



Original: **English**

No.: ICC-01/05-01/08
Date: **24 November 2008**

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Mauro Politi

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
*v. Jean-Pierre Bemba Gombo***

Public Document

Request for leave to file reply in relation to the motion for provisional release

Source: Defence Team of Mr Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

Fatou Bensouda

Petra Kneuer

Counsel for the Defence

Nkwebe Liriss & Karim A. A. Khan

Aimé Kilolo Musamba

Legal Representatives of Victims

Legal Representatives of 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

Pursuant to Article 67(1) of the Rome Statute and Court Regulation 24(5), Mr. Jean-Pierre Bemba Gombo, through counsel, respectfully requests leave to reply to the Prosecutor's response to Mr. Bemba's Requête de Mise en Liberté Provisoire. In support of this request he states the following:

1. A Requête de Mise en Liberté Provisoire was filed on behalf of Mr. Bemba on 3 November 2008.¹
2. On 12 November 2008, this Chamber requested responses from the Prosecution and from the Kingdom of Belgium, the Republic of Portugal and the Kingdom of the Netherlands.²
3. The Prosecution responded on 18 November 2008.³ Responses from the Kingdoms of Belgium and the Netherlands and the Republic of Portugal are not due until 24 November 2008.
4. Mr. Bemba now seeks leave to reply to the Prosecutor's Response.

APPLICABLE LAW

Article 60(3) and (4) – Initial proceedings before the Court

3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.
4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.

Article 67(1) – Rights of the Accused

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially ...

Court Regulation 24(5) – Responses and replies

¹ ICC-01/05-01/08-200-Conf. A previous request was denied on 20 August 2008. ICC-01/05-01/08-80-Anx, p. 19. An appeal of that decision is pending.

² ICC-01/05-01/08-238.

³ ICC-01/05-01/08-262.

5. Participants may only reply to a response with the leave of the chamber, unless otherwise provided in these Regulations.

Regulation 34(c) – Time limits for documents filed with the Court

Unless otherwise provided in the Statute, Rules or these Regulations, or unless otherwise ordered:

- (c) Subject to leave being granted by a Chamber in accordance with regulation 24, sub-regulation 5, a reply shall be filed within ten days of notification in accordance with regulation 31 of the response.

LEGAL ANALYSIS

5. The Prosecution's relies upon a Registry Decision which was filed after Mr. Bemba's Requête de Mise en Liberté Provisoire was filed on 3 November 2008. The Prosecution argues in paragraph 48 of its response:

As recently as 10 November 2008, the Registrar found that "it appears from the information provided to her on the identity of certain visitors that they may be assisting Mr. Jean-Pierre Bemba to "interfere with the administration of justice" and/or to "jeopardise the interests of public safety or the rights or freedom of any person".'

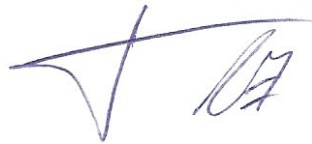
6. Because the Registry's decision was made after Mr. Bemba's motion was filed, fairness should allow Mr. Bemba an opportunity to respond in relation to the effect of the Registry Decision on the determination of the present motion.
7. The Bemba Defence has been unable to find any decisions by any Pre-Trial or Trial Chamber of this Court addressing the legal standard applicable to the granting of leave to file a reply.⁴
8. However, the jurisprudence of the International Criminal Tribunal for the former Yugoslavia may be instructive. Rule 126 of the ICTY Rules of Procedure and Evidence requires that leave be granted prior to the filing of a reply. Trial Chambers have held that

⁴ The Defence is at an disadvantage because, unlike the Prosecution who has access to an searchable electronic database of all the Court's jurisprudence, the Defence is denied any access to this database and has no other means for conducting such a search.

leave to file a reply “is required, and leave will only be granted where the response raises an issue which goes beyond the issues raised by the motion itself.”⁵

9. In this case, the Prosecution has raised a procedural development that arose only after Mr. Bemba’s Requête de Mise en Liberté Provisoire was filed.
10. For this reasons, it is respectfully submitted that good cause has been shown and a new issue has been raised which in all fairness requires that leave should be granted to file a reply in relation to Mr. Bemba’s motion for provisional release.

Respectfully submitted,



Aimé Kilolo
Counsel

Dated this 24 November 2008

At The Hague, The Netherlands

⁵ Prosecutor v. Brdanin & Talic, IT-99-36, Decision on Filing of Replies, 7 July 2001, at para. 1. *See also* Milutonic et. al., IT-05-87, Order on Procedure and Evidence, 11 July 2006, at para. 11 (“Replies to responses will not be accepted by the Chamber unless on good cause shown. A party wishing to make such a reply must seek the leave of the Chamber to do so, specifying why the circumstances which amount to good cause”).