

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

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

**Confidential Document
With
Confidential Annex A**

Prosecution's Response to the Defence « *Demande d'autorisation de sortie sous le bénéfice de l'extrême urgence pour permettre à M. Jean-Pierre Bemba Gombo d'accomplir ses devoirs civiques en République Démocratique du Congo* »

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 10 June 2011, the Defence submitted an urgent filing requesting that Mr. Jean-Pierre Bemba Gombo ("Accused") be granted temporary provisional release to the Democratic Republic of the Congo ("DRC") for 17 hours (from 6:00 am to 9:00 pm) to register as a voter and obtain a voter's card in order to participate in the upcoming November 2011 elections ("Defence Application").¹ The Defence proposes that the Accused be subjected to conditions similar to those imposed during his provisional release to the Kingdom of Belgium after the deaths of his father and step-mother. The Defence proposes that the Accused be permitted to charter a private plane to fly from Schiphol Airport, Amsterdam to the DRC; that he be allowed to be present in the DRC for one hour to register to vote; and that he thereafter board his chartered plane for the return flight.²

2. The Office of the Prosecutor ("Prosecution") submits that the Accused should not be released in the middle of the trial. The Pre-Trial, Trial, and Appeals Chambers have all agreed that the Accused presents a flight risk and for that reason must remain in detention. Ordering the Accused's release is incompatible with those findings. Nor are there "humanitarian concerns" underlying this request. And there is no comparison between this situation and the prior instance, in which the Accused was allowed to attend his father's funeral in Belgium, in Dutch or Belgian custody at all times and without the public attention and specific security risks that this proposed trip would attract. In short, in the Prosecution's view, there is neither precedent nor justification for this extraordinary request.

¹ ICC-01/05-01/08-1501-Conf, Demande d'autorisation de sortie sous le bénéfice de l'extrême urgence pour permettre à M. Jean-Pierre Bemba Gombo d'accomplir ses devoirs civiques en République Démocratique du Congo, 10 June 2011 ("Defence Application").

² *Ibid.*, at paras 15 and 37.

Request for confidentiality

3. The Prosecution requests that this filing and its annex be received as confidential as they respond to an application currently classified as confidential.

Prosecution's response

4. The conditions justifying detention under Article 58(1) of the Rome Statute ("Statute") - the existence of the possibility, not the inevitability, of a future occurrence of flight or obstruction of justice³ - continue to be met, and the proposed temporary release would create an even greater possibility of flight or obstruction. Furthermore, the Defence has failed to identify conditions that would suffice to protect against those possibilities.

5. The Defence relies on Pre-Trial Chamber II's "Decision on the Defence's Urgent Request concerning Mr. Jean-Pierre Bemba's Attendance of his Father's funeral ("Provisional Release Decision"),⁴ which it wrongfully construes as a decision allowing the provisional release of the Accused. The Pre-Trial Chamber did not authorize the Accused's release, it instead directed that his custody be transferred temporarily to Dutch and Belgian officers. Nor did it purport to establish precedent for future requests. In fact, paragraph 9 of the Provisional Release Decision held that "[...] *for the purpose of this decision*, the information provided in the Defence's Request concerning the death of Mr. Jean-Pierre Bemba's father reveals the existence of exceptional humanitarian circumstances, which only justify her to invoke the Chamber's inherent powers to

³ ICC-01/04-01/07-572 OA6, Judgment In the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release, 09 June 2008, at para. 21.

⁴ ICC-01/05-01/08-437-Conf, Urgent Decision on the Defence's Urgent Request concerning Mr Jean-Pierre Bemba's Attendance of his Father's Funeral, 03 July 2009.

authorize the transfer of the accused from the Court's detention centre to the Kingdom of Belgium for a period that does not exceed 24 hours as requested by the Belgian authorities"⁵ [emphasis added].

6. There were humanitarian grounds in the prior situation yet no release was ordered. The Accused was held in custody at all times, with Dutch and Belgian law enforcement officers maintaining full control over the Accused and the situation. In this instance there are no humanitarian grounds to contemplate, it is a trip solely to exercise political activities in the DRC, where the Accused has political support and influence.⁶ Furthermore neither the DRC Government nor the United Nations Organization Stabilization Mission in the DRC (MONUSCO) has undertaken to secure his custody and return for trial.

7. More important, with the progress of the trial the incentive to flee and/or obstruct the case has only increased. On that latter point, the Trial Chamber III ("Chamber") found in its recent review of the Accused's detention that "The trial process is now underway which creates an obligation for Mr. Bemba to attend court regularly. The Chamber therefore considers that the final dismissal of the Accused's admissibility challenge and the subsequent start of the trial have introduced a greater level of certainty that Mr. Bemba must stand trial which *increases the risk of absconding*" [emphasis added].⁷

⁵ *Ibid.*, at p. 4.

⁶ The supporters of the Accused, including former members of his *Mouvement de Libération du Congo* ("MLC"), demonstrated and expressed solidarity with the Accused when he was arrested. See "Congo Protesters demand release of arrested ex-VP", available at: <http://www.reuters.com/article/latestCrisis/idUSL27385005>.

"Protests in DR Congo against former rebel leader's arrest", 27 May 2008 available at: http://voicesofafrica.africanews.com/site/list_message/13579.

⁷ ICC-01/05-01/08-1088, Decision on the review of detention of Mr. Jean-Pierre Bemba Gombo pursuant to the Appeals Judgement of 19 November 2010, 17 December 2010, at para. 32. To date 23 out of 40 Prosecution witnesses have testified. Both this Chamber and the Appeals Chamber have found that as the proceedings progress the risk of flight increases.

8. Finally, the Chamber recently denied the Accused's request for provisional release to allow him to visit his ailing grandmother in the DRC. The Chamber refused the request on the ground that it could not ensure the Accused's presence during trial.⁸ The Chamber explained that "Given that Mr. Bemba's grand-mother resides in the DRC, and the Court is likely to be unable to ensure the Accused's presence at trial if he is released for visiting his grand-mother in the DRC, and taken together with counter submissions made by the prosecution such as the start of trial, the personal circumstances for humanitarian grounds invoked by the Defence continue not to represent any change of circumstances that would warrant a modification of the Chamber's previous ruling as to Mr. Bemba's detention".⁹ There has been no material change in the circumstances underpinning the Chamber's ruling to warrant the Accused's present requested interim release to the DRC.

9. The Defence relies on jurisprudence from the International Criminal Tribunal for Former Yugoslavia ("ICTY") and the European Court of Human Rights ("ECHR"), and on Article 25 of the International Covenant on Civil and Political Rights ("ICCPR") and Article 30 of the DRC Constitution.¹⁰ The Prosecution submits that none of these authorities supports its request.

10. The ICTY authorities provide little assistance. The Rules of Procedure and Evidence of the ICTY explicitly allow for release under special circumstances, but there is no comparable provision in this Court's Statute or Rules.¹¹ The ECHR case of *Hirst vs. UK* considered whether United Kingdom legislation that prohibited convicted persons

⁸ ICC-01/05-01/08-1068-tENG, Defence Submissions on the Review of the Detention of Mr Jean-Pierre Bemba Gombo, 30 November 2010, at paras. 26 and 27.

⁹ ICC-01/05-01/08-1088, at para. 33.

¹⁰ Constitution of the Democratic Republic of Congo, available at: <http://www.presidentrdc.cd/constitution.html>.

¹¹ See for example, ICTY Rule 65 of the Rules of procedure and evidence, in particular Rule 65(I)(iii) which provides for special circumstances warranting release.

from voting was incompatible with the European Convention on Human Rights.¹² What is at issue here, however, is not a statutory ban against voting - since none exists¹³ - but the fact that the Accused cannot register in person because he is in custody, based on substantial grounds having been found to believe he committed war crimes and the Chambers' agreement that his release poses risks. Articles 25 of the ICCPR and 30 of the DRC Constitution do not provide much assistance either. Article 25 of the ICCPR deals with the rights of citizens to take part in public affairs, and to vote or be elected in a public office. Article 30 of the DRC Constitution deals with the right of access to DRC territory. The issue here is not whether the Accused should be permitted to exercise his civic rights or access the DRC territory, but rather whether his presence during trial will be secured in the event that he is provisionally released. None of the cited provisions require the Chamber to discount the legitimate reasons to maintain custody of a person on trial for war crimes.

11. Finally, the Defence states that the Accused already benefits from the right to an increased personal security in his capacity as former vice-president of the DRC and that he has a right to access the DRC territory without prior permission of the DRC authorities.¹⁴ These points are irrelevant. The issue before the Chamber is not whether the Accused himself would be allowed to enter the territory of the DRC and would have police protection against harm from others, it is whether his release would pose a risk of his flight or his interference with the ongoing proceedings.

¹² See section 3 of the United Kingdom's "Representation of the People Act 1983", available at <http://www.legislation.gov.uk/ukpga/1983/2>.

¹³ See Defence Application, para. 20, wherein the Defence states that there is no doubt that the applicant enjoys fully all his civil and political rights and enjoys the right to vote and to be elected pursuant to the Congolese Legislation, in particular Article 10. He has never been deprived of his political rights by any judicial decision, nor sentenced for war crimes or crimes against humanity. Consequently, the Accused is not barred by any law from voting.

¹⁴ Defence Application, paras 28-30.

Conclusion

12. In light of the foregoing, the Prosecution respectfully requests the Chamber to reject the Defence's Application.



Luis Moreno-Ocampo, Prosecutor

Dated this 17th Day of June 2011

At The Hague, The Netherlands