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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

**Observations of applicant victims on the extremely urgent application for
authorisation to leave the detention centre temporarily, filed by the Defence for
Mr Bemba on 10 June 2011**

Source: Office of Public Counsel for Victims

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

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I. Procedural Background

1. On 10 June 2011, the Defence for Mr Bemba filed an urgent application seeking authorisation for its client to travel to the Democratic Republic of the Congo (“DRC”) in order to perform his civic duties (“the Defence Application”).¹

2. On 13 June 2011, pursuant to rule 119 of the Rules of Procedure and Evidence, Trial Chamber III instructed the Office of the Prosecutor, the Legal Representatives of the Victims and the Office of Public Counsel for Victims in its capacity as legal representative of the applicants, to submit their views on the Defence Application by 17 June 2011 at the latest.²

3. In that same decision and for the purposes of their observations, the Chamber also ordered the Registry to notify the Office of Public Counsel for Victims of the confidential Defence Application with its confidential annexes filed 3 days previously. On that same day, the Office of Public Counsel for Victims was notified of the Defence Application.³

4. Accordingly, Principal Counsel of the Office of Public Counsel for Victims (“the OPCV”), in her capacity as legal representative of the applicants in the proceedings (“the Legal Representative”), respectfully submits the following observations on the Defence Application.

5. This submission is filed as confidential following the classification suggested by the Defence in its Application and endorsed by the Chamber.

¹ See “*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*”, ICC-01/05-01/08-1501-Conf and ICC-01/05-01/08-1501-Conf-AnxA to C, 10 June 2011 (“the Defence Application”).

² See *Decision requesting observations on the “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”*, ICC-01/05-01/08-1508-Conf, 13 June 2011.

³ See the e-mail sent by the Judicial Administration Section of the Court on 13 June 2011 at 18:24.

II. Observations of the victims on the Defence Application

6. On behalf of the applicant victims, the Legal Representative requests the Chamber to reject the Defence Application for the reasons set out below. The Legal Representative submits that the Defence Application (i) has no legal basis and (ii) is not supported by any of the guarantees provided for and required under rule 119 of the Rules of Procedure and Evidence (“the Rules”). The Legal Representative further submits that (iii) the objectives underpinning the Defence Application are confused. Finally, the Legal Representative wishes to draw the attention of the Chamber and the participants in the proceedings to the practical implications of the Defence Application with respect to (iv) the applicant victims and (v) to emphasise that alternatives to the Defence Application manifestly exist.

(i) The lack of a legal basis underpinning the Defence Application and the non-absolute character of the legal basis for the Application

7. It appears that the Defence is basing its exceptional application *inter alia* on “humanitarian grounds” as set forth in support of the Chamber’s decision allowing the Accused to attend his stepmother’s funeral last January.⁴ In that decision, the Chamber not only stated that the existence of humanitarian circumstances was the sole justification that allowed it to use its power to authorise the transfer of the Accused from the custody of the Court to the custody of the Belgian authorities, but also stated that these circumstances were quite exceptional.

8. However, in the absence of any Defence arguments explaining how the Accused’s exercise of his right to participate in the political process can be characterised as “humanitarian”, the Legal Representative can only note that the electoral process in the DRC does not appear in and of itself to constitute an

⁴ See the Defence Application, *supra*, footnote 1, para. 34.

exceptional circumstance that would warrant the Chamber's use of its power for humanitarian reasons pursuant to article 64 of the Rome Statute.⁵

9. As to the characterisation of "extremely urgent" and the Defence arguments in this regard, the Legal Representative wishes to emphasise the following: the information regarding the constraints imposed by the electoral calendar does not appear to be as recent as the Defence suggests. Although the Defence alleges that the National Assembly of the DRC adopted the draft law in question only on 25 May,⁶ the Chair of the National Independent Electoral Commission ("CENI") himself stated that the Commission had published the electoral calendar on 30 April 2011⁷ and that, furthermore, the process for identifying and registering Congolese citizens fulfilling voter requirements had already been completed in some provinces of the DRC, thus suggesting that information about this process had in all likelihood been available for some time already.⁸

10. It further appears that the Defence founds a significant part of its application on the presumed inviolability of the right to vote as an internationally recognised human right. In this regard, the Legal Representative, without in any way denying the importance of this right, wishes to draw the attention of the Chamber and the participants in the proceedings to the fact that this right is not absolute under international law. That this right is one of those enshrined in the International Covenant on Civil and Political Rights and mentioned in Protocol 1 to the European Convention on Human Rights, to name just two instruments, does not gainsay the fact that it is also internationally recognised that there may be restrictions on the

⁵ See *Decision on the Defence Request for Mr Jean-Pierre Bemba to attend his Stepmother's Funeral*, (Trial Chamber III), ICC-01/05-01/08-1099-Red, 12 January 2011, para. 13.

⁶ See Defence Application, *supra*, footnote 1, para. 5.

⁷ See the letter from the Chair of the Independent National Electoral Commission to Mr Bemba's Defence, Annex A to the Defence Application, *supra*, footnote 1, para. 6.

⁸ *Idem*, Annex A to the Defence Application, *supra*, footnote 1, para. 1.

exercise of certain rights, including the right to vote, provided that the relevant safeguarding criteria are met.⁹

11. With regard in particular to the Defence's reference to the cases brought before the European Court of Human Rights ("ECHR"),¹⁰ specifically the case of *Hirst v. The United Kingdom*, the ECHR held that the applicant's right to vote bestowed by Article 3 of Protocol 1 had been violated on the grounds that the applicant had been denied the right to participate in legislative elections on the basis of a law which had instituted a general restriction automatically and indiscriminately preventing all detainees from exercising their right to vote, regardless of length of sentence, the nature or gravity of the crime they had committed or their personal circumstances. Besides the fact that the case law in question refers only to choosing the legislature and not specifically to the right to vote or to other particular elections, it was the *general and indiscriminate approach taken by domestic law* which was found wanting, and the ECHR went on to confirm in its judgment that the right on which the application relied could not, for all that, be considered absolute,¹¹ thereby recognising that some restrictions could be imposed on that right.

12. As to the particular case of proceedings against Mr Haradinaj which the Defence also mentioned in support of its Application, the Legal Representative

⁹ The safeguards generally accepted in international human rights law relate to the appropriateness or legitimacy, necessity and proportionality of the restrictions imposed on certain fundamental rights. Regarding human rights and Congolese law, and more specifically the right to participate in the political process, see for example Ngondankoy Nkoy-ea-Loongya's *Droit congolais des droits de l'homme*, Bibliothèque de droit africain, Bruylant-Academia, 2004, pp. 199-200. See also *Mathieu-Mohin and Clerfayt v. Belgium*, ECHR, No. 9267/81, 2 March 1987, para. 52 and *Hirst v. The United Kingdom* (No. 2), ECHR, No. 74025/01, 6 October 2005, para. 62. See also the text of article 25 of the International Covenant on Civil and Political Rights: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions (...) [t]o vote and to be elected (...) [t]o have access, on general terms of equality, to public service in his country" (emphasis added), and article 4 of same. See the International Covenant on Civil and Political Rights, United Nations General Assembly Resolution 2200 A (XXI) of 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, also available on the website of the United Nations High Commissioner for Human Rights: <http://www2.ohchr.org/french/law/ccpr.htm>. The Democratic Republic of the Congo acceded to this Covenant on 5 October 1983.

¹⁰ See Defence Application, *supra*, footnote 1, para. 19.

¹¹ See *Hirst v. The United Kingdom* (No. 2), ECHR, No. 74025/01, 6 October 2005, paras. 60 *et seq.*

merely emphasises that having been acquitted by the Trial Chamber, Mr Haradinaj is now in custody once again following the Judgement of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia partially reversing the acquittal, mainly on the basis that the witnesses were victims of serious intimidation during the trial.¹²

13. It follows therefore that the Defence's arguments in support of a temporary variation in the Accused's detention regime have no legal basis in the Court's legal instruments.

(ii) The absence of rule 119 guarantees in the Defence Application

14. The Legal Representative notes that in support of its Application the Defence has not sufficiently supported or demonstrated the guarantees which the various competent authorities should put in place in order to meet the Court's requirements in this matter which are in effect conditions restricting liberty, such as illustrated by the Chamber's last decision authorising the Accused's short-term release from the Detention Centre and from host State territory for 24 hours. Furthermore, their feasibility is yet to be confirmed by the various authorities of the States concerned.¹³ In this regard, the Legal Representative notes that in the absence of such confirmation by the States potentially concerned by the Accused's passage through their territory, it is impossible to determine whether any guarantees which the Chamber might require are satisfactory or appropriate.

¹² See *The Prosecutor v. Ramush Haradinaj Idriz Balaj Lahi Brahimaj*, ICTY, Case No. IT-04-84-A, Appeals Chamber, Judgment, 21 July 2010.

¹³ See *supra*, footnote 5, para. 17. Moreover, the letters sent by the Chair of CENI in response to the correspondence from the accused's lawyers do not mention the feasibility of certain measures relating to how the Accused's registration and enrolment in the DRC might be arranged. In this regard in particular, the questions asked by the Accused's lawyers and presented as guarantees in support of their Application have not to date been answered by the Chair of CENI (see in particular the questions relating to holding the said procedure in one of the airports mentioned, within a specific time frame and for a limited length of time, whilst maintaining full discretion and confidentiality). See the correspondence between the Accused's lawyers and the Chair of the CENI, Annexes A and B to the Defence Application, *supra*, footnote 1.

15. Moreover, the circumstances, unchanged since the Chamber's recent decisions on the Accused's detention, are unfavourable to the Accused insofar as the only change to have occurred since the 17 December 2010 decision to maintain the Accused in detention is the continuation of the trial during which substantial evidence against Mr Bemba has already been brought. In this regard, the Trial Chamber and the Appeals Chamber have now held that the risk of the Accused's abscondment increases as the trial progresses.¹⁴

(iii) Absence of clarity concerning the objectives underpinning the Defence Application

16. The Legal Representative notes that the Defence bases its arguments both on the Accused's right to vote and on the exercise of his civil and political rights in a broader sense. In light of the current electoral context in the DRC and of the Accused's political profile, it appears that the Defence is pursuing both the objective of guaranteeing the Accused's right to vote and the possibility of the Accused standing in the forthcoming elections in the DRC.¹⁵ Thus, whilst the Defence furnishes no further details, it appears to target the Accused's right of suffrage and his right to stand for election. This nuance seems relevant both with regard to the conditions attached to those two rights under Congolese electoral law and with regard to the practical consequences potentially attached to the exercise of these two rights by the Accused.

17. With regard to the conditions for registration on the electoral roll for the purpose of obtaining a new voting card, article 8 of Law No. 04/028 of 24 December

¹⁴ See *Decision on the review of detention of Mr Jean-Pierre Bemba Gombo pursuant to the Appeals Judgment of 19 November 2010* (Trial Chamber III), 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"* (Appeals Chamber), ICC-01/05-01/08-631-Conf OA2, 2 December 2009, para. 70. Finally, see *Decision on the "Defence Request for Interim Release"* (Pre-Trial Chamber I), ICC-01/04-01/10-163, 19 May 2011, para. 42.

¹⁵ See Defence Application, *supra*, footnote 1, para. 22.

2004 governing voter identification and registration in the Democratic Republic of the Congo requires in effect that the person concerned “[TRANSLATION] be present in the territory of the Democratic Republic of the Congo at the time of identification and registration”, as confirmed by the Chair of CENI in his letter to the Defence.¹⁶ In addition to this initial journey – the only one mentioned by the Defence in its “exceptional” application – it appears on reading both article 5 of the 2006 Electoral Law¹⁷ and the 2011 bill to amend the law¹⁸ that one of the prerequisites of voter status is that the person concerned must also “[TRANSLATION] be present in the territory of the Democratic Republic of the Congo on the day of the elections”, which would entail a second journey to the DRC in order to participate in the election process.¹⁹

18. Finally, with regard to standing in the elections, it appears according to the Law (in both the 2006 and the 2011 texts), that the candidate may nominate one or several persons to act on his or her behalf in the capacity of representative, *inter alia* in order to declare his or her candidacy. This means that a third journey would not appear to be necessary. However, if by any chance the person declaring his or her candidacy were to be elected and the result of the election were not contested, it would appear evident that the newly elected member should be in a position to

¹⁶ See Annex A to the Defence Application, *supra*, footnote 1.

¹⁷ See the text of Law No. 06/006 of 09 March 2006 governing the organisation of presidential, legislative, provincial, urban, municipal and local elections, *a priori* still in force until promulgation of the 2011 Draft Law.

¹⁸ See the text of the 2011 bill, Annex C to the Defence Application, *supra*, footnote 1. The bill amending and supplementing Law No. 06/006 of 09 March 2006 on the organisation of presidential, legislative, provincial, urban, municipal and local elections was adopted by the National Assembly on 25 May 2011 and by the Senate on 13 June last. For the text to enter into force, it must still be promulgated by the President of the Republic.

¹⁹ This principle appears to be a source of lively debate amongst many Congolese people in the diaspora. See for example the debate on Radio Okapi – the United Nations radio station in the Democratic Republic of the Congo, co-managed by MONUC and *Hirondelle* Foundation – on 23 May 2011: Revision of electoral law: the Congolese diaspora excluded from the 2011 elections; guests included Eugène Kabongo Ngoy, opposition MP and member of the MLC, Mr Célestin Tunda ya Kasende, presidential majority MP and executive secretary of the PPRD responsible for the electoral process and Professor Mwahila Thyembe, analyst and director of the Institute for Geopolitics in Nancy, France. The text and audio recording of this debate are available from the following addresses respectively: <http://provincedelegequateur.blogspot.com/2011/05/revision-de-la-loi-electorale-les.html> and <http://radiookapi.net/emissions-audio/dialogue-entre-congolais/2011/05/23/ce-soir-revision-de-la-loi-electorale-les-congolais-de-la-diaspora-exclus-des-elections-de-2011/>

assume office soon after the election, and therefore, in order to do so, be at liberty to move and not be deprived of his or her civil or political rights.

19. Accordingly, the Legal Representative questions the real significance of the Defence's "extremely exceptional" Application²⁰ since it appears, on reading the texts governing this issue in the DRC, that the Accused would have to travel not exceptionally on one occasion but at least twice to the DRC in order to honour his civic rights. Furthermore, the Legal Representative wishes to stress that the present Application appears to be not only unfounded but also unjustified in fact in the light of the ongoing proceedings against the Accused.

20. Thus, without prejudging the issue and in full respect of the presumption of innocence, the importance of which the Legal Representative wishes to reiterate, it appears that in light of the pace of the proceedings against the Accused, even if the Chamber were not to find him guilty of the serious crimes of which he is charged, the Accused would not in any case be able to participate in the forthcoming presidential and legislative elections of 28 November 2011, or assume office in case of an election win in the following weeks, as envisaged by the electoral calendar published by CENI.²¹

21. In other words, the Legal Representative notes that the Defence Application is now moot since it is not the Accused's inability to travel to the DRC to register on the electoral roll which deprives him of his political rights, but the fact that the Accused is currently on trial for serious crimes, and that in all likelihood the Chamber will not make a finding as to his guilt during the current Congolese electoral calendar.

²⁰ See Defence Application, *supra*, footnote 1, para. 1.

²¹ The electoral calendar currently available indicates 28 November 2011 as the day of voting for the presidential elections as well as for the national parliament, and in particular 20 December 2011 as the day on which the President elect is sworn into office. See the information published by the CENI on its website: <http://www.ceni.gouv.cd/spip.php?article18>.

22. While the Legal Representative understands the Defence argument founded on the fact that the Accused should not miss the political opportunities still available to him inasmuch as he has not, to date, been deprived of his civic and political rights by virtue of a final judgment, the Defence Application is patently abstruse, regardless of the scenario which could result from the Accused's registration in the electoral roll. In other words, should the Chamber authorise this exceptional exeat as a matter of extreme urgency, it will have to lend relevance to its action by granting a similar Defence application to be filed a few weeks later to seek leave for the Accused to travel to vote. Not only that, but if the Accused were to decide to stand in the forthcoming elections, the absurdity of this process would lead to a situation whereby the Accused, if elected, would still be in detention in The Hague standing trial until the Chamber hands down its judgment. Hence, this Application is further marked by the objectively unreasonable prospect of a scenario whereby a newly-elected candidate cannot take up office in his country, regardless of the post he stood for, simply because he was elected at a time when he was standing trial for the most serious crimes under international law. Furthermore, if the Chamber were to find the Accused guilty, this could call into question the entire electoral process in the DRC.²²

23. The Legal Representative further notes that all the above practical considerations have been noticeably omitted from the arguments developed in the Defence Application purportedly intended to provide the Chamber with all the information it needs to make its ruling.

(iv) Practical implications of the Defence Application with respect to the applicant victims

24. Aside from these practical considerations associated with the electoral process itself, the Legal Representative wishes to draw the attention of the judges of the

²² In addition to common sense and the consequences associated with such a ruling, Congolese electoral laws in fact provide that a person who has been convicted of war crimes, crimes against humanity or genocide is not eligible to stand in presidential, legislative or other elections. See article 10 of the Law of 2006 and of the 2011 bill, *supra*, footnotes 17 and 18.

Chamber and the participants to the potential practical implications of the Defence Application for the applicant victims. In fact, if the Accused were to be authorised to travel and temporarily to leave the Detention Centre, even for a period of 17 hours, there are real risks for the victims, both material and physical – should the Accused use the occasion to abscond or manage to make contact with people supporting him²³ – and at the very least mental and psychological – on account of the disquiet such an exeat is bound to cause to the victims, and also because it would spread doubt amongst them as to the seriousness and reliability of the proceedings conducted against Mr Bemba by the International Criminal Court. The Legal Representative further wishes to emphasise that such an impact on the victims is foreseeable even if they are not informed until after the Accused has completed his travel and is again in detention at the Court's behest.

25. The Legal Representative's team very recently conducted a mission to the Central African Republic and noted at that time that the victims were continually asking questions about the Accused's continued detention and that it was still cause for great concern amongst them despite the explanations provided by the Legal Representative and other members of the Court. In addition to this latent disquiet, the victims' faith and trust in the Court's proceedings and in the judges' approach are also questioned.

26. Furthermore, despite the guarantees which the Chamber may decide to lay down and the Defence's undertakings in this regard, it can be seen from the experience of the Accused's last exeat of less than 24 hours for his stepmother's funeral and the great difficulty in keeping the Accused's movements completely

²³ The Legal Representative recalls the arguments set out in previous submissions on this matter with regard to the Accused's preeminent position within the community which supports him and the financial means which remain at his disposal as they pertain to the assessment of the concrete risk which the victims and witnesses could face on account of Mr Bemba's release and the risk of abscondment. 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.

confidential²⁴ that there is a high risk that the exeat now being requested cannot take place without any information reaching third parties,²⁵ especially since the relevant legal instruments of the DRC expressly require the presence of “[TRANSLATION] national and/or international observers and witnesses from the political parties accredited by the Independent Electoral Commission” for the purposes of voter identification and registration.²⁶ Furthermore, the Chairman of CENI has not yet indicated in his correspondence whether there could be a degree of flexibility in respect of these conditions.²⁷ Indeed, such travel might not only stimulate and galvanise certain means of support enjoyed by the Accused, but also, as a result, provoke unrest²⁸ and increased risks for the victims.

²⁴ See *inter alia* the concerns raised in this respect by the Belgian Government in its recent submissions to the Chamber: “*Transmission des observations du Royaume de Belgique relatives à la demande de mise en liberté provisoire*”, ICC-01/05-01/08-1505-Conf and ICC-01/05-01/08-1505-Conf-Anx1 to 3, 10 June 2011, in particular, Annex 2, pp. 5-6.

²⁵ Moreover, it would seem that the Defence has already contacted a private aircraft rental company to organise the expected trip, which leads us to expect possible additional leaks. See Defence Application, *supra*, footnote 1, paras. 15 *et seq.*

²⁶ See article 6 of Law No. 04/028 of 24 December 2004 governing voter identification and registration in the Democratic Republic of the Congo.

²⁷ See the letters from the Chairman of CENI, Annex A to the Defence Application, *supra*, footnote 1.

²⁸ Furthermore, it seems that this issue is being closely monitored by members of the *Mouvement de Libération du Congo*, by supporters and by critics of the Accused, who are publicly discussing the Accused’s forthcoming participation in the elections slated for this year in the DRC. See, for example: “*Jean Pierre Bemba ne quittera pas la CPI pour les élections 2011, François Mwamba [secrétaire général déchu MLC] confirme*” [“Jean Pierre Bemba will not leave ICC for 2011 elections, confirms François Mwamba [deposed secretary-general of the MLC]”]:

http://7sur7.cd/index.php?option=com_content&view=article&id=21222%3Ajean-pierre-bemba-ne-quittera-pas-la-cpi-pr-les-elections-2011francois-mwamba-confirme&catid=45%3Aother&lang=fr.

Christophe Rigaud, “RDC: Bemba probable candidat en 2011” [“DRC: Bemba probable candidate in 2011”]:

http://congoforums.net/elections_2011_47/rdc_bemba_probable_candidat_en_2011_a-12535/:

“[TRANSLATION] [...] But so far nothing has happened... the rumours of Bemba running are also intended to put pressure on the talks (which are still a hot topic) between the MLC and the UDPS (via Clément Kanku)... but also to put pressure on the International Criminal Court with a view to a temporary release which Jean-Pierre Bemba has been seeking for several months. But while Bemba’s candidacy is possible legally, there is a real feeling that the party wants to go all out. So we’ll have to wait and see in the first quarter of 2011.” [emphasis added].

See also Christophe Rigaud, “RDC: Troisième année de prison pour Jean-Pierre Bemba” [“DRC: Third year of prison for Jean-Pierre Bemba”], 24 May 2011, www.afrikarabia.com and <http://journaldekin.com/article.php?aid=596>: “(...) The impossible candidacy: Jean-Pierre Bemba’s political future seems to have been dealt a sudden blow in the last few days now, with the future electoral law being examined by the Congolese National Assembly. Under it, all candidates must attach to their statement of candidacy a photocopy of their voting card. In order to obtain his voting card, Mr Bemba must be “registered” in a registration centre... in the Democratic Republic of the Congo. It therefore seems that from the depths of his cell, Jean-Pierre Bemba cannot possibly comply

27. Lastly, the Legal Representative's attention is obviously also drawn to the costs which such travel would incur²⁹ and the impact those costs would have on the sums available for any reparations which the victims might receive were the Court to order reparations.

(v) Alternatives to the Defence Application

28. Finally, and substantively, the Legal Representative notes that the Defence Application, the dismissal of which the Defence claims would cause the Accused "[TRANSLATION] serious and irremediable prejudice"³⁰ and would "[TRANSLATION] deprive him of the right to stand in the next elections in the Democratic Republic of the Congo",³¹ appears all the more unfounded as alternatives seem to exist which, unlike what the Defence argues, would not require an exeat – and an urgent one at that.

29. Firstly, it would seem that there is a possibility – although not yet confirmed by the Chairman of CENI – that the Accused could be issued with a voting card and registered in the electoral roll on the basis of the information recorded at the time of the previous elections in 2006, which the Defence emphasised has remained unchanged.³² Accordingly, it appears to the Legal Representative that, before a decision is made on the Defence Application, the feasibility of such an option should

with the electoral law. For now, the supporters of the "chairman" are relying on the presumption of Jean-Pierre Bemba's innocence to justify the MLC leader's hypothetical candidacy, since he has not been convicted. But the new electoral law has visibly just dealt the death blow to the Senator Bemba's political career."

Lastly, see: "*Présidentielle 2011: JP Bemba exclu*" ["2011 Presidential elections: JP Bemba disqualified"], Kinshasa, 13 May 2011, <http://www.digitalcongo.net/article/75636>.

²⁹ The Legal Representative notes the Defence argument that the costs could be borne by the Accused's family or friends, but this argument alone is insufficient to reassure the Legal Representative, in the absence of any guarantees attached to it and any information as to how the reparations proceedings could unfold were the Court to order them. See Defence Application, *supra*, footnote 1, para. 17.

³⁰ See Defence Application, *supra*, footnote 1, para. 21.

³¹ See Defence Application, *supra*, footnote 1, para. 22.

³² See Annex B to Defence Application, *supra*, footnote 1.

not only be explored first, but also confirmed. In this respect, it seems to the Legal Representative that, in light of the particularly serious situation of the Accused, which has given rise to the restrictions placed on his freedom of movement, it would not be unreasonable to conceive that the Court currently has legitimate arguments to submit to CENI in order to make such an option possible, rather than envisaging the opposite to be true by authorising the Accused to travel to complete the necessary procedures.

30. Secondly, in addition to the right to vote attached to the Accused's exercise of his civil and political rights, it is evident from the legal instruments governing the matter in the DRC, as confirmed and restated by the Chairman of CENI himself in his correspondence to the Defence,³³ that registration may take place *a posteriori* when the person puts himself forward as a candidate.³⁴ This would, in any event, leave more time for the proceedings before the Chamber to follow their course.

31. Accordingly, the existence of these two alternatives to the Defence Application shows that, should the Chamber nevertheless consider it to be well-founded in law and in fact, it should still not be considered compelling, as the Defence argues.

32. Finally, in light of all of the above, the Legal Representative draws the Chamber's attention to the need for the decision on this Application to strike a balance between the Accused's right to participate in politics – which he will in all likelihood be unable to exercise effectively since the timetable of the forthcoming elections in the DRC is objectively incompatible with that of the ongoing proceedings before the Court – and the serious crimes of which Mr Bemba currently stands accused and which gave rise to the ongoing trial.

³³ See the correspondence from the Chairman of CENI, Annex A to Defence Application, *supra*, footnote 1.

³⁴ See article 9(5) of the Law of 2006 and the Draft Law of 2011, *supra*, footnotes 17 and 18.

33. The charges confirmed against the Accused, the evidence already presented by the Office of the Prosecutor, and the fact that the Court exercises its jurisdiction over the most serious crimes of concern to the international community as a whole, all demonstrate unequivocally that the alleged crimes are extremely serious. This argument is further supported by the sentences which may be handed down to the Accused for crimes of such seriousness that Jean-Pierre Bemba Gombo's temporary release can in no way be justified – not even for 17 hours to allow him to perform his civic duties.

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

[signed]
Paolina Massidda
Principal Counsel

Dated this 17 June 2011

At The Hague, The Netherlands