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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 Document

**Observations of the Legal Representative regarding the review of the detention of
Mr. Jean-Pierre Bemba Gombo**

Source: OPCV as Legal Representative of Victims a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08, a/0467/08, a/0130/09, a/0131/09, a/0132/09, a/0133/09, a/0134/09, a/0135/09, a/0136/09, a/0137/09, a/0138/09, a/0139/09, a/0141/09, a/0293/08, a/0427/09, a/0432/09, a/0511/08, a/0512/08, a/0513/08, a/0515/08, a/0516/08, a/0562/08, a/0563/08, a/0564/08, a/0565/08, a/0566/08, a/0567/08, a/0568/08, a/0569/08, a/0570/08, a/0571/08, a/0572/08, a/0651/09, a/0652/09 et a/0653/09

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

The Office of the Prosecutor

Ms. Fatou Bensouda

Ms. Petra Kneuer

Counsel for the Defence

Mr. Nkwebe Liriss

Mr. Aime Kilolo-Musamba

Legal Representatives of Victims

Ms. Marie Edith Douzima-Lawson

Ms. Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Mrs. Silvana Arbia & Mr. Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural Background

1. On 15 June 2009, Pre-Trial Chamber II rendered a Decision confirming five of the eight charges for which a warrant of arrest was issued against Mr. Bemba, thereby committing him to trial¹.
2. On 18 September 2009, the Presidency issued its “Decision constituting Trial Chamber III (the “Chamber”) and referring to it the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*².
3. On 08 December 2009, Trial Chamber III decided to continue Mr. Bemba’s detention³.
4. On 09 December 2009, the Chamber issued the “Decision on the Observations on legal representation of unrepresented applicants”⁴, wherein it held, *inter alia*, that the Office of Public Counsel for Victims (the “OPCV”) shall continue to represent a) the victim applicants it currently represents until the Chamber issues a decision on their application to participate, and b) those victim applicants who have not chosen a legal representative until a decision is made on their application to participate⁵.
5. On 19 February 2010, the Chamber issued an Order requesting the parties and participants to submit observations on the review of the continued detention of Mr.

¹ See the “Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor against Jean-Pierre Bemba Gombo” (Pre-Trial Chamber II), No. ICC-01/05-01/08-424, 15 June 2009.

² See the “Decision constituting Trial Chamber III and referring to it the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*” (Presidency), No. ICC-01/05-01/08-534, 18 September 2009.

³ See the Transcripts of the Status Conference held on 8 December 2009 (Trial Chamber III), No. ICC-01/05-01/08-T-18-Red ENG ET WT, p. 24, line 10 to p. 29, line 17.

⁴ See the “Decision on the Observations on legal representation of unrepresented applicants” (Trial Chamber III), No. ICC-01/05-01/08-651, 09 December 2009.

⁵ See *supra* note 3, p. 10. See also the “Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties’ observations on applications for participation by 86 applicants” (Trial Chamber III), No. ICC-01/08-01/05-699, 22 February 2010, par. 23.

Bemba, being that the Chamber must review its ruling on detention at least every 120 days⁶. On 3 March 2010, the Chamber issued a *Corrigendum* to such Order⁷.

6. On 22 February 2010, the Chamber issued a Decision on continuous participation, wherein it held, *inter alia*, that the 54 individuals who were granted the status of victim by the Pre-Trial Chamber shall continue to participate in the proceedings at the trial stage⁸.

7. On 1st April 2010, Trial Chamber III issued a Decision on the review of the detention of Mr. Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence, ordering that the Accused remain in custody⁹.

8. On 30 June 2010, the Chamber issued a Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, granting the status of victim to 81 applicants and setting the modalities of victims' participation at trial¹⁰. On 12 July 2010, the Chamber issued a *Corrigendum* to such Decision¹¹.

⁶ See the "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" (Trial Chamber III), No. ICC-01/05-01/08-698, 19 February 2010, par. 4.

⁷ See the "Corrigendum to the "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" (Trial Chamber III), No. ICC-01/05-01/08-698-Corr, 3 March 2010.

⁸ See the "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants" (Trial Chamber III), No. ICC-01/08-01/05-699, 22 February 2010, p. 21.

⁹ See the "Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence" (Trial Chamber III), No. ICC-01/05-01/08-743, 1st April 2010.

¹⁰ See the "Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings" (Trial Chamber III), No. ICC-01/05-01/08-807 and No. ICC-01/05-01/08-807-Conf-Exp-AnxA, 30 June 2010.

¹¹ See the "Corrigendum to the "Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings" (Trial Chamber III), No. ICC-01/05-01/08-807-Corr, 12 July 2010.

9. On 7 July 2010, Trial Chamber III issued an Order postponing the commencement of the trial, instructing notably the Prosecutor and the Legal representatives of victims to file by 15 July 2010 their submissions addressing the review of the detention of the Accused, in accordance with articles 60(3) and (4) and 61(11) of the Rome Statute as well as rule 118(2) of the Rules of Procedure and Evidence¹².

10. Accordingly, the Principal Counsel of the OPCV, acting as Legal Representative of victims a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08, a/0467/08, a/0130/09, a/0131/09, a/0132/09, a/0133/09, a/0134/09, a/0135/09, a/0136/09, a/0137/09, a/0138/09, a/0139/09, a/0141/09, a/0293/08, a/0427/09, a/0432/09, a/0511/08, a/0512/08, a/0513/08, a/0515/08, a/0516/08, a/0562/08, a/0563/08, a/0564/08, a/0565/08, a/0566/08, a/0567/08, a/0568/08, a/0569/08, a/0570/08, a/0571/08, a/0572/08, a/0651/09, a/0652/09 and a/0653/09 ("the Legal Representative"), hereby submits her observations on the review of the detention of Mr. Bemba.

II. There are no changes in the circumstances regarding the detention of the Accused which merit a modification of the Trial Chamber's last detention ruling

11. Pursuant to article 60(3) of the Rome Statute, the Chamber shall periodically review its ruling on the release or detention of an accused, and, upon such review, it may modify its ruling *"if it is satisfied that changed circumstances so require."* According to the Appeals Chamber,¹³ and as this Chamber recalled in previous Decisions on the

¹² See the "Order postponing the commencement of the trial" (Trial Chamber III), No. ICC-01/05-01/08-811, 7 July 2010, par. 7.

¹³ See the "Judgment on the 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 No. ICC-01/05-01/08

matter¹⁴, “the requirement of ‘changed circumstances’ imports either a change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary.”

12. Regarding the current circumstances which the Chamber should consider in its review of Mr. Bemba’s detention, the Legal Representative submits that they all militate in favour of maintaining Mr. Bemba in custody.

13. Particularly with regard to the only potential circumstance that might have changed since the last detention review by this Chamber, namely the commencement (and subsequent postponement) of the trial, the Legal Representative wishes to underline that the trial has only been postponed until a Status Conference is held on this issue on 30 August 2010, and that such a postponement consequently does not constitute a change in circumstances as required by the Court’s jurisprudence. In this regard, the Legal Representative recalls the Chamber’s assessment of such criteria in its last Decision on the matter, deciding that such a “*fact alone is not sufficient to merit the release of the accused since the sole reason for the adjournment is to afford the parties and participants adequate time to respond to, and for the Chamber to hear oral submissions on, the Defence Application to Challenge the Admissibility of the Case*”¹⁵.

14. Furthermore, the Legal Representative submits that the reason for the postponement of the commencement of the trial is related to the admissibility issue pending before the Appeals Chamber, and more specifically to the Defence’s appeal against the Decision confirming the admissibility of the case against the Accused and

Republic, and the Republic of South Africa” (Appeals Chamber), No. ICC-01/05-01/08-631-Red OA2, 02 December 2009, par. 1.

¹⁴ See the “Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence”, *supra* note 9, par. 26; see also Transcript of Status Conference held on 08 December 2009 (Trial Chamber III), No. ICC-01/05-01/08-T-18-Red ENG ET WT, p. 25, lines 13-17.

¹⁵ See the “Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence”, *supra* note 9, par. 31.

rejecting the Defence's abuse of process challenge¹⁶. Therefore, the Legal Representative argues that the risk of the Accused absconding, should he be released, is even greater now that a Decision on admissibility has been issued and that all of the Defence's arguments on the matter have been rejected. This is especially the case as the Defence's Request for suspensive effect attached to the said Appeal has been denied by the Appeals Chamber¹⁷. Consequently, the continued detention of the Accused remains necessary to ensure his appearance at trial.

15. In addition, the Legal Representative wishes to draw the attention of the Chamber to the security risks faced by the victims and witnesses due not only to the prominent position the Accused holds in the community that supports him, but also to the means he still possesses. Indeed, said security risks are very concrete, as demonstrated by the concerns expressed by the victims to their Legal Representatives and to the numerous public sources recounting threats of death and intimidation against potential witnesses, as already highlighted by both Legal Representatives a few months ago,¹⁸ and that remain unchanged to the knowledge of the Principal Counsel. Moreover, in light of the provisions of article 68(1) of the Rome Statute, the Legal Representative would like to recall that some of the crimes in this case involve sexual or gender violence or violence against children. Another factor that the Legal Representative wishes the Chamber to take into account is that many victims and witnesses are easily reachable and therefore might face security risks, as already mentioned in a previous Submission to the Chamber¹⁹, particularly

¹⁶ See the "Decision on the Admissibility and Abuse of Process Challenges" (Trial Chamber III), No. ICC-01/05-01/08-802, 24 June 2010; see also the "Corrigendum Acte d'Appel de la Défense contre la décision de la Chambre de Première Instance III du 24 Juin 2010 intitulée "Decision on the Admissibility and Abuse of Process Challenge"", No. ICC-01/05-01/08-804-Corr2 OA3, 28 June 2010.

¹⁷ See the "Decision on the Request of Mr Bemba to Give Suspensive Effect to the Appeal Against the "Decision on the Admissibility and Abuse of Process Challenges"" (Appeals Chamber), No. ICC-01/05-01/08-817 OA3, 9 July 2010.

¹⁸ See the "Observations of the Legal Representatives of Victims regarding the review of the detention of Mr. Jean-Pierre Bemba Gombo", No. ICC-01/05-01/08-703, 24 February 2010.

¹⁹ See *Idem*.

now that details about numerous victims and witnesses are known to the Defence following the completion of the disclosure process.

16. In conclusion, the Legal Representative stresses that the various grounds raised in the past by the Defence for Mr. Bemba before the Pre-Trial Chamber and this Chamber have consistently been rejected as not constituting a real change in circumstances within the meaning of article 60(3) of the Rome Statute. Moreover, the grounds that merited his detention in the first place - and its prolongation thereof - not only continue to exist at present, but can be said to be all the more pertinent in light of the fact that the trial will commence in the near future and that the case has been upheld as admissible by the Chamber.

FOR THE FOREGOING REASONS, the Legal Representative of victims a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08, a/0467/08, a/0130/09, a/0131/09, a/0132/09, a/0133/09, a/0134/09, a/0135/09, a/0136/09, a/0137/09, a/0138/09, a/0139/09, a/0141/09, a/0293/08, a/0427/09, a/0432/09, a/0511/08, a/0512/08, a/0513/08, a/0515/08, a/0516/08, a/0562/08, a/0563/08, a/0564/08, a/0565/08, a/0566/08, a/0567/08, a/0568/08, a/0569/08, a/0570/08, a/0571/08, a/0572/08, a/0651/09, a/0652/09 and a/0653/09 respectfully requests the Chamber to hold that there has been no change in the circumstances which would require a

modification of its previous ruling, and therefore to order the continued detention of Mr. Bemba.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

Paolina Massidda
Principal Counsel

Dated this 15 July 2010

At The Hague, The Netherlands