

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/05-01/08

Date: 15 July 2010

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 Redacted Document

**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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I. Introduction

1. On 7 July 2010, the Trial Chamber III (“Chamber”) issued its “Order postponing the commencement of the trial” (“Postponement Order”),¹ in which it requested *inter alia* that the parties and participants submit their observations, if any, on the periodic review of the pre-trial detention of Jean-Pierre Bemba Gombo (“Accused”).²

2. In compliance with the Chamber’s request, the Office of the Prosecutor (“Prosecution”) hereby submits that the continued detention of the Accused be maintained for the following reasons:

- (i) the conditions justifying detention under Article 58(1) of the Rome Statute (“Statute”) continue to be met;
- (ii) there has been no substantial change to these conditions or any related factors as stipulated by Article 60(3) of the Statute since the last review in April 2010;
- (iii) there has been no material change in circumstances that require or justify interim release; and
- (iv) there has been no inexcusable delay by the Prosecution in the conduct of its case as stipulated by Article 60(4) of the Statute, nor has the Accused been detained for an unreasonable period.

3. Consequently, the Prosecution submits that the statutory grounds for interim release or release pursuant to Articles 58(1), 60(3) and 60(4) of the Statute are not met and the continued detention of the Accused must be maintained.

¹ ICC-01/05-01/08-811.

² ICC-01/05-01/08-811, para. 7.

II. Request for confidentiality

4. The Prosecution requests that this submission be received by the Chamber as “Confidential, *Ex Parte*, Prosecution and the Victims and Witnesses Unit only” since it contains information relating to the security of Prosecution’s trial witnesses.

III. Procedural background

5. On 3 July 2008, the Accused was surrendered to the Court.³ He has been in custody continuously since then.

6. On 23 July 2008, the Defence submitted its first application for interim release.⁴

7. On 20 August 2008, the Single Judge denied interim release. On 16 December 2008, the Appeals Chamber dismissed the Defence appeal and upheld the first decision on interim release.⁵

8. On that same day, 16 December 2008, the Single Judge issued a second decision on interim release,⁶ affirming the continued detention of the Accused.⁷

9. On 14 April 2009, the Single Judge rejected the Defence’s third request and ordered the continued detention of the Accused.⁸

³ ICC-01/05-01/08-T-3-ENG, p. 4.

⁴ ICC-01/05-01/08-49.

⁵ ICC-01/05-01/08-323, “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’”.

⁶ ICC-01/05-01/08-321.

⁷ *Ibid*, p. 20.

⁸ ICC-01/05-01/08-403, p. 20.

10. On 14 August 2009, following the 15 June 2009 decision confirming the charges and a detention hearing on 29 June 2009, the Single Judge granted conditional release,⁹ but deferred implementation of its release decision.¹⁰

11. The Prosecution appealed. The Accused remained in custody pending the appeal. On 2 December 2009, the Appeals Chamber reversed the decision of the Single Judge.¹¹

12. Thereafter, on 8 December 2009, the Chamber rendered its first decision on the review of the Accused's pre-trial detention.¹² The Chamber maintained the continued detention of the Accused.¹³ On 1 April 2010, following its second review, the Chamber again continued to maintain the detention of the Accused.¹⁴

13. On 24 June 2010, the Chamber issued the "Decision on the Admissibility and Abuse of Process Challenges" ("Admissibility Decision").¹⁵ The Chamber rejected the Defence's challenge to the admissibility of the case and its request to dismiss the case for prosecutorial abuse of process.

14. On 28 June 2010, the Defence filed an appeal against the Admissibility Decision.¹⁶ Subsequently, on 5 July 2010, the Defence filed a request with the Appeals Chamber to grant suspensive effect of the Admissibility Decision pending its

⁹ ICC-01/05-01/08-475.

¹⁰ ICC-01/05-01/08-475, p. 35.

¹¹ ICC-01/05-01/08-631-Red OA2, "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'", 2 December 2009, para. 111.

¹² ICC-01/05-01/08-T-18-CONF-ENG p. 29, lines 15-17.

¹³ ICC-01/05-01/08-T-18-CONF-ENG p. 29, lines 15-17.

¹⁴ ICC-01/05-01/08-743.

¹⁵ ICC-01/05-01/08-802.

¹⁶ ICC-01/05-01/08-804-Corr2-tENG; the Defence filed two corrigenda on 28 and 29 June 2010 respectively (ICC-01/05-01/08-804-Corr and ICC-01/05-01/08-804-Corr2-tENG).

appeal.¹⁷ On 8 July 2010, the Prosecution opposed the Defence request.¹⁸ On 9 July 2010, the Appeals Chamber denied the application to suspend the trial pending appeal.¹⁹

15. In the meantime, on 7 July 2010, the Chamber issued the Postponement Order.²⁰ Because of the pendency of the Defence request to suspend the trial pending appeal and in order to give the Appeals Chamber a reasonable opportunity to decide that issue, the Chamber vacated the trial date of 14 July 2010. It scheduled a status conference for 30 August 2010 to hear submissions on re-fixing the trial date.

IV. Prosecution's observations

16. As the Appeals Chamber reiterated in the *Lubanga* case, 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 For the reasons set out below, the continued detention of the Accused remains necessary pursuant to Article 58(1) of the Statute to ensure his appearance at trial and to prevent him from obstructing court proceedings. Nor are there any other factors - inexcusable delay occasioned by the Prosecution or excessive length of detention - that would warrant the Accused's release.

¹⁷ ICC-01/05-01/08-809.

¹⁸ ICC-01/05-01/08-814.

¹⁹ ICC-01/05-01/08-817.

²⁰ See *Supra* n 1.

²¹ ICC-01/04-01/06-824, para. 134.

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

17. The Pre-Trial Chamber II unanimously concluded in the Confirmation Decision that there is sufficient evidence to establish substantial grounds to believe that the Accused is criminally liable and must stand trial on two counts of crimes against humanity and three counts of war crimes.²² As the Appeals Chamber confirmed in its Judgment reversing the 2009 order of conditional release,²³ the Confirmation Decision increased the likelihood and provided further incentive that the Accused would abscond, if released, given both the gravity of the charges and possibility of an overall lengthy sentence, if convicted.²⁴ The already noted risk of flight, moreover, can only have been exacerbated by the Chamber's Admissibility Decision rejecting the Accused's application to dismiss the charges.

18. In its most recent review of the Accused's detention in April 2010, the Chamber rejected the Accused's arguments in favour of release. The Chamber found no change in circumstances which "... undermine the critical conclusion that detention remains necessary to ensure that Accused's appearance at this trial."²⁵ In particular, it rejected claims centred on the Accused's alleged diminished political status and possibly worsening financial circumstances: "... these matters have all been considered as relevant factors during earlier reviews of his detention, and although there may have been incremental changes since the last review - reflecting

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

²³ ICC-01/05-01/08-631-Red OA2, "Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's decision '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'", 2 December 2009, para. 70.

²⁴ ICC-01/05-01/08-631, para. 70.

²⁵ ICC-01/05-01/08-743, para. 33.

largely the inevitable consequences of the passage of time - none of them, at this stage, constitutes a material or substantive change in circumstances.”²⁶

19. The Prosecution submits that the facts forming the basis of the Chamber’s assessment of the Accused’s personal circumstances in April 2010 remain unchanged. As such, no variation in the Accused’s current detention regime is warranted.

20. The need to protect witnesses from intimidation or interference, moreover, becomes more pressing as the trial draws near. At this stage, the Accused knows the identities of all witnesses upon whose evidence the Prosecution intends to rely at the trial. Numerous incidents of threats or use of violence against witnesses have been committed by supporters of the Accused in the past.²⁷ [REDACTED]²⁸ The combination of the willingness of the Accused’s supporters to target witnesses with the interest of the Accused to influence the case and his possibilities to do so once he is released leads to a foreseeable risk of intimidation and harm to witnesses.

There has been no inexcusable delay by the Prosecution

21. Nor is release justified on the ground of inexcusable delay attributable to the Prosecution. Though the Defence argued, in its abuse of process challenge, that the Prosecution failed to discharge its disclosure obligations *vis-à-vis* admissibility in a timely fashion, the Chamber rejected that complaint. After reviewing the relevant facts, the Chamber concluded that “there has been no material irregularity or impropriety in the proceedings, and the abuse of process challenge is without foundation.”²⁹

²⁶ ICC-01/05-01/08-743, para. 29.

²⁷ References to these threats are contained in filings: ICC-01/05-01/08-537-Conf-Exp; see also; ICC-01/05-01/08-496-Conf-Exp; ICC-01/05-01/08-217-Conf; and ICC-01/05-01/08-162-Conf.

²⁸ [REDACTED].

²⁹ ICC-01/05-01/08-802, para. 262.

22. In all respects, the Prosecution has fully discharged its disclosure obligations in a timely fashion and sufficiently in advance of trial. Much of the evidence was disclosed to the Defence well over a year ago. With respect to evidence provided subsequent to the Confirmation Hearing, the Chamber noted in its last review of April 2010 that “the prosecution substantively met the deadline [for disclosure] of 30 November 2009.”³⁰ The Chamber also stated that “[t]he defence has not identified any categories of evidence or individual documents disclosed since the last review of detention that together or separately constitute a material change in circumstances.”³¹ There are no circumstances justifying a changed assessment since the Chamber’s last review of the Prosecution’s compliance with its disclosure obligations.

23. Indeed, to the extent that the start of trial was delayed from its initial date of 27 April 2010, the postponements were occasioned by the Defence admissibility challenge,³² the pending appeal, and the Defence request that trial be suspended until the appeal is resolved.³³

The Accused’s length of detention has been reasonable

24. Finally, the length of detention thus far has not been unreasonable. 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.”³⁴ The Accused’s detention is reasonable, having regard to the facts and circumstances of this case. The Accused has been in detention for just over two (2) years. In complex international criminal trials, that period is neither unusual nor unreasonable. Moreover, against the

³⁰ ICC-01/05-01/08-743, para. 30.

³¹ ICC-01/05-01/08-743, para. 30.

³² ICC-01/05-01/08-743, para. 31.

³³ ICC-01/05-01/08-811, para. 5.

³⁴ ICC-01/04-01/06-824, para. 122.

backdrop of this case, and the Accused's own responsibility for the continued delays, the length of detention cannot warrant release pending trial.

V. Conclusion

25. For all the above-mentioned 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. Any new factors, either taken separately or together, do not warrant a variation of the *status quo*. 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 15th Day of July 2010
At The Hague, The Netherlands