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TRIAL CHAMBER III

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio-Benito
Judge Joyce Aluoch

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

Public

**Prosecution's Observations on the Review of the Pre-Trial Detention of
Jean-Pierre Bemba Gombo**

Source: The Office of the Prosecutor

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

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Introduction

1. On 19 February 2010, Trial Chamber III (“the Chamber”) issued an order requesting the parties and participants to file their observations (if any) on the periodic review of the pre-trial detention of Jean-Pierre Bemba Gombo (“the Accused”).¹ In compliance with that request, the Office of the Prosecutor (“the Prosecution”) submits that the continued detention of the Accused be maintained for the following reasons;

- (i) the conditions justifying detention continue to be met;
- (ii) that there has been no substantial change of these conditions or any related factors, since the last review in December 2009,² that warrants a variation or interruption of the current detention regime;
- (iii) the Accused has not been detained for an unreasonable period, nor has there been inexcusable delay by the Prosecution in the conduct of its case; and
- (iv) the statutory grounds for considering interim release/release pursuant to Articles 60(3) and (4) of the Rome Statute (“the Statute”) are not met.

¹ ICC-01/05-01/08-698, p. 3.

² ICC-01/05-01/08-T-ENG, p. 24, lines 10 – p. 29, line 17.

Procedural background

2. On 23 May 2008, Pre-Trial Chamber III (“PTC III”) issued a warrant of arrest³ for Jean-Pierre Bemba Gombo. On the same day, PTC III requested his provisional arrest.⁴

3. On 3 July 2008, the Accused was surrendered to the Court.⁵

4. On 4 July 2008, the Accused made his initial appearance before the Court, during which the Defence duty counsel indicated that the Accused would subsequently file a written request for interim release.⁶

5. On 23 July 2008, the Defence submitted its first application for interim release.⁷

6. The Prosecution filed its response to that application for release on 11 August 2008.⁸

7. On 20 August 2008, the Single Judge issued the “Decision on application for interim release” (“first decision on interim release”).⁹ The Single Judge found that the Accused should remain in pre-trial detention

³ ICC-01/05-01/08-1.

⁴ ICC-01/05-01/08-3.

⁵ ICC-01/05-01/08-T-3-ENG, p. 4.

⁶ ICC-01/05-01/08-T-3-ENG, p.4 and 5.

⁷ ICC-01/05-01/08-49.

⁸ ICC-01/05-01/08-65-Conf. The Defence sought leave to reply to this Response (ICC-01/05-01/08-70-Conf, 15 August 2008). However, the Single Judge denied this application in the Decision (See Decision, paras. 39-40).

⁹ ICC-01/05-01/08-73-Conf. A public redacted version of the decision was issued on 27 August 2008: ICC-01/05-01/08-80-Anx.

because the conditions set forth in Article 58(I)(b)(i) and (ii) of the Statute continue to be satisfied.¹⁰

8. On 16 December 2008, the Appeals Chamber rendered its “Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled “Decision on application for interim release”¹¹ in which the Appeals Chamber upheld the first decision on interim release and dismissed the appeal.

9. On that same day, the Single Judge issued a second decision on interim release.¹² The Single Judge rejected the Defence’s second request and ordered the continued detention of the Accused.¹³

10. On 14 April 2009, the Single Judge issued a third decision on interim release. The Single Judge rejected the defence’s third request and ordered the continued detention of the Accused.¹⁴

11. On 15 June 2009, Pre-Trial Chamber II (“PTC II”) issued its “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo” (“Confirmation Decision”) in which it confirmed the charges.¹⁵

¹⁰ Ibid, paras. 54-59.

¹¹ ICC-01/05-01/08-323.

¹² ICC-01/05-01/08-321.

¹³ Ibid, p. 20.

¹⁴ ICC-01/05-01/08-403, p. 20.

¹⁵ ICC-01/05-01/08-424. PTC II found that there was sufficient evidence to establish substantial grounds to believe that the Accused is criminally responsible under Article 28(a) of the Statute for two counts of crimes against humanity and three counts of war crimes and to commit him to a Trial Chamber.

12. On 29 June 2009, the Single Judge held a hearing to consider issues relating to the pre-trial detention of the Accused.¹⁶

13. On 14 August 2009, the Single Judge issued a fourth decision on interim release, whereby the Accused was granted conditional release. The implementation of that decision was deferred pending a decision on which state the Accused will be released and which set of conditions shall be imposed on him.¹⁷

14. On 2 December 2009, the Appeals Chamber rendered its “Judgment on appeal of the Prosecutor against Pre-Trial Chamber II’s “Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic and the Republic of South Africa”. The Appeals Chamber reversed the decision of the Single Judge.¹⁸

15. On 8 December 2009, the Chamber rendered its decision on the review of the Accused’s pre-trial detention under Articles 58(1) and 60 of the Statute and Rule 118(2) of the Rules of Procedure and Evidence (“the Decision”). The Chamber decided to maintain the continued detention of the Accused.¹⁹

16. On 19 February 2010, the Chamber issued its “Order requesting the parties and participants’ observations regarding the review of the detention of Mr. Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence”, in which it requested observations (if any) on the

¹⁶ ICC-01/05-01/08-425.

¹⁷ ICC-01/05-01/08-475, p. 35.

¹⁸ ICC-01/05-01/08-631, para. 111.

¹⁹ ICC-01/05-01/08-T-ENG p. 29, lines 15-17.

periodic review of the pre-trial detention of the Accused.²⁰ The Prosecution hereby submits its observations on the matter.

Prosecution's observations

17. As the Appeals Chamber in the *Lubanga* case has reiterated, where the conditions under Article 58(1) continue to be met, Article 60(2) of the Statute requires that the person must continue to be detained.²¹ Pursuant to Article 58(1) of the Statute, a warrant of arrest shall be issued and detention ensue; i) to ensure a person's appearance at trial; ii) to prevent the obstruction of the investigation or court proceedings; or iii) to prevent continuing criminal conduct by the same person. For the reasons elaborated below, the continued detention of the Accused remains necessary both to ensure his appearance at trial, and to ensure that he does not obstruct court proceedings.

Continued detention is necessary to ensure that the Accused will be present at trial and that he will not intimidate witnesses or obstruct court proceedings

18. PTC II unanimously concluded in the Confirmation Decision that there is sufficient evidence to establish substantial grounds to believe that Mr. Jean-Pierre Bemba Gombo, as *de jure and de facto* President and Commander-in-Chief of the *Mouvement de Libération du Congo* ("MLC"), was criminally responsible under Article 28(a) of the Statute by virtue of his *de facto* ultimate control over MLC troops, for two counts of crimes against humanity and three counts of war crimes.²² As the Appeals Chamber confirms in its Judgment in this case, the Confirmation Decision increased the likelihood and provided further incentive that the Accused would abscond, if released, given

²⁰ ICC-01/05-01/08-698, p. 3.

²¹ ICC-01/04-01/06-824, para. 134.

²² ICC-01/05-01/08-424 at paras. 184-185 and 457.

both the gravity of the charges and possibility of an overall lengthy sentence, if convicted.²³ Post confirmation, the Prosecution collected and disclosed additional evidence for trial. Trial is drawing nearer and is scheduled to commence on 27 April 2010.²⁴ Given these circumstances, there exists a firmer evidential basis for inferring that there is a likelihood that the Accused would not appear for trial, if released.

19. In December 2009, the Chamber, after its review decided to maintain the Accused's detention. In reaching this decision, the Chamber considered the factors relied upon by the Single Judge in the 14 April 2009 decision. In particular, the Chamber considered the following factors; the gravity of the charges and the possibility of an overall lengthy sentence, if convicted, the Accused's notable political and professional position, his international contacts, his general financial background and the network and resources available to him, and concluded that the Accused may abscond, if released.²⁵

20. The Chamber further decided that "given the Accused's general contacts and his position prior to his arrest, he would have access to funds if he wishes to flee."²⁶ In reaching this decision, the Chamber reasoned that "the Accused is a man who has had considerable power and influence and it is a proper inference that he could easily find financial support to flee."²⁷ The Chamber also acknowledged that it reached this conclusion notwithstanding its earlier finding that financial resources are not necessarily immediately available to fund the Accused's Defence.²⁸ After considering all factors, the Chamber concluded that "on this review of detention under Article 60(3), the

²³ ICC-01/05-01/08-631, para. 70.

²⁴ ICC-01/05-01/08-598.

²⁵ ICC-01/05-01/08-T-ENG, ET, p. 28, lines 18 to 25 and p. 29, lines 1 to 3.

²⁶ ICC-01/05-01/08-T-ENG, ET, p. 29, lines 5 to 7.

²⁷ Ibid, p. 29, lines 7 to 8.

²⁸ Ibid, p. 29 lines 4 to 5.

Chamber is of the view that no changed circumstances require a modification of the decision of 14 April 2009 and Mr. Bemba will, therefore remain in custody.”²⁹

21. These factors, previously confirmed by the Chamber continue to persist. They reflect still applicable concerns about the release of the Accused. There has been no change of circumstances since December 2009 which could indicate that, if released, there will be any way to ensure the Accused’s appearance at trial. The need to protect witnesses from intimidation or interference, moreover, is equally if not more pressing as the trial draws near. Of further pressing concern is the fact that the Accused knows the names and identities of all witnesses, upon whose evidence the Prosecution intends to rely upon at trial. The security of some of these witnesses may be at risk.

The Accused’s length of detention has been reasonable

22. The Appeals Chamber, in the *Lubanga* case, stated that “the unreasonableness of any period of detention prior to trial cannot be determined in the abstract, but has to be determined on the basis of the circumstances of each case”.³⁰ The Accused’s detention is reasonable, having regard to the facts and circumstances of this case. The Accused has been in detention for almost twenty one (21) months, and a trial date has already been set for 27 April 2010.³¹ In these circumstances, the Prosecution submits that the length of the Accused’s detention “remains within acceptable limits and the interests of justice”.

²⁹ Ibid, p. 29, lines 15 to lines 17.

³⁰ ICC-01/04-01/06-824, para. 122.

³¹ ICC-01/05-01/08-598.

There has been no inexcusable delay by the Prosecution

23. There has been no inexcusable delay in the pre-trial process. The Prosecution discharged its disclosure obligations in a timely manner on 30 November 2009, and thereafter upon the defence's specific request. As such, the Prosecution submits that the statutory grounds for granting release under Article 60(4) of the Statute has not been met. Accordingly, the Accused's detention must be maintained.

Conclusion

24. For all the above-explained reasons, the Prosecution requests that the Chamber maintain the continued detention of the Accused because the conditions justifying detention continue to be met. These conditions have not changed since the last review. Accordingly, the statutory grounds for granting interim release have not been met and the continued detention of the Accused must be maintained.



Luis Moreno-Ocampo, Prosecutor

Dated this 24th Day of February 2010

At The Hague, The Netherlands