

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 20 August 2008

PRE-TRIAL CHAMBER III

Before: Judge Hans-Peter Kaul, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

THE PROSECUTOR

v. JEAN-PIERRE BEMBA GOMBO

Confidential

Decision on 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, Trial Lawyer

Counsel for the Defence

Nkwebe Liriss
Tjarda E. Van der Spoel
Aimé Kilolo-Musamba

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER III (the “Chamber”) of the International Criminal Court (the “Court”), of which Judge Hans-Peter Kaul presently acts as Single Judge¹, received on 24 July 2008 an application for interim release (the “Application for interim release”)² by Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”).

Confidentiality

1. The present decision is classified as confidential because it refers to the existence of documents and, as the case may be, to a limited extent to their content, which have been submitted and are currently treated as confidential or under seal. The Single Judge is of the view that the making of such references in the present decision is required by the principle of fairness of proceedings and considers that it is not inconsistent with the confidential and under seal nature of the documents referred to. As some of the documents in question emanate from or concern the parties³ and participants⁴, the preparation of a version of this decision available to the public will require that interests of those concerned be taken into account and, as the case may be, that they be consulted. A public version of this decision will follow as soon as practicable.

Procedural history

Procedure before the Court

2. On 9 May 2008 the Prosecutor filed the “Prosecutor’s Application for Warrant of Arrest under Article 58”⁵ of the Rome Statute (the “Statute”) (the “Prosecutor’s

¹ ICC-01/05-01/08-53.

² ICC-01/05-01/08-49.

³ ICC-01/05-01/08-26-US-Exp, ICC-01/05-01/08-29-US-Exp, ICC-01/05-01/08-49-Conf-Anx4 and Anx5, ICC-01/05-01/08-58-US-Exp, ICC-01/05-01/08-59-Conf, ICC-01/05-01/08-65-Conf and ICC-01/05-01/08-70-Conf.

⁴ ICC-01/05-01/08-12-US-Exp-Anx1 and Anx2, ICC-01/05-01/08-13-US, ICC-01/05-01/08-18-Conf-Anx5 and Anx6, ICC-01/05-01/08-22-US-Exp-Anx1 and Anx2, ICC-01/05-01/08-23-US, ICC-01/05-01/08-38-Conf-Exp-Anx3 and ICC-01/05-01/08-71-Anx2, Anx3, Anx4 and Anx5.

⁵ ICC-01/05-01/08-26-US-Exp.

Application for Warrant of Arrest”), with annexes, whereby he sought the issuance of a warrant of arrest against Jean-Pierre Bemba on four counts of crimes against humanity and six counts of war crimes.

3. On 21 May 2008 the Chamber rendered the “Decision Requesting Additional Information in Respect of the Prosecutor’s Application for Warrant of Arrest under Article 58 of the Statute”⁶, in which it requested the Prosecutor to provide additional information and supporting material on various aspects of his application.

4. On 23 May 2008, following the Prosecutor’s “Application for Request for Provisional Arrest under Article 92 of the Statute”⁷, the Chamber issued a warrant of arrest⁸ against Mr Jean-Pierre Bemba on two counts of crimes against humanity and four counts of war crimes⁹. On the same day, the Chamber requested provisional arrest¹⁰ of Mr Jean-Pierre Bemba.

5. On 24 May 2008 the warrant of arrest was executed by the authorities of the Kingdom of Belgium which arrested Mr Jean-Pierre Bemba.

6. On 27 May 2008 the Prosecutor submitted additional information and supporting material (the “Prosecutor’s Further Submission”)¹¹ in response to the Chamber’s decision of 21 May 2008.

7. On 3 June 2008 the Chamber made recommendations¹² pursuant to article 59(5) of the Statute to the *Chambre des Mises en Accusations de la Cour d’Appel de Bruxelles* in connection with the preparation of a hearing on an application of Mr Jean-Pierre Bemba for release (see paragraph 21 below).

⁶ ICC-01/05-01/08-27.

⁷ ICC-01/05-01/08-28.

⁸ ICC-01/05-01/08-1-tENG-Corr.

⁹ ICC-01/05-01/08-1-tENG-Corr, para. 21.

¹⁰ ICC-01/05-01/08-3.

¹¹ ICC-01/05-01/08-29-US-Exp.

¹² ICC-01/05-01/08-13-US.

8. On 10 June 2008 the Chamber rendered the "Decision on the Prosecutor's Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo"¹³. Having examined the Prosecutor's Application for Warrant of Arrest and the Prosecutor's Further Submission, the Chamber held that "it is necessary to issue a new warrant of arrest to replace the warrant of arrest issued on 23 May 2008. The new warrant of arrest will refer to the same events [...], and will add to the crimes already set out in the warrant of arrest issued on 23 May 2008 two further counts of murder, under the dual head of crimes against humanity and war crimes".¹⁴

9. On 10 June 2008 the Chamber consequently issued a new warrant of arrest¹⁵, which entirely replaced the warrant of 23 May 2008, and requested the arrest and surrender¹⁶ of Mr Jean-Pierre Bemba pursuant to article 91 of the Statute.

10. On 20 June 2008 the Chamber took a decision¹⁷ to unseal and reclassify as public certain documents and decisions in the record of the situation in the Central African Republic (the "CAR") and in the case against Mr Jean-Pierre Bemba. This concerned, *inter alia*, annexes 6, 9-A, 9-B, 9-C and 14 to the Prosecutor's Application for Warrant of Arrest and annexes 4, 6-A, 6-B, 7, 8, 9, 10, 11, 18-A and 18-B to the Prosecutor's Further Submission. Annex 14 to the Prosecutor's Application for Warrant of Arrest consists of a video recording of the "Interview with Jean-Pierre Bemba" by Al Jazeera of 3 August 2007, in which Mr Jean-Pierre Bemba expressed his belief that he was not subject to any investigation by the Court.

11. On 23 June 2008 the Chamber made again recommendations¹⁸ under article 59(5) of the Statute to the *Chambre des Mises en Accusations de la Cour d'Appel de Bruxelles* in

¹³ ICC-01/05-01/08-14-tENG.

¹⁴ ICC-01/05-01/08-14-tENG, para. 10.

¹⁵ ICC-01/05-01/08-15

¹⁶ ICC-01/05-01/08-16.

¹⁷ ICC-01/05-01/08-20.

¹⁸ ICC-01/05-01/08-23-US.

connection with the preparation of a hearing on a fresh application of Mr Jean-Pierre Bemba for release (see paragraph 22 below).

12. On 3 July 2008 Mr Jean-Pierre Bemba was surrendered to the Court.¹⁹

13. On 4 July 2008 the Chamber held a hearing for the purpose of the initial appearance of Mr Jean-Pierre Bemba²⁰. Being represented by two duty counsels, Mr Jean-Pierre Bemba was informed of his rights under the Statute, including the right to apply for interim release pending trial. In response, while not making any application for interim release at the hearing, the defence stated that interim release would be applied for in writing later.²¹

14. On 23 July 2008 Mr Jean-Pierre Bemba lodged the Application for interim release. He submitted, *inter alia*, that, if put on interim release, he wished to reside in the Kingdom of Belgium or, alternatively, the Republic of Portugal or the Swiss Confederation²². The filing was notified to the Chamber on 24 July 2008.

15. On 1 August 2008 the Prosecutor filed an application for authorisation of redactions²³ with regard to the Prosecutor's Application for Warrant of Arrest and the Prosecutor's Further Submission and those of their respective annexes, which have not been unsealed and reclassified before (see paragraph 10 above). The existence of this filing was notified²⁴ to the defence on the same day. The application for redactions is currently pending.

¹⁹ ICC-01/05-01/08-T-3-ENG, page 4.

²⁰ ICC-01/05-01/08-T-3-ENG

²¹ ICC-01/05-01/08-T-3-ENG, pages 4 and 5.

²² ICC-01/05-01/08-49, para. 33.

²³ ICC-01/05-01/08-58-US-Exp.

²⁴ ICC-01/05-01/08-59-Conf.

16. On 4 August 2008 the Single Judge requested that the Prosecutor submit his observations on the Application for interim release by 11 August 2008²⁵ and that the relevant authorities of the Kingdom of Belgium, the Republic of Portugal, the Swiss Confederation and the Kingdom of the Netherlands submit their respective observations by 14 August 2008²⁶.

17. The observations of the Prosecutor²⁷, the Kingdom of Belgium²⁸, the Republic of Portugal²⁹, the Swiss Confederation³⁰ and the Kingdom of the Netherlands³¹ were filed as requested. Observations of the requested States were notified to the Chamber on 18 August 2008.

18. On 15 August 2008 Mr Jean-Pierre Bemba applied for leave to reply³², by 22 August 2008, to the observations of the Prosecutor of 11 August 2008. The application was notified to the Chamber on 18 August 2008.

Procedure at the national level

19. The following facts have been submitted to the Chamber in relation to the procedure at the national level.

20. After his provisional arrest pursuant to article 92 of the Statute on 24 May 2008, Mr Jean-Pierre Bemba was brought before an investigating judge of the *Tribunal de Première Instance de Bruxelles* on 25 May 2008. The judge verified the identity of Mr Jean-Pierre Bemba and informed him of his rights pursuant to article 55(2) of the

²⁵ ICC-01/05-01/08-60.

²⁶ ICC-01/05-01/08-61.

²⁷ ICC-01/05-01/08-65-Conf.

²⁸ ICC-01/05-01/08-71-Conf-Anx2.

²⁹ ICC-01/05-01/08-71-Conf-Anx3.

³⁰ ICC-01/05-01/08-71-Conf-Anx4.

³¹ ICC-01/05-01/08-71-Conf-Anx5.

³² ICC-01/05-01/08-70-Conf.

Statute. This included the right to choose legal representation, relying on which Mr Jean-Pierre Bemba stated the name of the counsel by whom he wished to be represented. Mr Jean-Pierre Bemba was then informed of the existence and content of the warrant of arrest against him of 23 May 2008, the right to be questioned in the presence of his counsel and the right to remain silent. Finally, Mr Jean-Pierre Bemba was given the opportunity to make a statement as to his arrest. In response, Mr Jean-Pierre Bemba denied having committed or ordered the commission of any crimes on the territory of the CAR and submitted that he had taken steps with a view to investigating any allegations of wrongdoing and, as the case may be, punishing it. He stated that he had no intention to flee from Belgium and that he was prepared to provide any document or information that the Court may deem necessary.³³

21. Following the appearance before the investigating judge, on 25 May 2008, the investigating judge remanded Mr Jean-Pierre Bemba in detention.³⁴ Through the counsel of his choice, Mr Jean-Pierre Bemba then challenged this decision and sought release³⁵. A hearing in connection with the application for release was scheduled by the *Chambre des Mises en Accusations de la Cour d'Appel de Bruxelles* for 4 June 2008.³⁶ It appears that the efforts of Mr Jean-Pierre Bemba in these proceedings were unsuccessful.

22. On 13 June 2008 the *Chambre du Conseil du Tribunal de Première Instance de Bruxelles* declared enforceable³⁷ the request of the Court for arrest and surrender of Mr Jean-Pierre Bemba following the decision of the Court of 10 June 2008 and the warrant of arrest of the same day. Through the counsel of his choice, Mr Jean-Pierre

³³ ICC-01/05-01/08-49-Conf-Anx5.

³⁴ ICC-01/05-01/08-49-Conf-Anx4.

³⁵ ICC-01/05-01/08-12-US-Exp-Anx2.

³⁶ ICC-01/05-01/08-12-US-Exp-Anx1.

³⁷ ICC-01/05-01/08-18-Conf-Anx5.

Bemba then challenged this decision³⁸ and sought release³⁹. A hearing in connection with the application for release was scheduled by the *Chambre des Mises en Accusations de la Cour d'Appel de Bruxelles* for 24 June 2008.⁴⁰ It appears that the efforts of Mr Jean-Pierre Bemba in these proceedings were unsuccessful.

The Chamber's decision of 10 June 2008

23. In the decision of 10 June 2008, the Chamber found that "there are reasonable grounds to believe that Mr Jean-Pierre Bemba is criminally responsible under article 25(3)(a) of the Statute, jointly with another person, or through other persons, for the crimes set out in paragraphs 29 to 68 of this Decision".⁴¹ The crimes referred to consist of rape as a crime against humanity under article 7(1)(g) of the Statute; rape as a war crime under article 8(2)(e)(vi) of the Statute; torture as a crime against humanity under article 7(1)(f) of the Statute; torture as a war crime under article 8(2)(c)(i) of the Statute; outrages upon personal dignity, in particular humiliating and degrading treatment, as a war crime under article 8(2)(c)(ii) of the Statute; murder as a crime against humanity under article 7(1)(a) of the Statute; murder as a war crime under article 8(2)(c)(i) of the Statute; and pillaging a town or place as a war crime under article 8(2)(e)(v) of the Statute.

24. The Chamber recognised that, "in light of Mr Jean-Pierre Bemba's past and present political position, his international contacts, his financial and professional background, and the fact that he has the necessary network and financial resources, he may abscond and avoid the execution of the arrest warrant".⁴² It recalled that "many of the victims and witnesses are financially destitute and that, in view of their place of residence, Mr Jean-Pierre Bemba could easily locate them, and that this

³⁸ ICC-01/05-01/08-18-Conf-Anx6.

³⁹ ICC-01/05-01/08-22-US-Exp-Anx2.

⁴⁰ ICC-01/05-01/08-22-US-Exp-Anx1.

⁴¹ ICC-01/05-01/08-14-tENG, para. 84.

⁴² ICC-01/05-01/08-14-tENG, para. 87.

places them at particular risk”.⁴³ Lastly, the Chamber observed that, “in his capacity as President of the [Movement for the Liberation of the Congo], Mr Jean-Pierre Bemba continues to exercise *de facto* and *de jure* authority over this movement; that he can rely on the movement’s network and his former soldiers to influence the witnesses in his case; and that his past behaviour indicates that he will do so”.⁴⁴

25. The Chamber concluded that the arrest of Mr Jean-Pierre Bemba appeared necessary pursuant to article 58(1)(b)(i) and (ii) of the Statute, both to ensure his appearance at trial and to ensure that he does not obstruct or endanger the investigation or the court proceedings.⁴⁵

The submissions

Mr Jean-Pierre Bemba

26. Mr Jean Pierre-Bemba submits first that he has not been given access to all the relevant information underlying the decision of 10 June 2008.⁴⁶ Furthermore, he denies criminal responsibility in the present case.⁴⁷

27. Mr Jean-Pierre Bemba also submits that there were procedural irregularities in the arrest and surrender proceedings in Belgium in that he did not have a counsel when brought before the investigating judge on 25 May 2008, that the warrant of arrest of 10 June 2008 was not served on him and that he was not heard and legally represented in the proceedings concerning that warrant.⁴⁸ He argues that, as a consequence, the warrants of arrest of 23 May and 10 June 2008 are null and void and he should be released immediately.⁴⁹

⁴³ ICC-01/05-01/08-14-tENG, para. 88.

⁴⁴ ICC-01/05-01/08-14-tENG, para. 89.

⁴⁵ ICC-01/05-01/08-14-tENG, para. 90.

⁴⁶ ICC-01/05-01/08-49, para. 4.

⁴⁷ ICC-01/05-01/08-49, para. 6.

⁴⁸ ICC-01/05-01/08-49, para. 14.

⁴⁹ ICC-01/05-01/08-49, para. 15.

28. Mr Jean-Pierre Bemba also argues that no information is available to him to show reasonable grounds to believe that he is criminally responsible for the crimes that are alleged against him⁵⁰ and that his detention is not necessary on any of the grounds recognised by the Statute. He argues that, therefore, he should be granted interim release⁵¹.

29. In particular, Mr Jean-Pierre Bemba submits that, despite the investigation against him having been going on for more than a year and him having the possibility to flee, he has not done so.⁵² On the contrary, he has been moving freely and in a transparent fashion within the Schengen territory,⁵³ has been staying habitually in the Republic of Portugal and Kingdom of Belgium⁵⁴ and has had no plans to return to the Democratic Republic of the Congo⁵⁵ or otherwise to leave the Schengen zone except for a planned holiday in the United States of America with his wife and children⁵⁶. Mr Jean-Pierre Bemba also states that he was willing to present himself to the Court⁵⁷ and that he is prepared to collaborate with it⁵⁸ and to comply with any condition that may be set for his release⁵⁹.

30. Mr Jean-Pierre Bemba also seeks leave to reply to the observations of the Prosecutor of 11 August 2008 insofar as the latter has claimed that Mr Jean-Pierre Bemba possesses various travel documents (see paragraph 33 below), arguing that it

⁵⁰ ICC-01/05-01/08-49-para. 21.

⁵¹ ICC-01/05-01/08-49, para. 1 and page 17.

⁵² ICC-01/05-01/08-49, para. 26.

⁵³ ICC-01/05-01/08-49, para. 27.

⁵⁴ ICC-01/05-01/08-49, paras 7 and 27.

⁵⁵ ICC-01/05-01/08-49, para. 28.

⁵⁶ ICC-01/05-01/08-49, para 29 and

⁵⁷ ICC-01/05-01/08-49, para. 30.

⁵⁸ ICC-01/05-01/08-49, para. 31.

⁵⁹ ICC-01/05-01/08-49, paras 32, 34, 35, 36 and 37.

is necessary to comment on the truthfulness and validity of the Prosecutor's allegations⁶⁰.

The Prosecutor

31. Referring to a statement of the Belgian authorities⁶¹, the Prosecutor submits that the arrest proceedings in Belgium were conducted in full compliance with domestic procedures and the procedure envisaged by article 59(2) of the Statute and rule 117 of the Rules of Procedure and Evidence (the "Rules")⁶². Even assuming that there were any irregularities, they were not of sufficient gravity to warrant nullification of the warrant of arrest against Mr Jean-Pierre Bemba.⁶³ Furthermore, the warrant of arrest of 10 June 2008 did not constitute a new warrant but replaced the warrant of 23 May 2008 while being based on the same factual allegations, not necessitating a new judicial procedure.⁶⁴

32. On the substance, the Prosecutor submits that the conditions under article 58(1) of the Statute continue to be met both as to the existence of reasonable grounds to believe that Mr Jean-Pierre Bemba has committed a crime within the jurisdiction of the Court⁶⁵ and as to the appearance of the necessity of his detention⁶⁶.

33. In support of his claim that the detention of Mr Jean-Pierre Bemba appears necessary under article 58(1)(a)(i) of the Statute, the Prosecutor submits, *inter alia*, that Mr Jean-Pierre Bemba possesses various travel documents.⁶⁷

⁶⁰ ICC-01/05-01/08-70-Conf, para. 8.

⁶¹ ICC-01/05-01/08-38-Conf-Exp-Anx3.

⁶² ICC-01/05-01/08-65-Conf, paras 16 and 19.

⁶³ ICC-01/05-01/08-65-Conf, paras 16 and 21.

⁶⁴ ICC-01/05-01/08-65-Conf, para. 18.

⁶⁵ ICC-01/05-01/08-65-Conf, paras 22 and 23.

⁶⁶ ICC-01/05-01/08-65-Conf, para. 25.

⁶⁷ ICC-01/05-01/08-65-Conf, paras 29 and 33.

The Governments of the Kingdom of Belgium, the Republic of Portugal, the Swiss Confederation and the Kingdom of the Netherlands

34. The Observations of the governments of the Kingdom of Belgium, the Republic of Portugal, the Swiss Confederation and the Kingdom of the Netherlands mainly deal with the question of permitting the stay of Mr Jean-Pierre Bemba on their respective territories in case of his provisional release.

Legal basis and jurisprudence

35. In accordance with article 21(1) of the Statute, the Single Judge primarily takes note of articles 55, 58, 59, 60, 67 and 69(7) of the Statute, rule 117 and 118 of the Rules and regulation 24(5) of the Regulations of the Court. Regulation 14 of the Regulations of the Registry is also taken into account.

36. According to article 21(2) and (3) of the Statute, the Single Judge will, where appropriate, also take into account principles and rules of law as interpreted in the Court's previous decisions and interpret and apply the relevant law in compliance with internationally recognised human rights.

Application of the relevant legal basis and jurisprudence to the present case

General considerations

37. The Single Judge observes at the outset that the right to liberty is of fundamental importance for everyone and that for any deprivation of liberty to be acceptable, it must be on such grounds and in accordance with such procedure as are established by the applicable legal regime. Furthermore, it must not be arbitrary.⁶⁸

⁶⁸ See, for example, article 9 of the International Covenant on Civil and Political Rights (UN Treaty Series, vol. 999, p. 171); article 7 of the American Convention on Human Rights (UN Treaty Series, vol. 1144, p. 143); article 6 of the African Charter on Human and Peoples' Rights (UN Treaty Series, vol. 1520, p. 217), article 5 of

38. Being mindful of the time-sensitivity of a decision on any application for interim release, the Single Judge considers the present application within the limits of the applicable statutory framework and as soon as permitted by the procedural circumstances (see paragraphs 17 and 18 above).

39. The Single Judge considers that the information available is sufficient⁶⁹ to rule on the Application for interim release and that, therefore, no reply to the observations of the Prosecutor of 11 August 2008 on the point indicated by the defence (see paragraphs 18, 30 and 33 above) is warranted.

40. The Single Judge notes that, in his observations of 11 August 2008, the Prosecutor makes factual allegations that had not been available to the defence before. These include, for example, the statements relating to the existence of various travel documents of Mr Jean-Pierre Bemba. Letting alone the fact that this specific allegation does not seem to have been supported by any evidence, any such newly introduced allegations, on which the defence has not had the chance to comment, are not taken into account in particular because the information available to the Single Judge is sufficient to make an informed decision on the Application for interim release irrespective of such newly introduced allegations.

41. The Single Judge further observes that the Prosecutor's Application for Arrest Warrant and the Prosecutor's Further Submission as such have to date not been made available to the defence (see paragraph 15 above). However, the factual basis

the Convention for the Protection of Human Rights and Fundamental Freedoms (UN Treaty Series, vol. 213, p. 221) and, also, European Court of Human Rights ("ECtHR"), *Winterwerp v the Netherlands*, judgment of 24 October 1979, Series A no. 33, pp. 17 – 19, §§ 39 and 45; *Bozano v France*, judgment of 18 December 1986, Series A no. 111, p. 23, § 54; *Labita v Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV; *Slivenko v. Latvia* [GC], no. 48321/99, § 147, ECHR 2003-X; *Assanidze v Georgia* [GC], no. 71503/01, §§ 169 and 170, ECHR 2004-II and *McKay v the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-...

⁶⁹ Pre-Trial Chamber I, "Decision on the Application for the interim release of Thomas Lubanga Dyilo", ICC-01/04-01/06-586-tENG, page 3.

for the arrest warrants against Mr Jean-Pierre Bemba and for the Chamber's decision of 10 June 2008 is provided in that decision which is public and, as such, accessible to the defence. Furthermore, a number of annexes to the Prosecutor's Application for Warrant of Arrest and the Prosecutor's Further Submission have been unsealed and reclassified as public (see paragraph 10 above) and are accordingly also available to the defence. In these circumstances, and in view of the evidentiary threshold applicable under Article 60(2) in conjunction with article 58(1)(a) of the Statute to detention matters, the Single Judge considers that the lack of access to the remaining information does not have an impact on the legality of detention of Mr Jean-Pierre Bemba at this stage.

Alleged procedural irregularities at the national level

42. It should first be noted that the Court is not a court of appeal in relation to the national authorities⁷⁰ and that its power to review questions of substance and procedure before national courts is limited⁷¹. The Single Judge considers that such questions should primarily be raised and pursued before the national authorities as these are better placed than international jurisdictions to deal with such questions⁷² and, as the case may be, to provide for an adequate remedy.

43. It further needs to be taken into account that the detention of Mr Jean-Pierre Bemba in the Kingdom of Belgium was detention pending surrender to the Court. Compared to detention pending trial, a review of the substance of an arrest warrant in the context of detention pending surrender has a limited scope and enjoys lesser procedural guarantees.⁷³

⁷⁰ Appeals Chamber, "Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006", ICC-01/04-01/06-772, para. 41.

⁷¹ Pre-Trial Chamber I, "Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute", ICC-01/04-01/06-512, page 6.

⁷² See, for example, ECtHR, *Winterwerp*, cited above, § 46; *Edificaciones March Gallego S A v Spain*, § 33, ECHR 1998-I and *Beshiri and Others v Albania*, no. 7352/03, § 37, 22 August 2006.

⁷³ See, for example, *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X, *Mc Donald and Others v Slovakia* (dec.), no. 72812/01, 16 November 2004, *Ismoilov and Others v Russia*, no. 2947/06, § 162, ECHR 2006-..., *Reinprecht v Austria*, no. 67175/01, § 31, ECHR 2005-XII, with further references and *Chahal v the United Kingdom*, judgment of 15 November 1996, § 112, ECHR 1996-V.

44. Nevertheless, the Single Judge is of the opinion that the defence has not substantiated sufficiently its allegations of procedural irregularities at the national level so as to allow unequivocally to establish the facts and to verify their compliance with the applicable legal regime.

45. In respect of the warrant of arrest of 23 May 2008, it is unclear whether the interview by the investigating judge on 25 May 2008 constituted a “questioning” within the meaning of article 55(2)(d) of the Statute or whether it was merely an interview to establish the identity of Mr Jean-Pierre Bemba and to inform him of his rights. It would appear that, on the substance, it was rather the latter in which case the allegedly unlawful absence of the counsel would only entail a potential exclusion pursuant to article 69(7) of the Statute of evidence obtained in the interview.

46. The Single Judge notes that, after having been informed on 25 May 2008 of the rights to be questioned in the presence of his counsel and to remain silent, Mr Jean-Pierre Bemba did not request the presence of his counsel and nevertheless made a statement before the investigating judge. Leaving aside the question of interpreting the making of such statement in the given circumstances as a waiver⁷⁴ of the right to counsel under article 55(2)(d) of the Statute, the Single Judge observes that the absence of the counsel of Mr Jean-Pierre Bemba before the investigating judge on 25 May 2008 and the statement he made do not seem to have resulted into any actual prejudice to him⁷⁵.

⁷⁴ See, for example, ECtHR, *Håkansson and Sturesson v Sweden* judgment of 21 February 1990, Series A no. 171-A, p. 20, § 66, and *Mikolenko v Estonia* (dec.), no. 16944/03, 5 January 2006.

⁷⁵ See, for example, ECtHR, *Croissant v. Germany*, judgment of 25 September 1992, Series A no. 237-B, § 31 and, *mutatis mutandis*, *Imbrioscia v. Switzerland* judgment of 24 November 1993, Series A no. 275, § 36; *John Murray v the United Kingdom*, no. 18731/91, § 63, ECHR 1996-I and *Magee v the United Kingdom*, no. 28135/95, § 41, ECHR 2000-VI.

47. As regards the warrant of arrest of 10 June 2008, it needs to be noted that it replaced in its entirety the warrant of 23 May 2008, adding two charges to those already existing, but making no change in respect of the principal facts and the necessity of the arrest. The warrant of 10 June 2008 was declared enforceable in the Kingdom of Belgium on 13 June 2008 by a decision of the *Chambre du Conseil du Tribunal de Première Instance de Bruxelles*, in respect of which Mr Jean-Pierre Bemba had the benefit of legal remedies at the national level.

48. The Single Judge further observes that, following his arrest on 24 May 2008, Mr Jean-Pierre Bemba was promptly brought before a judge on 25 May 2008 and informed of his rights (see paragraph 20 above). In the examination of his requests for release, hearings were scheduled for 4 and 24 June 2008 (see paragraphs 21 and 22 above). The Chamber was involved in the procedure leading to those hearings by way of making recommendations under article 59(5) of the Statute (see paragraphs 7 and 11 above). The information submitted shows that Mr Jean-Pierre Bemba had effective legal representation and that he was afforded adequate procedural protection with ample opportunities to raise any objections that he had at the national level at the appropriate time.

49. To the extent that this part of the Application for interim release has been substantiated, the Single Judge has found no indication of any irregularity or arbitrariness in the procedure followed by the competent Belgian authorities that would constitute a material breach of article 59(2) of the Statute⁷⁶ affecting the proceedings before the Court or render the detention of Mr Jean-Pierre Bemba on the authority of the Court otherwise unacceptable.

⁷⁶ ICC-01/04-01/06-512, pages 9 and 11.

Article 60(2) in conjunction with article 58(1) of the Statute

50. The Single Judge notes that pursuant to article 60(2) of the Statute a person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58(1) of the Statute are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber is to release the person, with or without conditions. Accordingly, the Application for interim release will further be examined on the existence of reasonable grounds to believe that Mr Jean-Pierre Bemba has committed a crime within the jurisdiction of the Court, as provided for under article 58(1)(a) of the Statute, and the appearance of the necessity of his arrest, as provided for under article 58(1)(b) of the Statute.

Article 58(1)(a) of the Statute

51. The Single Judge notes that it is a pre-requisite for the issuance of a warrant of arrest that the Chamber must be satisfied that there are reasonable grounds to believe that the person committed the crimes in question and that the same applies in proceedings for interim release under article 60(2) of the Statute.⁷⁷

52. The grounds for believing that Mr Jean-Pierre Bemba has committed crimes under the jurisdiction of the Court are explained exhaustively in the Chamber's decision of 10 June 2008, as referred to in paragraphs 23 to 25 of the present decision. The Single Judge notes that the defence has not put forward any material fact or argument to rebut these grounds and considers that they still stand.

⁷⁷ Appeals Chamber, "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", ICC-01/04-01/07-572, para. 18.

Article 58(1)(b) of the Statute

53. The existence of reasonable grounds to believe that the person did commit the offences in question lays the ground for inquiring into the need for his or her detention. The arrest of a person, in accordance with article 58(1)(b) of the Statute, may be ordered if it appears that it is necessary (i) to ensure the persons appearance at trial; (ii) to ensure that the person does not obstruct or endanger the investigation or the court proceedings; or, where applicable (iii) to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances. The reasons for detention pursuant to article 58(1)(b)(i) to (iii) of the Statute are in the alternative.⁷⁸ 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.⁷⁹

54. In its decision of 10 June 2008 the Chamber considered the arrest of Mr Jean-Pierre Bemba necessary under article 58(1)(b)(i) and (ii) of the Statute in order to ensure his appearance at trial and to ensure that he does not obstruct or endanger the investigation or the court proceedings.

55. In respect of ensuring the appearance of Mr Jean-Pierre Bemba at trial, the Chamber referred to his past and present political position, international contacts, financial and professional background and availability of the necessary network and financial resources. The Single Judge finds these considerations relevant⁸⁰ and holds the view that they are still valid today.

⁷⁸ Appeals Chamber, “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo’”, ICC-01/04-01/06-824, para. 139 and ICC-01/04-01/07-572, para. 20.

⁷⁹ ICC-01/04-01/07-572, para. 21.

⁸⁰ See ICC-01/04-01/06-824, para. 137 and, for example, ECtHR, *W. v Switzerland*, judgment of 26 January 1993, Series A no. 254-A; *Hesse v Austria*, no. 26186/02, 25 January 2007 and *Walter v Austria* (dec.), no. 34994/97, 27 April 2000.

56. In addition, as recognised by the Appeals Chamber, if a person is charged with grave crimes, the person may face a lengthy prison sentence, which in combination with other relevant facts may make the person more likely to abscond.⁸¹ The Single Judge considers that the crimes of which Mr Jean-Pierre Bemba stands accused fall in this category, which by implication increases the risk of him trying to escape.

57. As to the argument advanced by Mr Jean-Pierre Bemba that he could but did not escape despite the fact that the investigation against him had been going on for more than a year, the Single Judge notes that it was not known to the public that the investigation into the situation in the CAR was targeted at Mr Jean-Pierre Bemba and there is no indication that he had any knowledge to that effect. On the contrary, in the interview on 3 August 2007 Mr Jean-Pierre Bemba stated that he believed that he was not subject to any investigation by the Court (see paragraph 10 above). The argument therefore cannot be sustained.

58. In the view of the Single Judge, the claim of Mr Jean-Pierre Bemba that he was willing to present himself to the Court can equally not be accepted because it is of a hypothetical nature and it is not supported by any concrete evidence⁸². In this context, the Single Judge also notes that Mr Jean-Pierre Bemba was planning travel to the United States of America, a country that has not ratified the Statute, where he would potentially be beyond the reach of the Court (see paragraph 29 above).

59. As to article 58(1)(b)(ii) of the Statute, the Single Judge refers to the findings and conclusions of the Chamber in its decision of 10 June 2008 (see paragraph 24 above) which, in the absence of any relevant argument on the part of the defence to the contrary, the Single Judge finds still applicable today.

⁸¹ ICC-01/04-01/06-824, para. 136 and ICC-01/04-01/07-572, para. 21.

⁸² ICC-01/04-01/06-824, para. 138.

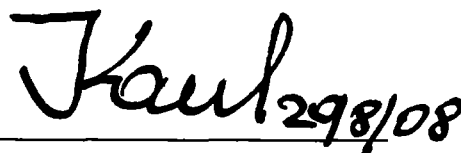
60. Considering the above, the Single Judge concludes that the conditions set forth in article 58(1)(a) and (b)(i) and (ii) of the Statute are fulfilled insofar as there are reasonable grounds to believe that Mr Jean-Pierre Bemba has committed crimes within the jurisdiction of the Court and his detention appears to be necessary to ensure his appearance at trial and to ensure that Mr Jean-Pierre Bemba does not obstruct or endanger the investigation or the court proceedings.

61. Given the conclusion in the aforesaid paragraph, the Single Judge finds that the observations of the requested States do not call for consideration since they are based on the premise of interim release of Mr Jean-Pierre Bemba.

FOR THESE REASONS, THE SINGLE JUDGE

- a) **rejects** the application of the defence for leave to reply to the Prosecutor's observations of 11 August 2008;
- b) **rejects** the application for interim release of Mr Jean-Pierre Bemba Gombo;
- c) **decides** that Mr Jean-Pierre Bemba shall continue to be detained.

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



Judge Hans-Peter Kaul
Single Judge

Dated this 20 August 2008

At The Hague, the Netherlands