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No.: **ICC-01/05-01/08**
Date: **2 September 2009**

PRE-TRIAL CHAMBER II

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

**Defence Response to the Various Applications to Postpone the Hearings of 7 to 14
September 2009**

Source: Mr Jean-Pierre Bemba Gombo's Defence Team

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

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Other

1. On 14 August 2009, Pre-Trial Chamber II decided to release Mr Jean-Pierre Bemba, but deferred implementation of this decision until the conditions of release and the receiving State had been determined.¹
2. On 24 August 2009, the Prosecutor lodged an appeal against this decision, at the same time filing a request for suspensive effect.²
3. On 27 August 2009, the Defence received the applications filed with Pre-Trial Chamber II of the International Criminal Court by the Kingdom of Belgium, the Portuguese Republic, the French Republic, the Federal Republic of Germany and the Italian Republic, requesting the postponement *sine die* of the hearings scheduled for 7 to 14 September 2009 in order to determine the conditions of interim release and the receiving State.³
4. The various applications are formulated in similar terms.
5. As far as the Defence is aware, only the Republic of South Africa has refrained from making such an application.
6. The basis for all these applications is the fact that an appeal, together with a request for suspensive effect of that appeal, has been lodged by the Prosecutor of the International Criminal Court against the decision of Pre-Trial Chamber II of 14 August 2009 on the interim release of Mr Bemba;
7. Acting pursuant to regulation 24(1) of the Court, the Defence submits the following observations:
8. Without providing any evidence in this regard of an interest in the proper administration of justice, and with no legal grounds whatsoever, these various States are requesting that Pre-Trial Chamber II order a deferral pending the Appeals Chamber's decision; this is a violation of article 67(1) of the Statute, article 9 of the

¹ ICC-01/05-01/08-475.

² ICC-01/05-01/08-485 OA2 and Anx1 OA2.

³ ICC-01/05-01/08-494 and Conf-Anxs1~7.

Universal Declaration of Human Rights, article 9 of the International Covenant on Civil and Political Rights, article 5 of the [European] Convention for the Protection of Human Rights and Fundamental Freedoms, article 6 of the African Charter on Human and Peoples' Rights, and article 7 of the American Convention on Human Rights.⁴

9. The Defence opposes this postponement on both legal and factual grounds;

10. The Defence would stress that under article 60(3) of the Rome Statute the Pre-Trial Chamber has the power to review rulings on detention every 120 days. It has three options in this respect: either it grants release, confirms the detention, or grants release subject to conditions.

11. The decision of 14 August 2009 ruled on two points: the first was Mr Bemba's release; the second was to hold fresh hearings on two specific points, in accordance with rule 119 of the Rules of Procedure and Evidence, before rendering its decision.

12. The interim release order of 14 August 2009 ruled that Mr Bemba be released subject to conditions. This is in fact the first act in a decision-making process which is still ongoing, inasmuch as the Court has decided *proprio motu* to order fresh hearings confined to the issue of determining the receiving State and of the conditions to be attached to such release.

13. The decision is yet to be finalised in a second phase, once the Pre-Trial Chamber has determined the conditions restricting liberty as provided in rule 119 of the Rules of Procedure and Evidence.

14. The Prosecutor's applications do not have suspensive effect, and even if the Appeals Chamber were to grant suspensive effect pursuant to article 82(3) of the Rome Statute, this does not suspend the ongoing decision-making process; hence there is no obstacle to the hearings being held.

⁴ ICC-01/05-01/08-475 para. 35.

15. If suspensive effect were to be granted, it would apply only to implementation of the release and not to the decision on the choice of receiving State or on determination of the conditions themselves.

16. The Pre-Trial Chamber itself has made it clear that it is deferring implementation of the interim release until a State to which Mr Bemba will be released has been identified, and until the conditions to be imposed on him have been determined.

17. There is nothing to be gained therefore in waiting for the Appeals Chamber's decision, which, even if it suspends implementation of the release, cannot legally suspend the decision-making process concerning the identification of a receiving State and the setting of the conditions to be imposed on Mr Bemba.

18. It should be noted that, on pain of denial of justice, the Pre-Trial Chamber is required to continue to address the issue of the application for conditional release on which it began to deliberate at the close of the hearing of 29 June 2009; the Appeals Chamber's decision cannot interfere with the conduct of the deliberation on an application which the Pre-Trial Chamber has not yet finished addressing, and cannot prevent the fresh hearings ordered by the latter.

19. On a practical level, the various States do not put forward or rely on any evidence indicating that the proper administration of justice requires the hearings of 7 to 14 September 2009 to be postponed. In any event, that part of the decision concerning the determination of the receiving State and the conditions may only be appealed before the Appeals Chamber after the Pre-Trial Chamber has rendered its decision.

20. Furthermore, political expediency, or the embarrassment of the States having taken a negative stance as regards receiving Mr Bemba in the face of the legal issues surrounding the obligation under articles 86 and 88 of the Rome Statute to cooperate

with the Court, cannot in themselves justify these various, apparently concerted, applications for a postponement.

FOR THESE REASONS,

21. The Defence requests the Pre-Trial Chamber II to take account of these observations and to dismiss the applications by the aforementioned States for postponement of the hearings of 7 to 14 September 2009.

[signed]

Nkwebe Liriss
Lead Counsel

Dated this 2 September 2009

At Kinshasa, Democratic Republic of the Congo