

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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Date: 1 April 2010

**TRIAL CHAMBER III**

**Before:** Judge Adrian Fulford, Presiding Judge  
Judge Elizabeth Odio Benito  
Judge Joyce Aluoch

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

**Public Document**

**Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo  
pursuant to Rule 118(2) of the Rules of Procedure and Evidence**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda, Deputy Prosecutor  
Ms Petra Kneuer, Senior Trial Lawyer

**Counsel for the Defence**

Mr Nkwebe Liriss  
Mr Aimé Kilolo-Musamba

**Legal Representatives of the Victims**

Ms Marie-Edith Douzima-Lawson

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

Mr Anders Backman

**Victims Participation and Reparations  
Section**

**Other**

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* hereby delivers the following Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo (“Mr Bemba”).

## I. Background and Submissions

1. On 8 December 2009, the Chamber ordered Mr Bemba’s continued detention.<sup>1</sup>
2. Pursuant, first, to Articles 60(3) (which relates to detention pending trial) and 61(11) of the Rome Statute (“Statute”) (the Trial Chamber’s ability to exercise any function of the Pre-Trial Chamber) and, second, to Rule 118(2) of the Rules of Procedure and Evidence (“Rules”), the Trial Chamber reviews its rulings on detention at least every 120 days. On 8 April 2010, Mr Bemba will have been detained for 120 days since the last review of his detention on 8 December 2009.
3. In light of this, the Chamber invited observations from the parties and participants in its order of 19 February 2010, and the subsequent corrigendum of 3 March 2010.<sup>2</sup>

### *Submissions of the prosecution*

4. On 24 February 2010, the Office of the Prosecutor (“prosecution”) filed the “Prosecution’s Observations on the Review of the Pre-Trial Detention of Jean-Pierre Bemba Gombo”.<sup>3</sup> The prosecution submits that the accused’s detention should be maintained for the following reasons:<sup>4</sup>

<sup>1</sup> Transcript of hearing on 8 December 2009, ICC-01/05-01/08-T-18-ENG-ET, page 24, line 10 to page 29, line 17.

<sup>2</sup> Order requesting the parties and participants’ observations regarding the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence, 19 February 2010, ICC-01/05-01/08-698 and Corrigendum, 3 March 2010, ICC-01/05-01/08-698-Corr.

<sup>3</sup> ICC-01/05-01/08-702, 24 February 2010.

<sup>4</sup> ICC-01/05-01/08-702, paragraph 1.

- (i) the conditions justifying detention continue to be met;
  - (ii) there has been no substantial change of these conditions or other relevant factors since the last review in December 2009, such as to warrant a variation or interruption of the current detention regime;
  - (iii) the accused has not been detained for an unreasonable period, nor has there been inexcusable delay by the prosecution in the conduct of its case; and
  - (iv) the statutory grounds for considering interim release or release pursuant to Articles 60(3) and (4) of the Statute are not met.
5. The prosecution further submits that the continued detention of the accused remains necessary both to ensure his appearance at trial, and to ensure that he does not obstruct court proceedings.<sup>5</sup> The prosecution relies on the Appeals Chamber decision of 2 December 2009 (“Appeals Chamber decision”)<sup>6</sup> which confirmed that 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”(“Confirmation decision”),<sup>7</sup> increased the incentives for, and the likelihood of, the accused absconding, in light of the gravity of the charges and the possibility of a lengthy sentence, if convicted.<sup>8</sup> The prosecution also observes that since the date of trial is imminent, the evidential basis for inferring that the accused will not appear for trial if released is enhanced.<sup>9</sup>
6. The prosecution submits that the factors previously found by the Chamber to be persuasive in its last review of detention on 8 December 2009<sup>10</sup> are all still

<sup>5</sup> ICC-01/05-01/08-702, paragraph 17.

<sup>6</sup> Judgment on 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”, 2 December 2009, ICC-01/05/01/08-631-Red..

<sup>7</sup> ICC-01/05-01/08-424, 15 June 2009.

<sup>8</sup> ICC-01/05/01/08-631, paragraph 70 and ICC-01/05-01/08-702, paragraph 18.

<sup>9</sup> ICC-01/05-01/08-702, paragraph 18.

<sup>10</sup> ICC-01/05-01/08-T-18-ENG-ET, page 24, line 10 to page 29, line 17.

applicable and they encapsulate the prosecution's concerns as to the suggested release of the accused.<sup>11</sup>

7. The prosecution suggests that there is a continued need to protect witnesses from intimidation or interference, especially since the accused is aware of the names and identities of all those who are to be called by the prosecution at trial.<sup>12</sup>
8. The prosecution further submits that the length of the accused's detention has been reasonable, having regard to the facts and circumstances of his case: he has been in detention for 21 months and there was (at the time of the prosecution's submissions) a trial date of 27 April 2010.<sup>13</sup>
9. Finally, the prosecution argues there has been no inexcusable delay in the pre-trial process, in the sense that the prosecution has discharged its substantive disclosure obligations in a timely manner, namely by 30 November 2009. For all these reasons the prosecution submits that the Chamber should not vary its earlier decision on detention.<sup>14</sup>

*Submissions of the legal representatives for victims*

10. On 24 February 2010, the legal representatives for victims ("legal representatives") filed a joint submission in which they argue there have been no changes in the circumstances relevant to the detention of the accused such as to merit a modification of the Chamber's existing order.<sup>15</sup> The legal representatives join the prosecution in relying on the Appeals Chamber decision of 2 December 2009: they submit that the gravity of the confirmed

<sup>11</sup> ICC-01/05-01/08-702, paragraph 21.

<sup>12</sup> ICC-01/05-01/08-702, paragraph 21.

<sup>13</sup> ICC-01/05-01/08-702, paragraph 22.

<sup>14</sup> ICC-01/05-01/08-702, paragraphs 23 and 24.

<sup>15</sup> ICC-01/05-01/08-703, paragraphs 8-10.

charges and the overall length of sentence the accused faces if convicted are relevant to the risk of him absconding.<sup>16</sup>

11. In addition the legal representatives submit that these risks are heightened by Mr Bemba's extensive means, his political and professional position, and his international contacts and ties.<sup>17</sup>

12. The legal representatives submit that there are security risks faced by the victims and witnesses on account of the prominent position the accused holds within the community that supports him and his wealth. The victims they represent have expressed concerns about their security and they have emphasised that the actions of the members of Mr Bemba's party and his supporters constitute a constant threat for victims and witnesses; it is suggested this can be seen in numerous public sources which recount threats of death and intimidation against potential witnesses.<sup>18</sup>

13. The legal representatives therefore request the Chamber to find that there has been no change of circumstances which would require a modification of the oral decision at the status conference on 8 December 2009, and that accordingly Mr Bemba should remain in custody.<sup>19</sup>

#### *Defence submissions*

14. The defence filed its submissions on the review of Mr Bemba's detention on 19 March 2010.<sup>20</sup> In summary, the defence requests the following:<sup>21</sup>

<sup>16</sup> ICC-01/05-01/08-703, paragraph 10 and ICC-01/05/01/08-631-Red, paragraphs 66- 70.

<sup>17</sup> ICC-01/05-01/08-703, paragraph 11.

<sup>18</sup> ICC-01/05-01/08-703, paragraph 12 and footnote 16.

<sup>19</sup> ICC-01/05-01/08-703, page 8.

<sup>20</sup> Soumissions de la Défense sur la Révision de la Détention avant le procès de Mr Jean-Pierre Bemba Gombo en vertu de la Règle 118(2) du Règlement de procédure et de preuve, 19 March 2010, ICC-01/05-01/08-730 with confidential annexes 1,6-8 and public annexes 2-5. A corrigendum to confidential annex 8 was filed on 20 March 2010 (notified 22 March 2010), ICC-01/05-01/08-730-Conf-Anx8-Corr.

<sup>21</sup> ICC-01/05-01/08-730, paragraph 76.

- (i) that the Kingdom of Belgium disclose a copy of the police report on the conditions of Mr Bemba's interim release on 8 July 2009;
- (ii) that a status conference is convened before any determination by the Chamber on a possible host State in case of interim release;
- (iii) that the material change in circumstances since 8 December 2009 is accepted;
- (iv) that the interim release of Mr Bemba is ordered, with or without conditions as the Court deems appropriate.

15. The defence submits that the prosecution's submissions regarding inexcusable delay pursuant to Article 60(4) are premature, absent an application by the defence in this regard; however, the defence seeks to reserve its right to raise this issue since it was canvassed at the last status conference.<sup>22</sup>

16. Addressing the bases of the Appeals Chamber decision of 2 December 2009<sup>23</sup> and the Trial Chamber's decision of 8 December 2009,<sup>24</sup> the defence advances six principal points:

- (i) The risk of the accused absconding: As to the Appeals Chamber decision that there is a risk of the accused absconding due to the gravity of the charges and the risk of a lengthy sentence<sup>25</sup> (as reflected by the Trial Chamber in its decision of 8 December 2009), the defence submits that the Court has jurisdiction only over the most serious crimes and a person who faces charges confirmed by the Court inevitably risks an overall lengthy sentence. Therefore, the defence submits it is critical to bear in mind that Article 60(3) of

<sup>22</sup> ICC-01/05-01/08-730, paragraphs 3-4.

<sup>23</sup> ICC-01/05/01/08-631-Red.

<sup>24</sup> ICC-01/05-01/08-T-18-ENG-ET, page 24, line 10 to page 29, line 17.

<sup>25</sup> ICC-01/05/01/08-631-Red, paragraphs 67-70.

the Statute provides for the possible release of anyone who is the subject of an arrest warrant.<sup>26</sup> The defence relies on the presumption of innocence, pursuant to Article 66 of the Statute along with certain jurisprudence from the International Criminal Tribunal for the former Yugoslavia (“ICTY”), in support of its argument that accused facing similar charges in the past have been released.<sup>27</sup> The defence accepts that in evaluating the risk of the accused absconding the Chamber will take into account the fact that the charges have been confirmed, but it submits that fact on its own does not carry significant weight because otherwise the opportunity of interim release provided by the Statute framework would be meaningless.<sup>28</sup> The defence submits that a new circumstance that has arisen is that the prosecution only completed its disclosure obligations on 1 March 2010 and it is argued that the Chamber must now consider not only the charges that have been confirmed but also how these are substantiated.<sup>29</sup> The defence submits that the jurisprudence of the European Court of Human Rights indicates that the gravity of the charges is not a sufficient justification for prolonging an accused’s detention, and that there need to be other factors leading to a decision that continued custody is necessary.<sup>30</sup> In addition, the defence submits that since the admissibility of the case is being substantively challenged by its “Application Challenging the Admissibility of the Case pursuant to Articles 17 and 19(2)(a) of the Rome Statute”,<sup>31</sup> the accused’s concerns as to a lengthy sentence are diminished since there is uncertainty as to whether there will be a trial.<sup>32</sup> The defence also submits that the

<sup>26</sup> ICC-01/05-01/08-730, paragraph 29.

<sup>27</sup> ICC-01/05-01/08-730, paragraphs 31-32.

<sup>28</sup> ICC-01/05-01/08-730, paragraph 33.

<sup>29</sup> ICC-01/05-01/08-730, paragraph 35-36.

<sup>30</sup> ICC-01/05-01/08-730, paragraph 38 and Anx5.

<sup>31</sup> 25 February 2010, ICC-01/05-01/08-704-Conf-Exp-tENG.

<sup>32</sup> ICC-01/05-01/08-730, paragraph 41.

“passage of time” constitutes a new circumstance that reduces the risk of the accused absconding, since Mr Bemba has been deprived of his liberty for almost 2 years; this submission is based on jurisprudence from the European Court of Human Rights in the case of *Neumeister v. Austria* in which, it is suggested, the Court recognized that the length of time an accused has spent on remand has the effect of reducing the danger of flight due to the probability that the remand period will be deducted from any period of imprisonment.<sup>33</sup>

- (ii) The possible obstruction of investigations or the risk to the safety of witnesses: it is suggested that the Appeals Chamber observed that the Pre-Trial Chamber in its decision on interim release (14 August 2009<sup>34</sup>) failed to consider Mr Bemba’s financial situation in determining whether he had the means to interfere with the investigation or the safety of witnesses,<sup>35</sup> and it is additionally pointed out that the Trial Chamber in its 8 December 2009 decision did not refer to the risk of interference by the accused with the investigation or to any possible further crimes being committed within the jurisdiction of the Court.<sup>36</sup>
- (iii) The choice of host State: the defence submits that the Appeals Chamber decision sets out that the Court is dependent primarily on the cooperation of States in agreeing to accept someone who is granted interim release, as well as in enforcing the conditions imposed by the Court, because otherwise a decision on interim

<sup>33</sup> ICC-01/05-01/08-730, paragraph 54 and annex 2.

<sup>34</sup> 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, 14 August 2009, ICC-01/05-01/08-475.

<sup>35</sup> ICC-01/05-01/08-730, paragraph 13 and ICC-01/05/01/08-631-Red, paragraph 74.

<sup>36</sup> ICC-01/05-01/08-730, paragraph 22.

release will be ineffective.<sup>37</sup> The Trial Chamber in its decision of 8 December 2009 set out that the preparedness of States to take on this responsibility is irrelevant unless there has been a material change in circumstances since the last detention review.<sup>38</sup> The defence submits that if the Chamber determines there has been a material change in circumstances, the accused is willing to reside wherever the Chamber deems suitable, whether it is within the Kingdom of Belgium, the Democratic Republic of Congo, the Republic of Portugal, the Kingdom of the Netherlands or elsewhere.<sup>39</sup> The defence proposes a number of conditions that could be applied to an order for interim release, and in this regard it relies on the accused's previous interim release to the Kingdom of Belgium on 8 July 2009 for a period of 24 hours (to attend his father's funeral), suggesting that the Chamber should request a copy of the report from the security services who supervised the accused to confirm his cooperation.<sup>40</sup> The defence sets out certain international jurisprudence regarding persons detained by the Special Tribunal for Lebanon.<sup>41</sup> Finally, the defence requests that the proposed host States attend a status conference, with a view to determining whether the conditions referred to above are feasible. The defence suggests that any guarantees proposed by a host State may in themselves constitute a new circumstance justifying interim release.<sup>42</sup>

- (iv) Professional and political situation: the defence submits that the accused's professional and political situation has changed considerably, as shown by a certificate attached to the defence filing

<sup>37</sup> ICC-01/05-01/08-730, paragraph 15.

<sup>38</sup> ICC-01/05-01/08-730, paragraph 23.

<sup>39</sup> ICC-01/05-01/08-730, paragraphs 60-63.

<sup>40</sup> ICC-01/05-01/08-730, paragraph 64-66.

<sup>41</sup> ICC-01/05-01/08-730, paragraph 67 and footnote 37.

<sup>42</sup> ICC-01/05-01/08-730, paragraphs 69-73.

at Confidential Annex 6.<sup>43</sup> The defence submits that Mr Bemba is no longer exercising his role as President of the MLC and as a result his influence has self-evidently diminished.<sup>44</sup> The defence argues that the disclosure by the prosecution on 18 December 2009, to the effect that proceedings had previously been conducted in Bangui, constitutes a new circumstance.<sup>45</sup> The defence submits that there is no evidence to suggest that Mr Bemba attempted to obstruct proceedings in Bangui in September 2003 when he held the highly influential position of Vice-President of the DRC, prior to orders freezing and seizing his assets.<sup>46</sup> The defence suggests that the fact that the investigations are now complete, and that the entirety of evidence has been disclosed, is a fresh circumstance supporting the contention that the accused will not seek to avoid justice, particularly since it is contended the evidence is mainly exculpatory.<sup>47</sup>

- (v) International contacts and ties: The defence submits that the disclosure by the prosecution on 18 December 2009 and 1 March 2010 constitutes new circumstances in relation to Mr Bemba's contacts and that the defence analysis of this evidence leads to the conclusion that it does not reveal anything, in this context, that might be a threat to the proceedings; on the contrary, it is suggested that the accused's contacts are credible people of European or international standing, in relation to whom there can be no reasonable fear that they will assist Mr Bemba in absconding.<sup>48</sup> Further, the defence submits that the lack of preparedness on the part of any country to accept him under an order for interim release

<sup>43</sup> ICC-01/05-01/08-730, paragraphs 42- 48 and Conf-Anx6.

<sup>44</sup> ICC-01/05-01/08-730, paragraph 43.

<sup>45</sup> ICC-01/05-01/08-730, paragraph 44.

<sup>46</sup> ICC-01/05-01/08-730, paragraph 45.

<sup>47</sup> ICC-01/05-01/08-730, paragraph 47.

<sup>48</sup> ICC-01/05-01/08-730, paragraph 49-51.

– citing the reservations that have been expressed – disproves the suggestion that he has powerful contacts and ties at an international level. The defence requests that the Chamber expressly determines this point, since it has not previously been dealt with in any of the jurisprudence of the Court.<sup>49</sup> The defence relies on jurisprudence from the European Court of Human Rights that mere allegations do not suffice for these purposes; there must be an identifiable risk, supported by identifiable evidence.<sup>50</sup>

- (vi) Financial resources: The defence submits that the letter from the accused's bank dated 18 March 2010 indicates that the accused no longer has the capacity to access funds through his contacts.<sup>51</sup> The defence further argues that this increasing inability on the part of the accused to secure financial support is indicative that he would not be able to fund an attempted flight with his family from justice.<sup>52</sup>

#### *Third Party submission*

17. On 19 March 2010, the Chamber received notification from a third party, requesting the release of Mr Bemba, and a corrigendum was filed on 24 March 2010.<sup>53</sup> The Chamber has not taken this filing into consideration: the author has no legal standing before the Court, being neither a party nor an authorized victim participant. Unless the Chamber has invited, or granted leave to, a State, an organization or a person to present observations, pursuant to Rule 103 of the Rules it declines to consider submissions other than those made by the parties and participating victims.

<sup>49</sup> ICC-01/05-01/08-730, paragraph 53.

<sup>50</sup> ICC-01/05-01/08-730, paragraph 55 and annex 3.

<sup>51</sup> ICC-01/05-01/08-730, paragraph 56 and confidential annex 1.

<sup>52</sup> ICC-01/05-01/08-730, paragraph 57.

<sup>53</sup> Demande d'ordonnance d'annulation d'un motif de refus de libération provisoire stigmatisant et criminalisant indistinctement tous les contacts internationaux de l'accusé, 19 March 2010, ICC-01/05-01/08-726, and Corrigendum, 24 March 2010, ICC-01/05-01/08-726-Corr.

*Submissions at the Status Conference on 29 March 2010*

18. At the status conference on 29 March 2010, the Chamber raised the issue of the defence request for an order, addressed to the Kingdom of Belgium, to provide a copy of a report into the conditions of the accused's interim release; the Chamber reminded counsel of the observations of the Single Judge on 14 August 2009,<sup>54</sup> in which she set out that when the accused was authorised for a period of 24 hours to attend his father's funeral ceremony, the Registrar was informed that he cooperated fully; that he respected all the conditions set by the Single Judge; and returned to the seat of the Court in compliance with the Single Judge's order. In the circumstances the defence was asked whether anything further could be gained from obtaining the report, as requested.<sup>55</sup>
19. The defence submitted that there is an additional aspect: the capacity of the Kingdom of Belgium to ensure compliance with the conditions set by the Court. The defence requested that the conditions imposed at the time of this earlier interim release are applied if a decision is taken to release Mr Bemba at this stage.<sup>56</sup>
20. On the issue of a possible host state, the defence sought to submit a judgment from the ICTY in support of the suggestion that the Court should liaise directly with possible host States, to secure the necessary guarantees.<sup>57</sup>
21. The prosecution responded briefly stating that the prosecution does not oppose the defence request for a report from the Kingdom of Belgium, seeking only a copy if this is ordered. The prosecution also submitted that the

<sup>54</sup> 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, 14 August 2009, ICC-01/05-01/08-475, paragraph 65.

<sup>55</sup> Transcript of hearing on 29 March 2010, ICC-01/05-01/08-T-21-ENG-RT, page 32, line 15 to page 33, line 7.

<sup>56</sup> ICC-01/05-01/08-T-21-ENG-RT, page 33, line 8 to page 34, line 25.

<sup>57</sup> ICC-01/05-01/08-T-21-ENG-RT, page 35, lines 7-11.

accused's behaviour during the short period of interim release is not a relevant factor when considering Article 58(1) of the Statute. The prosecution submitted that it is factually incorrect to characterise this period as interim release, since the accused was not released from custody, but rather it was a short period where he was transferred from custody in the detention centre to the control of armed police. As regards a possible host state, the prosecution referred to the jurisprudence of the Appeals Chamber which is to the effect that the issue of a host State is only of relevance if the Chamber's decides that the conditions under Article 58(1) of the Statute are not met.<sup>58</sup>

22. Thereafter, the defence sought to advance further submissions, which essentially re-iterate the arguments already set out in its written filings (rehearsed above) by reference to new documents hitherto not submitted to the Chamber.<sup>59</sup> The Chamber instructed the defence (by email after the hearing) to file these supporting documents.<sup>60</sup>

23. In compliance, the defence sent courtesy copies of the supporting documentation to the Chamber on 29 March 2010, and thereafter they were formally notified the following day.<sup>61</sup> The supporting documentation comprised: (i) the decision on the motion for provisional release, referred to by the defence during the status conference, before the ICTY in the case of the *Prosecutor v. Sefer Halilović* dated 1 September 2005;<sup>62</sup> (ii) a decision on a motion on behalf of Lahi Brahimaj before the ICTY dated 14 September 2007 in the case of the *Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj*;<sup>63</sup> (iii) an extract from the new MLC Statute of 26 October 2008;<sup>64</sup> (iv) the UN

<sup>58</sup> ICC-01/05-01/08-T-21-ENG-RT, page 37, line 4 to page 38, line 10.

<sup>59</sup> ICC-01/05-01/08-T-21-ENG-RT, page 38, line 19 to page 45, line 7.

<sup>60</sup> Email communication from the Legal Officer to the Presiding Judge to the Defence, 29 March 2010.

<sup>61</sup> Communication des documents évoqués par la Défense lors de la Conférence de mise en état de ce Lundi 29 mars 2010, 29 March 2010, ICC-01/05-01/08-741 and annexes A-E.

<sup>62</sup> ICC-01/05-01/08-741-AnxA.

<sup>63</sup> ICC-01/05-01/08-741-AnxB.

<sup>64</sup> ICC-01/05-01/08-741-AnxC.

Security Council resolution 1291 of 24 February 2000 regarding MONUC,<sup>65</sup> and (v) an extract from the Congolese Family Code.<sup>66</sup>

## II. Relevant Provisions

24. In accordance with Article 21(1) of the Statute, the Trial Chamber has considered the following provisions:

### Article 58 of the Statute

#### Issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear

1. At any time after the initiation of an investigation, the Pre-Trial Chamber shall, on application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that:

[...]

(b) The arrest of the person appears necessary:

- (i) To ensure the person's appearance at trial;
- (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or
- (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

### Article 60 of the Statute

#### Initial proceedings before the Court

[...]

3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.

4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.

### Article 61 of the Statute

#### Confirmation of the charges before trial

[...]

<sup>65</sup> ICC-01/05-01/08-741-AnxD.

<sup>66</sup> ICC-01/05-01/08-741-AnxE.

11. Once the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.

#### **Rule 118 of the Rules**

##### **Pre-trial detention at the seat of the Court**

[...]

2. The Pre-Trial Chamber shall review its ruling on the release or detention of a person in accordance with article 60, paragraph 3, at least every 120 days and may do so at any time on the request of the person or the Prosecutor.

### **III. Analysis and Conclusion**

25. The Statute refers only to review of detention by the Pre-Trial Chamber.

However, under Article 61(11) of the Statute, the Trial Chamber "may exercise any function of the Pre-Trial Chamber that is relevant and capable of application" in the trial proceedings. As the Trial Chamber stated in its previous review of Mr Bemba's detention on 8 December 2009, it considers it appropriate, in fairness to the accused, to review his detention under Articles 58(1) and 60 of the Statute and Rule 118(2) of the Rules during the entirety of the pre-trial proceedings before the Court.<sup>67</sup>

26. By Article 60(3) of the Statute, the Chamber is required periodically to review its ruling on the release or detention of the accused, and, upon such review, it may modify its ruling "if it is satisfied that changed circumstances so require". As the Chamber indicated in the order on detention on 8 December 2009, "to order the release of the accused at this stage the Chamber would need to identify either a change in some or all of the facts underlying the previous decision on detention or a new fact satisfying the Chamber that a modification of the Pre-Trial Chamber's last decision ordering the detention of the accused is necessary".<sup>68</sup>

<sup>67</sup>ICC-01/05-01/08-T-18-ENG-ET, page 24, lines 10-17.

<sup>68</sup>ICC-01/05-01/08-T-18-ENG-ET, page 25, lines 13-17.

27. The arrest and confinement of the accused are governed by Articles 58 and 60 of the Statute; and particularly, pre-trial detention can be justified to ensure the individual's appearance at trial, to ensure he does not obstruct or endanger the investigation or the Court proceedings, or to prevent him committing crimes within the jurisdiction of the Court arising out of the same circumstances as the case which the Chamber is considering.

28. In support of Mr Bemba's interim release, the defence has suggested that there are six "new circumstances". The said circumstances are rehearsed in detail above but include: (i) the prosecution completing its disclosure obligations on 1 March 2010; (ii) the "passage of time;" (iii) the possibility of obtaining the cooperation of a host State; (iv) the accused's diminished political status; and (v) the accused's shrinking finances; and, (vi) the established lack of any international contacts.

29. Although the accused is properly able to present arguments concerning his personal circumstances, and particularly his suggested diminished political status, as well as his possible worsening financial circumstances, these matters have all been considered as relevant factors during earlier reviews of his detention, and although there may have been incremental changes since the last review – reflecting largely the inevitable consequences of the passage of time – none of them, at this stage, constitutes a material or substantive change in circumstances. Developments of this kind are capable of constituting a material change in circumstances, but on these facts they fail to reach the necessary threshold.

30. The completion by the prosecution of its disclosure obligations does not constitute a material change in circumstances, especially given that the prosecution substantively met the deadline of 30 November 2009. The defence

has not identified any categories of evidence or individual documents disclosed since the last review of detention that together or separately constitute a material change in circumstances. Given the earlier Decisions on detention have not referred to particular international contacts of the accused, the absence of any named individuals in the prosecution's served evidence does not constitute a material development.

31. Indeed, the only potential change in circumstances of significance since the last review is that the trial date has been adjourned from 27 April 2010 to 5 July 2010.<sup>69</sup> In the judgment of the Chamber, this fact alone is not sufficient to merit the release of the accused since the sole reason for the adjournment is to afford the parties and participants adequate time to respond to, and for the Chamber to hear oral submissions on, the defence Application to Challenge the Admissibility of the Case, filed on 25 February 2010 after the original trial date had been set.<sup>70</sup>

32. Addressing the suggestion by the defence that the Chamber should request a copy of the police report from the Belgian authorities, and that thereafter it is necessary to hold a status conference with potential host States, as indicated during the previous review of detention on 8 December 2009,<sup>71</sup> the availability of potential host States is an irrelevant consideration if the decision of the Chamber is that there has been no material change since 8 December 2009. It follows that the theoretical possibility that unspecified countries may be prepared to assist is irrelevant, given the Chamber's overall conclusion that there has been no material change in circumstances. For similar reasons, the jurisprudence from the ICTY submitted by the defence following the status conference is equally irrelevant. Finally, given the observations of the Single

<sup>69</sup> ICC-01/05-01/08-T-20-ENG-ET, page 15, line 5.,

<sup>70</sup> Requête en vue de contester la recevabilité de l'Affaire conformément aux articles 17 and 19 (2) (a) du Statut de Rome, 25 February 2010, ICC-01/05-01/08-704-Conf-Exp, and Corrigendum, 1 March 2010, ICC-01/05-01/08-704-Conf-Exp-Corr.

<sup>71</sup> ICC-01/05-01/08-T-18-ENG-ET, page 28, lines 5 – 10.

Judge (set out above) and the limited nature of the change in the accused's circumstances when he attended his father's funeral, effectively under armed guard, a report from the Kingdom of Belgium would not be of material assistance on this review.

33. Although the defence deployed a wide range of other arguments, ranging from the jurisprudence of the European Court of Human Rights, the presumption of innocence, the proper approach of the Court to the gravity of the crimes that all accused face before the ICC, the suggested failure of the accused to obstruct proceedings in Bangui when he was Vice-President, and the lack of a host State (demonstrating, it is said, his lack of international contacts), the Chamber is unpersuaded that any of these matters demonstrate a change of circumstances since the last review of the accused's detention, either viewed separately or together. Further, they do not undermine the critical conclusion that detention remains necessary to ensure the accused's appearance at this trial.
34. In all the circumstances, the Chamber is satisfied, first, that the requirements of Article 58(1)(b)(i) of the Statute apply and, second, that there has not been a material change of circumstances; accordingly, the accused will remain in custody.

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



**Judge Adrian Fulford**



**Judge Elizabeth Odio Benito**



**Judge Joyce Aluoch**

Dated this 1 April 2010

At The Hague, The Netherlands