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No.: ICC-01/05-01/13

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TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

THE PROSECUTOR

*v. JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO MUSAMBA, JEAN-JACQUES
MANGENDA KABONGO, FIDÈLE BABALA WANDU AND NARCISSE ARIDO*

Public

Defence Observations on continued detention or 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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A. INTRODUCTION

1. The Defence for Mr. Jean-Pierre Bemba hereby files its observations in response to the Trial Chamber's 'Order requesting the parties' observations under Article 60 of the Statute'.¹

2. The Defence withdraws its application for Mr. Bemba's release, and further requests the Trial Chamber to suspend any consideration of Mr. Bemba's detention, pending a change in Mr. Bemba's detention status in Case No. ICC-01/05-01/08.

3. These requests are without prejudice to the Trial Chamber's residual duty to ensure that Mr. Bemba is not detained for an unreasonable length of time due to inexcusable delay by the Prosecutor.

B. PROCEDURAL HISTORY

4. On 11 December 2014, the Defence submitted a request for release.² This was the first time that the Defence submitted such a request in Case No. ICC-01/5-01/13.

5. Although the Pre-Trial Chamber granted the request,³ the Chamber noted that:

the granting of the Request in respect of these proceedings cannot result in Mr Bemba being actually released absent a decision to the same effect to be taken by Trial Chamber III. ⁴

¹ ICC-01/05-01/13-980.

² ICC-01/05-01/13-782-Red.

³ ICC-01/05-01/13-798.

⁴ P.4.

6. On 20 May 2015, the Appeals Chamber confirmed the continued detention of Mr. Bemba in the Main Case.⁵

7. On 29 May 2015, the Appeals Chamber reversed the Pre-Trial Chamber's decision to release Mr. Bemba.⁶ The Chamber found that the Pre-Trial Chamber had erred by failing to balance:

the risks under article 58 (1) (b) of the Statute that are found to be met against the duration of detention, taking into account relevant factors that may have delayed the proceedings and the circumstances of the case as a whole.⁷

8. The Appeals Chamber therefore remanded the matter to the Trial Chamber for a new determination.⁸

C. SUBMISSIONS

9. The Trial Chamber requested observations from the parties as concerns the continued detention or release of the defendants. However, in the absence of a specific request for release from Mr. Bemba, the Trial Chamber is not required to issue a decision on detention as concerns Mr. Bemba.

10. In the case of Mssrs. Kilolo, Mangenda, Arido and Babala, the Pre-Trial Chamber was required, pursuant to Article 60(3) of the Statute, to issue a decision every 120 days as concerns their continued detention, irrespective as to whether the defendants requested such a review to occur.

⁵ ICC-01/05-01/08-3249-Red.

⁶ ICC-01/05-01/13-970.

⁷ ICC-01/05-01/13-970, para. 2.

⁸ P.13.

11. In contrast, prior to December 2014, Mr. Bemba did not challenge his detention or request to be released in Case No. ICC-01/05-01/13. The Pre-Trial Chamber issued a ruling on Mr. Bemba's detention in January 2015 because Mr. Bemba requested to be released; in the absence of such a request, the Chamber would not have been obliged to issue its ruling.

12. This follows from the Appeals Chamber's ruling that:

A periodic review by the Pre-Trial Chamber of its ruling on the detention of a person subject to a warrant of arrest under article 60 (3) of the Statute follows from, and is dependent upon, a ruling on a previous application by the detained person for interim release.⁹

13. Although the Appeals Chamber remanded the matter to the Trial Chamber after it reversed the January ruling, the Chamber did so because there was an extant request for release from Mr. Bemba.

14. If Mr. Bemba now withdraws his request, the legal *status quo* reverts to the situation prior to December 2014. Mr. Bemba will remain detained pursuant to the decision on the arrest warrant. Should he file an application for release in the future, it would be determined in accordance with Article 60(2) of the Statute.

15. The Trial Chamber can review the continued necessity of Mr. Bemba's detention in light of Article 60(4) of the Statute, even if the defendant has not requested such a review.¹⁰

16. There is, regrettably, no utility in doing so in circumstances in which Trial Chamber VII does not possess the power to order the release of Mr. Bemba, due to a continued detention order by Trial Chamber III. The fact that the detention order in Case No. ICC-01/05/01/08 prevents Mr. Bemba from being released as a remedy for

⁹ ICC-01/04-01/06-824, para. 3.

¹⁰ ICC-01/04-01/06-824, para. 98.

inexcusable delays in Case No. ICC-01/05-01/13 does, however, heighten the imperative of pre-empting the occurrence of such delays.

17. These delays can be avoided by ensuring, *inter alia*, that the Prosecution fulfils its disclosure duties towards the Defence in a timely and effective manner.

D. RELIEF SOUGHT

18. For the reasons set out above, the Defence for Mr. Jean-Pierre Bemba:

- i. Withdraws its request for Mr. Bemba's release; and
- ii. Requests the Trial Chamber to suspend any determination of Mr. Bemba's detention or release until there is a change in Mr. Bemba's detention status in Case No. ICC-01/05-01/08.



Melinda Taylor
Counsel of Mr. Jean-Pierre Bemba

Date this 19st day of June 2015

The Hague, The Netherlands