

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 12 November 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's Response to Defence "*Requête ampliative de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo suite à la lettre de garantie étatique émanant de la [REDACTED]*"

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence of Jean-Pierre Bemba

Mr. Aimé Kilolo Musamba

Mr. Peter Haynes

Legal Representatives of Victims

Ms. Marie-Edith Douzima-Lawson

Mr. Assingambi Zarambaud

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

Ms. Silvana Arbia

Counsel Support Section

Deputy Registrar

Mr. Didier Preira

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Other Section

I. Introduction

1. On 6 June 2011, the Defence filed an additional application for interim release pursuant to Article 60 (3) of the Rome Statute (“Statute”), requesting that Mr Jean-Pierre Bemba Gombo (“Accused”) be granted interim release to the [REDACTED], as an alternative to interim release to the Kingdom of Belgium, during the Court’s judicial recess and periods where the Trial Chamber III (“Chamber”) does not sit for at least three consecutive days, including long weekends (“Defence Application”).¹ The Defence submitted that the willingness of the [REDACTED] to host the Accused and implement a monitoring system during the periods of interim release requested eliminates the risk of flight and ensures his appearance at trial.² The Defence further requested a status conference involving the relevant parties and participants before the Chamber on this matter.³

2. The Office of the Prosecutor (“Prosecution”) submits that there is no change to warrant a modification of the Chamber’s last decision maintaining the continued detention of the Accused.⁴ The Prosecution notes that the Chamber ordered the continued detention of the Accused based exclusively on the application of the requirements of Article 58(1)(b)(i) of the Statute. Therefore any considerations as to whether the conditions under Article 58(1)(b)(ii) continue to apply are, at present, beyond the scope of the Chamber’s present determination under Article 60(3) of the Statute.

¹ ICC-01/05-01/08-1479-Conf, *Requête ampliative de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo suite à la lettre de garantie étatique émanant de la [REDACTED]*, 6 June 2011, at paras. 1 and 3.

² *Ibid* at paras. 10 to 12.

³ *Ibid* at para. 17.

⁴ ICC-01/05-01/08-1088, Decision on the review of detention of Mr Jean-Pierre Bemba Gombo pursuant to the Appeals Judgment of 19 November 2010, 17 December 2010.

3. Furthermore, the Prosecution does not deem a status conference on the matter to be necessary at this stage as the observations of the parties and participants have already been sought by way of written submissions.⁵

II. Request for confidentiality

4. The Prosecution requests that this document be received as “Confidential” as it responds to the Defence Application and Chamber’s decision, which are both currently classified as “Confidential”.

III. Prosecution’s response

5. The Prosecution opposes the Defence request. The conditions justifying detention under Article 58(1) of the Statute continue to be met⁶ and the new factor does not warrant a modification of the Chamber’s prior ruling.

The undertaking of the [REDACTED] is irrelevant for the review of detention

6. The Prosecution submits that the letter of the [REDACTED] is irrelevant to the Chamber’s review pursuant to Article 60(3) of the Statute. It does not have an impact on the grounds underpinning the Chamber’s prior decision on the Accused’s detention⁷ or

⁵ The Prosecution notes that the [REDACTED] was invited to respond by 20 June 2011; see, ICC-01/05-01/08-1479-Conf, para. 9(d). Moreover, the Kingdom of Belgium has already provided its observations: ICC-01/05-01/08-1505, *Transmission des observations du Royaume de Belgique relatives à la demande de mise en liberté provisoire*, 10 June 2011.

⁶ In its response to the latest Defence application for interim release, which at present is before the Chamber for a determination, the Prosecution advanced detailed submissions in this regard; see, ICC-01/05-01/08-1423-Conf, Prosecution’s observations on the Defence Application for the interim release of Mr Jean-Pierre Bemba Gombo, 19 May 2011, at paras. 10 to 14.

⁷ See *supra* n. 4.

the conditions under Article 58(1) of the Statute. Firstly, the letter of the [REDACTED] fails to provide sufficient guarantees or properly address how it would ensure the Accused's appearance at trial. Moreover, other than a general willingness to accept the Accused on its territory, the letter does not indicate or provide concrete information on the type of monitoring envisaged by the [REDACTED] should the Accused be granted interim release.

7. Additionally, despite the conditions under Rule 119(1) of the Rules of Procedure and Evidence that were referred to in the Defence letter including four conditions listed therein,⁸ the response of the [REDACTED] does not indicate which of the conditions it is capable of implementing. To the contrary, the letter of the [REDACTED] states that it will provide information on the practical modalities regarding the stay of the Accused on its territory at a later stage. The fact remains that, as determined in the Chamber's prior decision maintaining the Accused's detention,⁹ there exists a possibility that the Accused will abscond, in particular now that the trial has advanced considerably.

A Status Conference is unnecessary

8. As submitted above, the Prosecution disputes the necessity of a status conference at this stage as the parties and participants, including the [REDACTED], have provided written observations or been afforded the opportunity to articulate their positions and address the relevant issues. Thus, absent any suggestion by the Chamber that one or more changed circumstances under Article 60(3) of the Statute favour modification of the Accused's detention, it would be of limited added value to have the parties and participants, including the representatives of the Kingdom of Belgium and/ or the

⁸ ICC-01/05-01/08-1479-Conf-Anx B.

⁹ See *supra* n. 4, at paras. 40 and 46.

[REDACTED], to repeat orally the submissions currently being advanced. If the Defence or either State would want a further opportunity to respond, the Prosecution notes that the Chamber can, as it has in the past, allow additional submissions in the form of a written reply.¹⁰

IV. Conclusion

9. In light of the foregoing, the Prosecution respectfully requests the Chamber to reject the Defence's Application and maintain the continued detention of the Accused.



Fatou Bensouda, Prosecutor

Dated this 12th Day of November 2012

At The Hague, The Netherlands

¹⁰ ICC-01/05-01/08-1513-Conf , Decision on the Defence “*Demande d'autorisation de répliquer conformément à la norme 24(5) du Règlement de la Cour*”, 14 June 2011.