch and German authorities, the Registry informed the Defence by letter that a framework agreement on interim release is in the process of being finalised. The Defence accordingly inferred that “[t]his specific position taken by the Registry in the instant case also constitutes a new development and responds to the Defence letter (whose date is not indicated in the application) to the Registry seeking a framework agreement on release, without which (in the Defence’s submission) “the Applicant’s right to a fair trial” continues “to be violated” in that, the Defence submits, “a fair trial must include a realistic

possibility of release, which is denied to the Applicant in the absence of an agreement on interim release”.

- II. SUBMISSIONS OF THE VICTIMS
- III. The Appeal Chamber’s judgment of 19 November 2010 and the subsequent decision by the Trial Chamber of 17 December 2010 are still relevant in that the reasons and conditions underpinning the two decisions remain the same.
- IV. While it is true that the crimes imputed to the militias of Mr Jean-Pierre Bemba Gombo were perpetrated in the context of support for the regime of the late former President Ange-Félix Patassé, that, the regime having been overthrown on 15 March 2003, these militias had already returned to the Congo in disarray as from that date, and therefore that they can no longer continue to commit crimes within the jurisdiction of the International Criminal Court in the CAR (article 58(1)(b)(iii)), nothing indicates however that, if granted interim release, Mr Jean-Pierre Bemba Gombo will appear at trial (article 58(1)(b)(i)), or that he will not obstruct or endanger the investigation or the court proceedings (article 58(1)(b)(ii)).
- V. Contrary to the assertions of the Defence, the sole ground on which the Applicant remains in detention is not the need to secure his appearance at trial. As the Defence itself states, one vulnerable witness/victim, namely [REDACTED], called by the Prosecutor has not yet appeared before the Court. This, in itself, is a reason for the Applicant to remain in detention.
- VI. [REDACTED], who is currently being examined before the Chamber, has vividly expressed his fear, not to say his terror, particularly of Mr Jean-Pierre Bemba Gombo. This is further cause for continued detention.

- VII. Likewise, some Congolese witnesses who have not yet been examined have explicitly expressed their fear, not to say their terror, pointing out that Mr Jean-Pierre Bemba Gombo continues to enjoy significant and dangerous support in the Congo, such that his release would, "de facto", pose a threat to their lives.
- VIII. It is worth emphasising that, under article 68 of the Statute and rule 89 of the Rules of Procedure and Evidence, the Chamber may authorise the legal representatives of the victims to call one or several of their clients to appear in person before the Chamber and to testify under oath once the Prosecution has concluded its case. It is not possible therefore to claim at this stage that the victims whom the Chamber may allow to testify in person after the Prosecutor's witnesses have been examined are not vulnerable.
- IX. There is no reason to interpret the [REDACTED]'s response of 25 October 2010, which would appear not to have been notified until March 2011, as signifying, even implicitly, agreement on the part of [REDACTED] to receive Mr Jean-Pierre Bemba Gombo on its territory in the event of his release. There is even less reason to bypass the Chamber and the [REDACTED] and to approach a [REDACTED] directly, albeit the [REDACTED].
- X. In its letter of 25 October 2010, [REDACTED] clearly indicated that "[a] joint reading of rules 118 and 119 and the previous decisions of the International Criminal Court on this issue shows that the matter of the conditions to be imposed on conditional release is decided after the Pre-Trial Chamber has ruled in favour of conditional release". "Accordingly, it would be premature for the [REDACTED] to impart their views on any conditions which may be imposed on a conditional release of Mr Jean-Pierre Bemba Gombo".

- XI. [REDACTED] also clearly recalled that it is for the Court to seek the views of the relevant States as to the conditions restricting liberty to be imposed within the framework of a conditional release”, and that “[f]urthermore, in accordance with the Rules of Procedure and Evidence of the ICC, the [REDACTED] reserve their observations for the Court itself”. In other words, the Court alone may issue a request to [REDACTED], and it is to the Court alone that those authorities may respond. Neither a request from the Chamber nor a response from the [REDACTED] was appended to the application.
- XII. The Dutch authorities, for their part, merely recalled that they are under the obligation to transfer Mr Jean-Pierre Bemba Gombo to another State should the Chamber so decide.
- XIII. The replies from the [REDACTED] authorities were not appended to the Defence application.
- XIV. The Registry’s letter of 18 March 2011 merely reports on the finalisation of a framework agreement and the possibility of an ad hoc request for cooperation” pending said finalisation.
- XV. Contrary to the Defence assertion therefore, there are no new circumstances, either on account of the letters from the [REDACTED] and Dutch authorities, or on account of the Registry’s letter.
- XVI. There has been no breach of Mr Jean-Pierre Bemba Gombo’s right to a fair trial resulting, it is claimed, from the absence of a framework agreement purportedly depriving him of any possibility of being granted interim release, since he was content to send requests to receive him to only five European States, instead of contacting all the States Parties, and since the Registry also

clearly informed him that in the event of his release prior to the signing of a framework agreement, interim release would be implemented within the framework of an ad hoc request for cooperation.

XVII. The interim release of Mr Jean-Pierre Bemba Gombo, including only at weekends, would be likely to compromise his appearance at trial and, above all, to put the lives of the witnesses and victims at serious risk, even those who are not vulnerable, given the seriousness of the crimes of which he is accused and the particularly widespread nature of those crimes, despite the Defence, in its letter of 20 September 2010 to the [REDACTED], minimising the crimes of which Mr Jean-Pierre Ebmba Gombo is accused by reducing them to the level of mere “negligence”.

FOR THESE REASONS

The Chamber is respectfully requested to reject the application for the interim release of Mr Jean-Pierre Bemba Gombo as being devoid of merit.

[signed]
Mr Assingambi Zarambaud

Dated this 23 May 2011

At The Hague, the Netherlands.