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

Date: **23 May 2011**

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

**Observations of the applicant victims on Mr Bemba's
application for provisional release dated 3 May 2011**

Source: Office of Public Counsel for Victims

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

Office of the Prosecutor

Mr Luis Moreno Ocampo

Ms Petra Kneuer

Counsel for the Defence

Mr Liriss Nkwebe

Mr Aimé Kilolo-Musamba

Legal Representatives of the Victims

Ms Marie-Edith Douzima Lawson

Mr Zarambaud Assingambi

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

Ms Paolina Massidda

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Counsel Support Section

Deputy Registrar

Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural background

1. On 3 May 2011, the Defence for Mr Jean-Pierre Bemba Gombo filed an application for interim release (“the Defence Application”) restricted to weekends and Court recesses, subject to a guarantee of Mr Bemba’s appearance provided by a State Party to the Rome Statute.¹

2. On 12 May 2011, Trial Chamber III ordered the Office of the Prosecutor, the Legal Representatives of the Victims and the Office of Public Counsel for Victims, as the legal representative of the applicants, to file their observations on the Defence Application on 19 May 2011.²

3. On 13 May 2011, the Office of Public Counsel for Victims (“OPCV”), not having been notified of the Defence Application, e-mailed the Chamber requesting notification of the application and an extension of time until 25 May 2011 in order to file its observations.³ That same day, the Chamber granted the OPCV’s requests by e-mail.⁴

4. Accordingly, Principal Counsel of the OPCV, acting as the legal representative of the applicants (“the Legal Representative”) in the proceedings, respectfully submits to the Chamber the following observations on the Defence Application.

5. These submissions are filed as confidential in accordance with the level of confidentiality chosen by the Defence.

¹ See “*Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo*”, ICC-01/05-01/08-1387-Conf, 3 May 2011, and “Corrigendum to Application for the interim release of Mr Jean-Pierre Bemba Gombo”, ICC-01/05-01/08-1387-Conf-Corr-tENG, 4 May 2011.

² See *Decision requesting observations on the « Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo »*, ICC-01/05-01/08-1398-Conf, 12 May 2011.

³ See the e-mail sent by Principal Counsel to Trial Chamber III at 12:33 on 13 May 2011.

⁴ See the e-mail sent by Trial Chamber III to Principal Counsel at 16:21 on 13 May 2011.

II. Observations of the victims on the Defence Application

6. The Legal Representative submits that the Accused's detention must be continued, since the requirements of article 58(1) of the Rome Statute continue to be met and there has been no change of circumstances since the Chamber's last ruling on the matter.⁵

7. In particular, the Legal Representative notes and reiterates the arguments of the Office of the Prosecutor concerning the absence of a change in the circumstances and conditions set out at article 58(1) of the Rome Statute pertaining to the restrictions placed upon the Accused's liberty and the need to continue his detention.⁶ However, if changed circumstances were to be relied upon, the Legal Representative submits that this could only be to the detriment of the Accused, since the only change to have arisen since the last decision of 17 December 2010 on his continued detention has been the continuation of the trial, during which significant evidence has already been brought against Mr Bemba. In this respect, the Trial Chamber and the Appeals Chamber have already indicated that the risk of flight is major as the trial progresses.⁷ In light of the charges confirmed against the Accused, the evidence presented thus far by the Office of the Prosecutor, and the fact that the Court exercises jurisdiction with respect to the most serious crimes of concern to the international community as a whole, it is apparent that the alleged offences are of an extremely serious nature given the penalties which the Accused might incur – such that they can in no way justify the interim release of Jean-Pierre Bemba Gombo.

⁵ See *Decision on the review of detention of Mr Jean-Pierre Bemba Gombo pursuant to the Appeals Judgment of 19 November 2010*, ICC-01/05-01/08-1088, 17 December 2010.

⁶ See "Prosecution's observations on the Defence Application for the interim release of Mr Jean- Pierre Bemba Gombo", ICC-01/05-01/08-1423-Conf, 19 May 2011, paras. 10-14.

⁷ See *Decision on the review of detention of Mr Jean-Pierre Bemba Gombo pursuant to the Appeals Judgment of 19 November 2010*, ICC-01/05-01/08-1088, 17 December 2010, para. 40. See also *Judgment on the 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"*, ICC-01/05-01/08-631-Conf OA2, 2 December 2009, para. 70. Lastly, see *Decision on the "Defence Request for Interim Release"* (Pre-Trial Chamber I), ICC-01/04-01/10-163, 19 May 2011, para. 42.

8. Moreover, the Legal Representative notes – as in previous submissions on the same subject⁸ – that the Accused’s pre-eminent position in the community supporting him and the financial means which remain available to him are factors which the Chamber should take into consideration in order to assess the specific risk which Mr Bemba’s release might pose for the victims and witnesses, regardless of the place to which he is provisionally released.

9. Furthermore, article 68 of the Rome Statute emphasises the nature of the crime, “where the crime involves sexual or gender violence or violence against children”. In the present case, a large number of the violent acts with which the Accused is charged are of a sexual, or indeed gender-based, nature, and some were committed against minors. Moreover, even if the identities of the victims appear to be protected, the fact remains that the victims are not safe, given that many of them, and indeed many of the victims who also have the status of witnesses, are easily accessible. The distance of some of the victims from urban centres exposes them to chance encounters. Hence there is a real risk of subornation of victims and endangerment to their lives.

10. The Legal Representative also subscribes entirely to the arguments put forward by the Office of the Prosecutor concerning the correspondence filed by the Defence purportedly constituting a change in circumstances which would justify the Accused’s interim release.⁹

11. In particular, the Legal Representative notes that the Defence’s argument that the alleged positive attitude of the Belgian authorities constitutes a change in circumstances to justify Mr Bemba’s release is irrelevant for the purposes of the

⁸ See, *inter alia*, “Observations of the Legal Representatives of Victims regarding the review of the detention of Mr. Jean-Pierre Bemba Gombo”, ICC-01/05-01/08-703, 24 February 2010, para. 12, and “Observations of the Legal Representative regarding the review of the detention of Mr. Jean-Pierre Bemba Gombo”, ICC-01/05-01/08-825, 15 July 2010, para. 15

⁹ See *supra*, footnote 6, paras. 16-23.

application, since the only criteria which are to be taken into account by the Chamber are those set out at article 58(1)(b) of the Rome Statute.

12. Furthermore, the Defence infers from the correspondence with Belgium that it intends to accept Mr Bemba on its territory; however, nowhere in that letter is there any indication of such an intention, or any guarantee that an effective monitoring system would be set up. Lastly, the correspondence with the host State indicates that the Netherlands can facilitate the Accused's exit from its territory, but cannot guarantee to agree to his re-entry.

13. In light of the foregoing, the Legal Representative submits that there is no guarantee whatsoever that the Accused will appear before the Court if he is released.

FOR THESE REASONS, the Legal Representative respectfully requests the Chamber to deny the Defence Application.

[signed]
Paolina Massidda
Principal Counsel

Dated this 23 May 2011

At The Hague, The Netherlands