

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/08
Date: 3 September 2009

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
v. JEAN-PIERRE BEMBA GOMBO**

**Public Document
URGENT**

**Decision Postponing the Hearings with States on Mr Jean-Pierre Bemba Gombo's
Conditional Release and Considering the Defence's Additional Applications**

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

The Office of the Prosecutor

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Competent authorities of
the Kingdom of Belgium,
the Republic of France,
the Federal Republic of Germany,
the Italian Republic
the Kingdom of the Netherlands,
the Republic of Portugal,
the Republic of South Africa

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Deputy Registrar

Didier D. Pereira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”),¹ renders this decision concerning: the postponement of the hearings scheduled between 7 and 14 September 2009, the States’ requests for postponement of these same hearings,² and the Defence’s additional applications.³

1. On 23 May 2008 Pre-Trial Chamber III issued a warrant of arrest against Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”)⁴ and on 24 May 2008 he was arrested in the Kingdom of Belgium.

2. On 10 June 2008 Pre-Trial Chamber III issued the “Decision on the Prosecutor’s Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo”.⁵ On the same date, Pre-Trial Chamber III issued a new warrant of arrest, which entirely replaced the one of 23 May 2008.⁶

3. On 3 July 2008 Mr Jean-Pierre Bemba was surrendered to the seat of the Court where his first appearance took place before Pre-Trial Chamber III on 4 July 2008.⁷

4. On 20 August 2008 Judge Hans-Peter Kaul, acting as Single Judge on behalf of the Pre-Trial Chamber III, issued the “Decision on application for interim release” in which he rejected the Defence’s application for interim release and decided that Mr Jean-Pierre Bemba shall continue to be detained.⁸

5. On 16 December 2008 Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber III, issued the “Decision on Application for Interim

¹ Pre-Trial Chamber II, “Decision Designating Single Judges”, ICC-01/05-01/08-393.

² ICC-01/05-01/08-494.

³ ICC-01/05-01/08-484-Conf.

⁴ ICC-01/05-01/08-1.

⁵ ICC-01/05-01/08-14-tENG.

⁶ ICC-01/05-01/08-15.

⁷ ICC-01/05-01/08-T-3-ENG ET.

⁸ Pre-Trial Chamber III, ICC-01/05-01/08-73-Conf.

Release” in which she, *inter alia*, rejected the second application for interim release and decided that Mr Jean-Pierre Bemba shall continue to be detained.⁹

6. On 14 April 2009 Judge Ekaterina Trendafilova, acting as Single Judge on behalf of the Chamber¹⁰ also issued the “Decision on Application for Interim Release”, in which, she, *inter alia*, rejected the Defence’s third application for interim release.¹¹

7. On 15 June 2009 the Chamber issued the “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, in which it was decided, *inter alia*, that there is sufficient evidence to establish substantial grounds to believe that the accused is criminally responsible under article 28(a) of the Rome Statute (the “Statute”) for two counts of crimes against humanity and three counts of war crimes, and to commit him to a Trial Chamber.¹²

8. On 16 June 2009 the Single Judge issued the “Decision to Hold a Hearing pursuant to Rule 118(3) of the Rules of Procedure and Evidence”.¹³

9. On 29 June 2009 the Single Judge held the hearing, during which the Defence requested Mr Jean-Pierre Bemba’s interim release to the Kingdom of Belgium, the Republic of France and the Republic of Portugal.¹⁴ Accordingly, the Single Judge requested that these States, as well as the Kingdom of the Netherlands, as a host State, submit their observations on “[...] Mr. Jean-Pierre Bemba’s interim release; and [...], the conditions if any, that would need to be imposed pursuant to Rule 119 of the Rules of Procedure and Evidence to enable the states in which Mr. Bemba

⁹ Pre-Trial Chamber III, ICC-01/05-01/08-321.

¹⁰ On 19 March 2009 the Presidency decided to merge Pre-Trial Chamber III with Pre-Trial Chamber II and to assign the situation in the Central African Republic to Pre-Trial Chamber II, Presidency, ICC-01/05-01/08-390.

¹¹ Pre-Trial Chamber II, ICC-01/05-01/08-403.

¹² Pre-Trial Chamber II, ICC-01/05-01/08-424.

¹³ ICC-01/05-01/08-425.

¹⁴ ICC-01/05-01/08-T-13-ENG WT 29-06-2009, p. 22, line 6 and p. 31, lines 5-8.

seeks to be released to accept him on their territory”, no later than 10 July 2009.¹⁵ The Single Judge also ordered the Registrar to “notify the relevant authorities of [...] [these States] of [the] hearing and to transmit [to them][...][the] public transcript in its original language” as well as the Defence’s written submissions that was filed on 2 July 2009.¹⁶

10. On 2 July 2009 the Defence and the Prosecutor filed their additional written submissions on Mr Jean-Pierre Bemba’s request for interim release,¹⁷ and on the same date, the Single Judge received the “Requête aux fins d’extension de la demande initiale en rapport avec les pays d’accueil dans le cadre de la demande de mise en liberté de Mr Jean-Pierre Bemba Gombo lors de l’audience du 29 Juin 2009” submitted by the Defence (the “Defence’s Request”), in which it requested adding the Federal Republic of Germany, the Italian Republic and the Republic of South Africa to the list of States that Mr Jean-Pierre Bemba seeks to be released to.¹⁸

11. On 6 July 2009 the Kingdom of Belgium requested an extension of time to submit its observations until 24 July 2009,¹⁹ which was granted on 8 July 2009.²⁰

12. On 10 July 2009 the Single Judge filed a decision on the Defence’s Request, which was notified on 13 July 2009.²¹ According to this decision, the Single Judge, *inter alia*, granted the Defence’s Request and requested the relevant authorities of the Federal Republic of Germany, the Italian Republic and the Republic of South Africa, to

¹⁵ ICC-01/05-01/08-T-13-ENG WT 29-06-2009, p. 64, lines 11-20.

¹⁶ ICC-01/05-01/08-T-13-ENG WT 29-06-2009, p. 64, lines 21-25 and p. 65, line 1.

¹⁷ “Notes supplétives aux Soumissions Orales de la Défense lors de l’Audience du 29 Juin 2009”, ICC-01/05-01/08-432; “Prosecution’s Additional Observations on Interim Release pursuant to Rule 118(3) of the Rules of Procedure and Evidence”, ICC-01/05-01/08-431.

¹⁸ ICC-01/05-01/08-433.

¹⁹ ICC-01/05-01/08-438 and its annexes. The Single Judge, being aware of the confidential nature of annex 2 of this filing, does not consider revealing this particular information to be inconsistent with the confidential nature of the filing as such.

²⁰ Pre-Trial Chamber II, “Decision on the Belgian Authorities’ Request for Extension of Time Limit”, ICC-01/05-01/08-442.

²¹ Pre-Trial Chamber II, “Decision Seeking Observations on the Defence’s Request for Interim Release”, ICC-01/05-01/08-446.

submit observations no later than Friday 7 August 2009, at 16h00 on: (i) the request for interim release, and (ii) the conditions, if any, that would have to be met to enable the States, to which Mr Jean-Pierre Bemba seeks to be released, to accept him on their territory.²²

13. On 13 July 2009 the Single Judge received the observations of the Republic of Portugal,²³ the Republic of France²⁴ and the Kingdom of the Netherlands.²⁵

14. On 24 July 2009 the Single Judge received the observations of the Kingdom of Belgium.²⁶

15. On 29 July 2009 the Single Judge received additional observations of the Republic of Portugal.²⁷

16. On 5 August 2009 the Republic of South Africa submitted a request for extension of time to submit its observations until 28 August 2009,²⁸ which was granted in part on 6 August 2009.²⁹

17. On 7 August 2009 the Registrar submitted its document on the "Transmission of the observations of the Federal Republic of Germany and the Italian Republic received on the Defence request for interim release of Mr Jean-Pierre Bemba Gombo".³⁰

²² Pre-Trial Chamber II, ICC-01/05-01/08-446.

²³ ICC-01/05-01/08-448-Conf-Anx I.

²⁴ ICC-01/05-01/08-448-Conf-Anx 2.

²⁵ ICC-01/05-01/08-448-Conf-Anx 3.

²⁶ ICC-01/05-01/08-461.

²⁷ ICC-01/05-01/08-465.

²⁸ ICC-01/05-01/08-468.

²⁹ Pre-Trial Chamber II, "Decision on the Request for Extension of Time", ICC-01/05-01/08-470.

³⁰ ICC-01/05-01/08-472 and its annexes.

18. On 12 August 2009 the Registrar submitted her document on the "Transmission of the observations of the Republic of South Africa received on the Defence request for interim release of Mr Jean-Pierre Bemba Gombo".³¹

19. On 14 August 2009 the Single Judge issued the "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" (the "14 August 2009 Decision"), in which she, *inter alia*, decided that the accused be granted conditional release, until decided otherwise.³² In the same decision, the Single Judge also decided that the implementation of this decision is deferred "pending a decision in which State [the accused] will be released and which set of conditions shall be imposed on him". Moreover, the Single Judge invited the competent authorities of these States to participate in public hearings at the seat of the Court between 7 and 14 September 2009.³³ On the same date, the Prosecutor filed an appeal against the 14 August 2009 Decision.³⁴

20. On 24 August 2009 the Defence filed the "Réplique de la Défense conformément à la Décision de la Chambre Préliminaire II du 14 août 2009 et Requêtes Incidentes de la Défense", in which it requested that the Single Judge : (1) release the accused temporarily on the territory of the host State until a decision is taken with respect to the execution of the 14 August 2009 Decision; (2) add the Democratic Republic of the Congo (the "DRC") to the list of States that Mr Jean-Pierre Bemba seeks to be released as well as inviting it to participate in the public hearings scheduled to take place between 7 and 14 September 2009; and (3) invite any State Party to the Statute

³¹ ICC-01/05-01/08-473 and its annexes.

³² Pre-Trial Chamber II, ICC-01/05-01/08-475.

³³ Pre-Trial Chamber II, ICC-01/05-01/08-475.

³⁴ ICC-01/05-01/08-476.

to accept the accused to be released on its territory (the “Defence’s Additional Applications”).³⁵

21. On 31 August 2009 the Registrar filed the “Transmission of Requests from the Italian Republic, the Federal Republic of Germany, the Kingdom of Belgium, the Republic of France and the Republic of Portugal for postponement of the hearings scheduled in the Decision on the Interim Release of Jean-Pierre Bemba Gombo on 14 August 2009” alongside seven confidential annexes.³⁶ In this filing, the Registrar stated, *inter alia*, that the competent authorities of the Kingdom of Belgium, the Republic of France, the Federal Republic of Germany, the Italian Republic and the Republic of Portugal requested the Single Judge to “postpone the hearings scheduled respectively with these States” (the “States’ Requests”).³⁷

22. On 3 September 2009 the Appeals Chamber issued the “Decision on the Request of the Prosecutor for Suspensive Effect” in which it decided to grant suspensive effect in respect of operative paragraph (a) of the 14 August 2009 Decision, namely, that the accused “be granted conditional release, until decided otherwise” (the “3 September 2009 Decision”).³⁸

23. The Single Judge notes articles 58(1), 60(2) and (3) of the Statute and rule 119(3) of the Rules of Procedure and Evidence.

24. The Single Judge is aware that the suspensive effect granted by the Appeals Chamber does not extend to the remaining operative paragraphs (b)-(j) of the 14 August 2009 Decision, which invite the relevant States to participate in the public hearings scheduled in September 2009. However, being mindful of the indeterminate future legal implications of the 3 September 2009 Decision, that is, the possibility that

³⁵ ICC-01/05-01/08-484-Conf.

³⁶ ICC-01/05-01/08-494 and its annexes.

³⁷ ICC-01/05-01/08-494.

³⁸ Appeals Chamber, ICC-01/05-01/08-499.

the Appeals Chamber overturns the 14 August 2009 Decision, and for the sake of preserving the Court's resources, the Single Judge does not consider it feasible, at this stage, to proceed with convening the public hearings as initially scheduled in the 14 August 2009 Decision. This finding of the Single Judge also renders the States' Requests moot.

25. With respect to the Defence's Additional Applications, the Single Judge considers that they are currently premature, given the fact that the Appeals Chamber has suspended the relevant part of the 14 August 2009 Decision granting the accused conditional release. Moreover, since the Single Judge has decided not to carry out the hearings as stated above, she, therefore, refrains from scheduling additional hearings with the other States, including the DRC.

FOR THESE REASONS, THE SINGLE JUDGE

a) decides to postpone the public hearings scheduled to take place 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 from 7-11 September 2009 and on 14 September 2009 respectively, until the Appeals Chamber has ruled on the appeal against the 14 August 2009 Decision;

b) decides not to address the States' Requests as moot;

c) rejects the Defence's Additional Applications.

Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday 3 September 2009

At The Hague, The Netherlands