

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/05-01/08
Date: 27 January 2012

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 of 28 December 2011**

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 28 December 2011, the Defence submitted an updated 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 a letter wherein the Minister of Foreign Affairs of [REDACTED] confirmed its prior proposals and clarified that [REDACTED] will monitor the Accused should he be released and allowed to stay in the territory of [REDACTED]. The Defence argues that these measures warrant conditional release of the Accused.

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 of Procedure and Evidence 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-01/05-01/08-2022-Conf (“last review”)² on 19 December 2011 justifying modification of the last ruling on detention pursuant to Article 60(3) of the Statute; and

¹ ICC-01/05-01/08-2029-Conf, Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo, 28 December 2011.

² ICC-01/05-01/08-2022-Conf, Decision on the “Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo”, 19 December 2011.

- (iv) detention is also necessary under Article 58(1)(b)(ii) of the Statute to ensure that the Accused will not intimidate witnesses.³

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 on 19 December 2011. The Chamber found that the four factors that underpinned its prior decision on detention remained intact.⁴ For that reason, the Chamber determined that “it is appropriate at this stage for the accused to remain within a detention regime overseen by the Court”.⁵ In other words, the guarantees provided by [REDACTED] were not sufficient to overcome the Accused’s flight risk.⁶ Therefore, the Accused’s detention remained necessary to ensure his appearance at trial under Article 58(1)(b)(i) of the Statute.⁷

5. The Defence argues that the new information submitted by [REDACTED] constitutes changed circumstances that merit review of the Chamber’s prior decision.

³ The Prosecution recognizes that the Chamber did not reach that factor when it denied in its last review. ICC-01/05-01/08-2022-Conf, para. 14.

⁴ *Ibid*, para. 12.

⁵ *Ibid*, para. 21.

⁶ *Ibid*.

⁷ *Ibid*, para. 13.

According to the Defence, there would be no risk of flight if the Accused is allowed to reside in [REDACTED] since about 10 policemen will guard him.⁸

6. The Prosecution submits that these 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 about 10 police officers to conduct this monitoring is substantively no different than its prior guarantee and does not constitute changed circumstances that would merit a review of the prior decision of the Chamber.

7. Nor are the additional details that the [REDACTED] authorities have confirmed what they previously stated and agreed to enforce the conditions of provisional release changed circumstances that affect the risk of flight.

8. To the contrary, these measures do not mitigate or eliminate the risk that the Accused, if released, will choose to not return to trial. It remains a pressing fact that the Accused has the motive to flee and has 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 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.

9. The Prosecution therefore submits that the details provided in the most recent letter from [REDACTED] do not alter the factual underpinnings of the last review,

⁸ ICC-01/05-01/08-2029-Conf, para. 7.

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

¹⁰ *Ibid*, para. 37.

and detention of the Accused continues to be necessary. The critical facts, in particular the Accused's access to financial and material support, remain unchanged. The specification that the [REDACTED] authorities will commit about 10 persons to guard him, and its commitment to enforce the conditions of provisional release do not change that crucial fact that if the Accused decides to flee he will have the financial resources to enable flight. Thus, there is no changed circumstance that would require the Chamber to modify its last review pursuant to Article 60(3) of the Statute.

IV. Conclusion

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



Luis Moreno-Ocampo, Prosecutor

Dated this 27th Day of January 2012

At The Hague, The Netherlands