

**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***

Public Redacted Document

**Prosecution Response to Defence Request for Provisional Release of Mr 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 9 December 2011, the Defence submitted an urgent Request for Provisional Release (“Application”)¹ requesting that Mr. Jean-Pierre Bemba Gombo (“Accused”) be granted provisional release into [REDACTED] during judicial recess, weekends, and any periods when Trial Chamber III (“Chamber”) will not sit for at least three consecutive days. The Defence attached to its Application two letters whereby the [REDACTED] proposes to implement measures to monitor the Accused during his stay in [REDACTED]. The Defence argued that these measures warrant conditional release of the Accused under Rule 119 of the Rules of Procedure and Evidence (“Rules”).

2. The Office of the Prosecutor (“Prosecution”) opposes the Application and submits that the continued detention of the Accused be maintained for the following reasons:

- (i) the conditions justifying detention under Article 58(1)(b)(i) of the Rome Statute (“Statute”) continue to be met;
- (ii) the conditions of release proposed by the Defence pursuant to Rule 119 of the Rules do not sufficiently mitigate the risks identified under Article 58(1)(b) of the Statute;
- (iii) there has been no substantial change of circumstances since the Chamber’s Decision ICC-01/05-01/08-1789-Conf (“last review”)² in September 2011 justifying modification of the last ruling on detention pursuant to Article 60(3) of the Statute;

¹ ICC-01/05-01/08-2000-Conf, Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo, 9 December 2011.

² ICC-01/05-01/08-1789-Conf, Decision on the accused’s application for provisional release in light of the Appeals Chamber’s judgment of 19 August 2011, 26 September 2011.

- (iv) detention is also necessary under Article 58(1)(b)(ii) of the Statute to ensure that the Accused will not intimidate witnesses.

II. Request for confidentiality

3. The Prosecution requests that this document be received as “Confidential” as it responds to the Application, which is currently classified as “Confidential”.

III. Prosecution’s submissions

Continued detention is necessary to ensure that the Accused will be present at the trial

4. The Application must be assessed against the Chamber’s last review in September 2011. The Chamber found that the four factors that underpinned its prior decision on detention remained intact³ and that the guarantees provided at that time by [REDACTED] did not address the Accused’s risk of absconding.⁴ Therefore, the Accused’s detention remained necessary to ensure his appearance at trial under Article 58(1)(b)(i) of the Statute.⁵ This finding was affirmed by the Appeals Chamber.⁶

5. As stated by the Appeals Chamber, the Chamber may modify its prior ruling if it is satisfied that the new proposed conditions of release would sufficiently

³ ICC-01/05-01/08-1789-Conf, paras. 22-23.

⁴ *Ibid.*, para. 37.

⁵ *Ibid.*, paras. 22-23. The Chamber held that the following factors remained unchanged: commencement of the trial and need to ensure the accused appearance at trial; gravity of the charges confirmed; potential substantial sentence in case of conviction; financial and material support from which the Accused benefits.

⁶ ICC-01/05-01/08-1937-Conf OA9, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 26 September 2011 entitled “Decision on the accused’s application for provisional release in light of the Appeals Chamber’s judgment of 19 August 2011”, 23 November 2011, para. 68.

mitigate the identified risk.⁷ Thus, this Chamber now must assess the Defence application against that standard.

6. The Defence argues that new information by [REDACTED] constitutes changed circumstances that merit review of the Chamber's prior decision. According to the Defence, [REDACTED] now identifies two added safeguards that would negate the Accused's risk of flight: (i) it has expressly identified a place of residence in [REDACTED], and (ii) the Accused will be monitored by ten police officers.⁸

7. The Prosecution submits that these two measures do not constitute new additional safeguards. In prior letters to this Court the [REDACTED] authorities offered around the clock monitoring of the Accused, should he be released in [REDACTED].⁹ The offer to assign ten officers to conduct this monitoring is a mere particularization of the prior guarantee already provided and does not constitute changed circumstances that would merit a review of the prior decision of the Chamber.

8. Nor is the additional detail that the [REDACTED] authorities identified a specific residence for the Accused a changed circumstance that affects the risk of flight.

9. To the contrary, these measures do not mitigate or eliminate the risk that the Accused, if released, will not appear for the trial. It remains a pressing fact that the Accused has the motive to flee and access to untold funds that would enable him to circumvent security measures. For instance, the same friends or family who purportedly were willing to fund his private jet trips to and from the Democratic

⁷ *Ibid.*, para. 34.

⁸ ICC-01/05-01/08-2000-Conf, paras.10-11; see Annex B.

⁹ ICC-01/05-01/08-1621-Conf-Anx1, Transmission of the Registry of the observations of [REDACTED], Letters of 9 June and 28 July notified on 3 August 2011.

Republic of the Congo might well fund efforts to facilitate his escape or hire persons to overcome the guards by force. The Accused, if given the opportunity, will have the ability to abscond,¹⁰ and the proposed new measures do not eliminate that risk to an acceptable degree.

10. The Prosecution therefore submits that the safeguards proposed in the recent letters from [REDACTED] do not alter the factual underpinnings of the last review, and detention of the Accused continues to be necessary. There is no change on the facts underlying the last review, in particular the Accused's access to financial and material support, and the new facts - that the [REDACTED] authorities will commit ten persons to guard him, and that he will reside at a specific address - do not change that crucial circumstance. Thus, there is no changed circumstance that would require the Chamber to modify its last review pursuant to Article 60(3) of the Statute.

Continued detention is necessary to ensure that the Accused will not intimidate witnesses or obstruct court proceedings

11. In the last review, the Chamber entered a finding to the effect that Article 58(1)(b)(ii) of the Statute constitutes an alternative ground for the Accused's continued detention.¹¹

12. The Chamber considered that several incidents were reported since July 2011 in which threats have allegedly been made against Prosecution witnesses and their families. The Chamber inferred that some of the alleged incidents of witness interference may have originated from supporters of the Accused.¹² As the threats against witnesses apparently increased precisely when the Prosecution began calling witnesses whose testimony relates to the Accused's criminal responsibility, the

¹⁰ *Ibid.*, para. 37.

¹¹ *Ibid.*, para. 32.

¹² *Ibid.*, paras. 29, 30, 31.

Chamber concluded that “releasing the Accused would increase his ability to interfere with witnesses or cause others to do the same.”¹³

13. The Appeals Chamber, however, reversed this finding and stated that Article 58(1)(b)(ii) of the Statute cannot provide an additional basis for the Accused’s detention, as he was deprived of the opportunity to address witness intimidation allegations, which post-dated his application for release.¹⁴

14. The Prosecution observes that the Accused has been on notice - at least since the last review - of incidents of witness interference and the possibility that this would constitute an additional ground for his continued detention. However, he has chosen not to address this issue. The Prosecution therefore submits that the requirement provided for by Rule 118(3) of the Rules has been complied with, and requests that the Chamber can additionally find that the Accused’s continued detention is also necessary under Article 58(1)(b)(ii) of the Statute to ensure that the Accused will not intimidate witnesses. The Chamber may invite the Accused to provide his observations on the issue of witness interference, should this be deemed necessary.

¹³ *Ibid.*, para. 31.

¹⁴ ICC-01/05-01/08-1937-Conf OA9, paras. 66, 68. The Accused’s application for release, « *Requête ampliative de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo suite à la lettre de garantie étatique émanant de [REDACTED]* », ICC-01/05-01/08-1479-Conf, was filed on 6 June 2011.

IV. Conclusion

15. The Prosecution requests that the Chamber dismiss the Defence Application and maintain the continued detention of the Accused.



Luis Moreno-Ocampo, Prosecutor

Dated this 20th Day of January 2012

At The Hague, The Netherlands