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

Date: 27/01/2015

APPEALS CHAMBER

Before:

**Judge Sanji Mmasenono Monageng
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR
v. Jean-Pierre Bemba Gombo**

Public

**Defence request to file additional submissions in support of its appeal against
Trial Chamber III's "Decision on 'Defence Urgent Motion for Provisional Release'"**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
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REGISTRY

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Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

A. BACKGROUND

1. On 5 December 2014, having been incarcerated for a period of over six and a half years, Mr. Bemba filed a request for provisional release.¹

2. In rejecting this request, the Trial Chamber's decision was based, in part, on factual findings made by Pre-Trial Chamber II in the parallel Article 70 Case.² Indeed, at the heart of the Trial Chamber's finding that Mr. Bemba posed a flight risk was the fact that the charges against Mr. Bemba in the Article 70 case had now been confirmed. The Chamber was explicit that it considered:³

the existence of a finding by Pre-Trial Chamber II that there are "substantial grounds to believe" that the accused committed or solicited offences against the administration of justice related to the Bemba case, as a matter of fact and strictly for the purposes of its assessment under Article 58(1)(b)(i), clearly satisfies the standard set by the Appeals Chamber that there must be "possibility" that the arrest of the person appears necessary to ensure that the person does not obstruct or endanger the court proceedings.

3. On 12 January 2015, the Defence seized the Appeals Chamber with its appeal against the Trial Chamber's decision.⁴ The propriety of the Trial Chamber's reliance on factual findings from the Pre-Trial Chamber in the Article 70 Case was raised as one of three grounds of appeal.

4. On 23 January 2015, Mr. Bemba was granted provisional release in the Article 70 Case.⁵ Being aware of the scope of the Prosecution's Article 70 case against Mr. Bemba, and aware of the risk of alleged interference with (or danger to)

¹ ICC-01/05-01/08-3211.

² ICC-01/05-01/13.

³ ICC-01/05-01/08-3221, para. 49.

⁴ ICC-01/05-01/08-3230-Red-OA11.

⁵ ICC-01/05-01/13-798.

witnesses, as well as the risk that the proceedings might be obstructed or endangered by his release, the Pre-Trial Chamber held that:⁶

“it is necessary and appropriate to grant his release.”

B. APPLICABLE LAW

5. Regulation 28 (1) of the Regulations of the Court provides that “[a] Chamber may order the participants to clarify or to provide additional details on any document within a time limit specified by the Chamber.” Regulation 28(2) provides that “[a] Chamber may order the participants to address specific issues in their written or oral submissions within a time limit specified by the Chamber.”

C. SUBMISSIONS

6. Pre-Trial Chamber II’s decision to provisionally release Mr. Bemba despite its findings in the Confirmation Decision, significantly undermines the Trial Chamber’s reliance on these same findings as a means for justifying his continued detention in the Main Case. As such, Mr. Bemba’s provisional release in the Article 70 Case has a direct impact on the present appeal.

7. The Defence accordingly seizes the Appeals Chamber with a request to file additional submissions on the impact of Mr. Bemba’s provisional release in the Article 70 Case. The Appeals Chamber has previously authorised the making of additional submissions pursuant to Regulation 28(2) where those submissions were justified and necessary in the present circumstances in light of the arguments made on appeal.⁷

⁶ ICC-01/05-01/13-798, p.4.

⁷ See *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Decision on Mr Al-Senussi's request to file further submissions and related issues, 6 February 2014, ICC-01/11-01/11-508, para. 18. See also *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Decision on the Libyan Government's request to file further submissions, 12 September 2013, ICC-01/11-01/11-442 (OA 4), para. 12, citing

8. The Trial Chamber's reliance on Pre-Trial Chamber II's findings is a central issue on appeal. Both parties have made extensive submissions on whether the Trial Chamber's reliance on these findings was a legal error warranting reversal of its decision denying release. That these findings were not held to warrant continued detention in the Article 70 Case necessarily impacts on the question of whether the Trial Chamber's approach was in error. As such, the making of further submissions is not only justified, but will assist the Appeals Chamber in the efficient disposal of the matter.

9. Given the limited nature of such submissions, granting the Defence request will have no significant bearing on the timely adjudication of the appeal, nor undermine the expeditiousness of the proceedings.

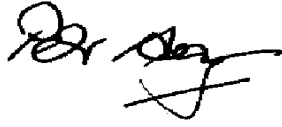
C. RELIEF SOUGHT

10. For the reasons set out above, the Defence for Mr. Bemba respectfully requests the Honourable Appeals Chamber to:

GRANT the Defence leave to file additional submissions limited to the impact of Pre-Trial Chamber II's decision to provisionally release Mr. Bemba in the Article 70 Case.

The whole respectfully submitted.

Prosecutor v. Thomas Lubanga Dyilo, Decision on the Prosecutor's 'Application for Leave to Reply to 'Conclusions de la défense en réponse au mémoire d'appel du Procureur', 12 September 2006, ICC-01/04-01/06-424 (OA 3), paras. 6-7.

A handwritten signature in black ink, appearing to read 'Peter Haynes', with a stylized flourish at the end.

Peter Haynes QC
Lead Counsel of Mr. Jean-Pierre Bemba

The Hague, The Netherlands

27 January 2014