

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 3 January 2012

**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**

**Public redacted version of the 19 December 2011 Decision on the  
«Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo»**

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 Victims**

Ms Marie Edith Douzima-Lawson

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**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

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

**States Representatives**

Competent authorities of the Republic of  
[REDACTED]

**Amicus Curiae**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

Harry Tjonk

**Victims Participation and Reparations Section**

**Other**

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Public redacted version of the 19 December 2011 Decision on the “Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo”.

## I. Background and submissions

1. On 12 December 2011, the defence filed its “Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo” (“Application”),<sup>1</sup> requesting the Chamber to authorise the accused’s provisional release to the Republic of [REDACTED] during judicial recesses, weekends, and any periods during which the Chamber will not sit for at least three consecutive days.<sup>2</sup>
2. The Application is based upon two letters from [REDACTED] dated 5 December 2011 (together, “Letters”),<sup>3</sup> in which [REDACTED] (i) reiterates its willingness to accept the accused onto its territory if provisional release is granted; (ii) specifies the location where the accused would stay while in [REDACTED]; and (iii) states that “ten police officers or gendarmes” will be made available to monitor the accused while in [REDACTED].<sup>4</sup> The defence argues that the “additional safeguards contained in the [Letters] constitute a significant change in circumstances, in the sense that they are aimed at completely removing any risk of flight”,<sup>5</sup> and “have the effect of undermining any risk that the applicant

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<sup>1</sup> Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo, 12 December 2011, ICC-01/05-01/08-2000-Conf, and three confidential annexes.

<sup>2</sup> ICC-01/05-01/08-2000-Conf, paragraphs 1 and 15.

<sup>3</sup> ICC-01/05-01/08-2000-Conf-AnxA and ICC-01/05-01/08-2000-Conf-AnxB.

<sup>4</sup> ICC-01/05-01/08-2000-Conf-AnxB. The Chamber notes that the Letters appear to have been sent in response to a request from the accused’s counsel to confirm the “assignment of a number of police officers or gendarmes to monitor Mr Bemba, and the address of the residence at which he would reside during his stay in [REDACTED]”. See ICC-01/05-01/08-2000-Conf-AnxA.

<sup>5</sup> ICC-01/05-01/08-2000-Conf-Anx1, paragraph 10.

will either abscond, or interfere with the proper conduct of the proceedings”.<sup>6</sup>

3. At the defence’s request,<sup>7</sup> the Application was dealt with on an expedited schedule,<sup>8</sup> with the Office of the Prosecutor (“prosecution”) and the legal representatives of victims filing their observations on 14 December 2011.<sup>9</sup> All oppose the Application and request the Chamber to reject it.
  
4. The prosecution argues that the Letters constitute “a mere particularization of the prior guarantee already provided [by [REDACTED]] and do[ ] not constitute changed circumstances.”<sup>10</sup> Arguing that “[t]here is no change on the facts underlying the last review”, the prosecution asserts that the accused continues to have “the motive to flee and access to untold funds that would enable him to circumvent security measures”.<sup>11</sup> This, in the prosecution’s submission, means that there is no basis under Article 60(3) of the Rome Statute (“Statute”) for a modification of the Chamber’s most recent decision on detention, dated 26 September 2011 (“September 2011 Decision”).<sup>12</sup> Finally, the prosecution argues that because the accused is now “on notice [...] of incidents of witness

<sup>6</sup> ICC-01/05-01/08-2000-Conf-Anx1, paragraph 3.

<sup>7</sup> Application for the interim release of Mr Jean Pierre Bemba Gombo to allow him to perform his civic duties in the Democratic Republic of Congo, ICC-01/05-01/08-1639-Conf-tENG, 26 August 2011. paragraph 36.

<sup>8</sup> See Decision shortening time for observations on the “Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo”, 12 December 2011, ICC-01/05-01/08-2003-Conf, paragraphs 4-5.

<sup>9</sup> Observations de Maître Zarambaud Assingambi, Représentant légal de victimes sur la requête de la Défense du 9 décembre 2011 aux fins de mise en liberté de l’accusé Jean-Pierre Bemba Gombo [REDACTED], 14 December 2011, ICC-01/05-01/08-2006-Conf and three confidential annexes; Prosecution Response to Defence Request for Provisional Release of Mr Jean-Pierre Bemba Gombo, 14 December 2011, ICC-01/05-01/08-2007-Conf; Observations de la Représentante légale de victimes relatives à la requête de mise en liberté provisoire de Jean-Pierre Bemba Gombo, 14 December 2011, ICC-01/05-01/08-2008-Conf.

<sup>10</sup> ICC-01/05-01/08-2007-Conf, paragraph 7.

<sup>11</sup> ICC-01/05-01/08-2007-Conf, paragraphs 9-10.

<sup>12</sup> Decision on the accused’s application for provisional release in light of the Appeals Chamber’s judgment of 19 August 2011, 26 September 2011, ICC-01/05-01/08-1789-Conf. A public redacted version was filed on 27 September 2011: Public Redacted Version of the 26 September 2011 Decision on the accused’s application for provisional release in light of the Appeals Chamber’s judgment of 19 August 2011, 27 September 2011, ICC-01/05-01/08-1789-Red. French translations were filed on 24 October 2011: Décision relative à la requête présentée par l’accusé aux fins de sa mise en liberté provisoire comme suite à l’arrêt du 19 août 2011, ICC-01/05-01/08-1789-Conf-tFRA-Corr; Version publique expurgée de la Décision du 26 septembre 2011 relative à la requête présentée par l’accusé aux fins de sa mise en liberté provisoire comme suite à l’arrêt du 19 août 2011, ICC-01/05-01/08-1789-Red-tFRA.

interference and the possibility that this would constitute an additional ground for his continued detention”, it is open to the Chamber to find that the accused’s continued detention is warranted under Article 58(1)(b)(ii) of the Statute.<sup>13</sup>

5. Like the prosecution, Mr Zarambaud views the Letters as merely reiterating [REDACTED]’s previous undertakings, and argues that they contain no new information that could be considered “a substantial change in circumstances”.<sup>14</sup> Mr Zarambaud argues that the proposal for the accused to stay in a “particularly luxurious” location while in [REDACTED] demonstrates that [REDACTED] intends to treat the accused as a head of State, such as [REDACTED], the former leader of [REDACTED], who currently resides in [REDACTED].<sup>15</sup> Finally, Mr Zarambaud notes that [REDACTED], which could destabilise the country.<sup>16</sup>
  
6. Ms Douzima submits that the Letters do not change the basis for the Chamber’s September 2011 Decision.<sup>17</sup> In her submission, the Letters are not intended to eliminate the risk of the accused absconding, but are instead aimed at “ensuring the protection and physical security of the accused” while in [REDACTED].<sup>18</sup> Ms Douzima also argues that [REDACTED]’s commitment to provide ten police officers or gendarmes to monitor the accused actually increases his risk of flight, given that Belgium deployed approximately a hundred officers and armoured cars when the accused was transferred there for a matter of hours.<sup>19</sup>

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<sup>13</sup> ICC-01/05-01/08-2007-Conf, paragraph 14.

<sup>14</sup> ICC-01/05-01/08-2006-Conf, paragraphs 27-28.

<sup>15</sup> ICC-01/05-01/08-2006-Conf, paragraph 30.

<sup>16</sup> ICC-01/05-01/08-2006-Conf, paragraph 31.

<sup>17</sup> ICC-01/05-01/08-2008-Conf, paragraphs 15-16.

<sup>18</sup> ICC-01/05-01/08-2008-Conf, paragraphs 17-18.

<sup>19</sup> ICC-01/05-01/08-2008-Conf, paragraphs 19-20.

7. On 15 December 2011, the defence filed a reply to the observations of the prosecution and the legal representatives of victims,<sup>20</sup> as authorised by the Chamber.<sup>21</sup> In its reply, the defence reiterates its argument that the Letters “constitute[ ] a significant change” in circumstances, noting that while [REDACTED] had previously agreed to provide “a single police officer” to carry out checks at the accused’s residence, the Letters state that “10 police officers or gendarmes will be physically present with the accused at all times to monitor and protect not only the accused, but also his place of residence, which is substantially different”.<sup>22</sup> The defence also responds to Ms Douzima’s observation regarding the level of security when the accused was transferred to Belgium, arguing that the police presence in Belgium arose “in a context which is totally different”.<sup>23</sup> Finally, the defence suggests that the Chamber could request the Registry to undertake a security evaluation on whether “the practical measures proposed by the Republic of [REDACTED] [...] are adequate to negate the risk of flight”.<sup>24</sup>

## II. Relevant provisions

8. In accordance with Article 21(1) of the Statute, the Chamber has, in ruling on the Application, considered Articles 58(1), 60(3) and 64 of the Statute and Rules 118 and 119 of the Rules of Procedure and Evidence (“Rules”).

## III. Analysis

9. A Chamber may modify an earlier order relating to a person’s detention

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<sup>20</sup> Réplique de la Défense conformément à la norme 24(5) du Règlement de la Cour, 15 December 2011, ICC-01/05-01/08-2016-Conf and confidential annex.

<sup>21</sup> Order granting leave to reply, 15 December 2011, ICC-01/05-01/08-2014-Conf.

<sup>22</sup> ICC-01/05-01/08-2016-Conf-Anx1, paragraph 2 (referring to [REDACTED]’s letter of 28 July 2011).

<sup>23</sup> ICC-01/05-01/08-2016-Conf-Anx1, paragraph 3.

<sup>24</sup> ICC-01/05-01/08-2016-Conf-Anx1, paragraph 4.

under Article 60(3) of the Statute only “if it is satisfied that changed circumstances so require”.<sup>25</sup> As the Appeals Chamber has held, “the ‘requirement of changed circumstances [in Article 60(3) of the Statute] imports either a change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary.’”<sup>26</sup> In undertaking its inquiry, “the Chamber must revert to the [previous] ruling on detention to determine whether there has been a change in [...] circumstances that have a bearing on the conditions under article 58(1) of the Statute.”<sup>27</sup>

10. The starting point for the Chamber’s analysis is the September 2011 Decision, in which the Chamber found that the accused’s continued detention was warranted under Article 58(1)(b)(i) of the Statute to ensure his appearance at trial,<sup>28</sup> and under Article 58(1)(b)(ii) due to the risk of witness interference.<sup>29</sup> The Appeals Chamber confirmed the Chamber’s findings under Article 58(1)(b)(i) of the Statute,<sup>30</sup> and reversed the Chamber’s findings under Article 58(1)(b)(ii) on the grounds that the “Trial Chamber made a procedural error” under the latter provision by relying on alleged incidents of witness interference without first seeking observations from the accused on these incidents.<sup>31</sup>

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<sup>25</sup> Article 60(3) of the Statute.

<sup>26</sup> Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled “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”, 19 November 2010, ICC-01/05-01/08-1019 OA4, paragraph 51 (quoting 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”, 2 December 2009, ICC-01/05-01/08-631-Red OA2, paragraph 60).

<sup>27</sup> ICC-01/05-01/08-1019 OA4, paragraph 52.

<sup>28</sup> ICC-01/05-01/08-1789-Red, paragraphs 21-26.

<sup>29</sup> ICC-01/05-01/08-1789-Red, paragraphs 27-33.

<sup>30</sup> Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 26 September 2011 entitled “Decision on the accused’s application for provisional release in light of the Appeals Chamber’s judgment of 19 August 2011”, 23 November 2011, ICC-01/05-01/08-1937-Conf, paragraphs 33-38 and 47-51. A second public redacted version was filed on 15 December 2011: ICC-01/05-01/08-1937-Red2.

<sup>31</sup> ICC-01/05-01/08-1937-Red2, paragraphs 64-68.

*The Letters do not bear on the accused's risk of flight and therefore do not constitute changed circumstances under Article 60(3) of the Statute*

11. The Chamber's Article 58(1)(b)(i) findings in the September 2011 Decision were based on the following four factors: (i) the final dismissal of the defence's challenge to the admissibility of the case and the commencement of the trial; (ii) the gravity of the charges confirmed against the accused; (iii) the potential substantial sentence in case of conviction; and (iv) the financial and material support from which the accused benefits.<sup>32</sup>
12. The question is whether the Letters alter the above factual findings to such a degree that a modification of the September 2011 Decision is warranted under Article 60(3) of the Statute.<sup>33</sup> The Chamber is of the view that the Letters have no bearing on whether the accused continues to pose a flight risk and do not alter the four factors upon which the Chamber based its Article 58(1)(b)(i) findings in the September 2011 Decision. The letters focus solely on the modalities of the proposed monitoring regime in [REDACTED]. While they provide some new detail in this regard, they do not speak to the issue of whether the accused constitutes a flight risk or the factors upon which the Chamber's September 2011 Decision was based. For this reason, the Chamber finds that the Letters do not change "the facts underlying [the September 2011 Decision], or [constitute] a new fact satisfying a Chamber that a modification of its prior ruling is necessary."<sup>34</sup>
13. In light of the above, and because there do not appear to be any other changes since the September 2011 Decision that may bear on the accused's

<sup>32</sup> ICC-01/05-01/08-1789-Red, paragraph 22.

<sup>33</sup> Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 2 September 2011 entitled "Decision on the 'Demande de mise en liberté de M. Jean-Pierre Bemba Gombo afin d'accomplir ses devoirs civiques en République Démocratique du Congo'", 9 September 2011, ICC-01/05-01/08-1722, paragraph 30.

<sup>34</sup> ICC-01/05-01/08-1019 OA4, paragraph 51.



risk of flight,<sup>35</sup> the Chamber concludes that the accused's continued detention is necessary to ensure his appearance at trial. It is therefore warranted under Article 58(1)(b)(i) of the Statute.

14. While the Chamber continues to have concerns about the reported incidents of witness interference in this case, it notes the Appeals Chamber's observation that "the conditions set forth in article 58(1)(b) of the Statute are in the alternative" and that "[i]f one of those conditions is fulfilled, the other conditions do not have to be addressed, and detention must be maintained."<sup>36</sup> As such, the Chamber will limit its analysis to Article 58(1)(b)(i) of the Statute and will not consider in this Decision whether the accused's continued detention may be warranted under Article 58(1)(b)(ii) of the Statute.

*The Chamber declines to exercise its discretion to consider conditional release*

15. The accused has requested that he be released to [REDACTED] pursuant to Rule 119 of the Rules,<sup>37</sup> under the conditions specified in [REDACTED]'s various letters.<sup>38</sup>
16. The Appeals Chamber has held on several occasions that Trial Chambers have the discretion to consider the possibility of conditional release or to decline to do so:

<sup>35</sup> ICC-01/05-01/08-1019 OA4, paragraph 52 (holding that a Chamber must not limit itself to the arguments of the parties when considering a request for interim release; it "must also consider any other new information which has a bearing on the subject").

<sup>36</sup> ICC-01/05-01/08-631-Red, paragraph 89.

<sup>37</sup> ICC-01/05-01/08-2000-Conf-Anx1, paragraph 9.

<sup>38</sup> See ICC-01/05-01/08-2000-Conf-AnxB (5 December 2011); ICC-01/05-01/08-1479-Conf-AnxA (26 May 2011); ICC-01/05-01/08-1621-Conf-Anx1 (9 June 2011 and 28 July 2011); ICC-01/05-01/08-1556-Conf-Anx2 (20 June 2011). Nothing in the 5 December 2011 Letters suggests that [REDACTED] has retreated from the undertakings contained in its letters of 26 May, 9 June, 20 June and 28 July 2011. On the contrary, the reference in one of the 5 December 2011 letters to the 20 June 2011 letter suggests that [REDACTED] stands by its previous undertakings.

- If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58(1) of the Statute are not met, it shall release the person, with or without conditions. If, however, the release would lead to any of the risks described in article 58(1)(b) of the Statute, the Chamber may, pursuant to rule 119 of the Rules of Procedure and Evidence, examine appropriate conditions with a view to mitigating or negating the risk. As the list of conditions in rule 119(1) of the Rules of Procedure and Evidence indicates, the Chamber may also, in appropriate circumstances, impose conditions that do not, per se, mitigate the risks described in article 58(1)(b) of the Statute.<sup>39</sup> (emphasis added)
- Thus, rule 119(3) does not apply to requests for interim release generally, but to a situation where a Chamber is considering the conditional release of detained person or the amendment of conditions already imposed. In the present case, the Trial Chamber had found that Mr Bemba's continued detention was necessary under article 58(1)(b)(i) of the Statute. As stated above, in such a situation the Chamber has the discretion to consider the possibility of conditional release or not to do so.<sup>40</sup> (emphasis added, internal citations omitted)
- [...] having found that there is a risk that Mr Bemba may abscond and having balanced that against Mr Bemba's desire to participate in the elections, the Chamber did not err when declining to consider his conditional release to the DRC.<sup>41</sup> (emphasis added, internal citations omitted)

17. In the *Bemba OA 8 Judgment*, however, the Appeals Chamber indicated that under certain circumstances, the Trial Chamber is *required* to exercise its discretion and consider the possibility of conditional release:

[...] once a State willing and able to enforce conditions upon release has been identified [...] the Trial Chamber must examine the appropriateness of such conditions.<sup>42</sup> (emphasis added)

18. Similarly, in the *Bemba OA 7 Judgment*, the Appeals Chamber stated that while “the examination of conditions of release is discretionary”, in certain circumstances the Chamber must identify “specific conditions” (presumably those under which the Chamber would be willing to grant

<sup>39</sup> ICC-01/05-01/08-631-Red, paragraph 105.

<sup>40</sup> ICC-01/05-01/08-1626-Red, paragraph 82.

<sup>41</sup> ICC-01/05-01/08-1626-Red, paragraph 85.

<sup>42</sup> Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 2 September 2011 entitled “Decision on the ‘Demande de mise en liberté de M. Jean-Pierre Bemba Gombo afin d’accomplir ses devoirs civiques en République Démocratique du Congo’”, 9 September 2011, ICC-01/05-01/08-1722, paragraph 39.

conditional release)<sup>43</sup> and “make an informed decision on the matter [of conditional release]”.<sup>44</sup> In paragraph 55, the Appeals Chamber articulated its position in the following terms:

In relation to conditional release, the Appeals Chamber recalls that the examination of conditions of release is discretionary and that conditional release is possible in two situations: (1) where a Chamber, although satisfied that the conditions under article 58(1)(b) are not met, nevertheless considers it appropriate to release the person subject to conditions; and (2) where risks enumerated in article 58(1)(b) exist, but the Chamber considers that these can be mitigated by the imposition of certain conditions of release. Therefore, in a situation such as the present, where the Trial Chamber has found that detention is necessary to ensure the person's appearance at trial, the Chamber has the discretion to consider whether the risk of flight can be mitigated by the imposition of conditions and to order conditional release. However, given that a person's personal liberty is at stake if a Chamber is considering conditional release and a State has indicated its general willingness and ability to accept a detained person and enforce conditions, the Chamber must seek observations from that State as to its ability to enforce specific conditions identified by the Chamber. Depending on the circumstances, the Chamber may have to seek further information from the State if it finds that the State's observations are insufficient to enable the Chamber to make an informed decision. That is not to say that the Chamber upon receiving observations from the State is obliged to grant conditional release. It only means that the Chamber must seek information that would enable it to make an informed decision on the matter.<sup>45</sup> (emphasis added, internal citations omitted)

19. In the recent *Bemba OA 9 Judgment*, the Appeals Chamber further explained paragraph 55 of the *Bemba OA 7 Judgment*. Noting that its findings in the *Bemba OA 7 Judgment* were made “in the particular circumstances” giving rise to that appeal and “must be understood in that context”,<sup>46</sup> the Appeals Chamber explained that:

The obligations identified by the Appeals Chamber in the *Bemba OA 7 Judgment* to specify possible conditions of detention and, if necessary, to seek further information [...] are only triggered when: (a) the Chamber is considering conditional release; (b) a State has indicated its general willingness and ability to

<sup>43</sup> While the Appeals Chamber did not address the question directly, it presumably did not intend to suggest that a Chamber is required in all instances to identify conditions under which the Chamber would be willing to order the detainee's release. In certain instances and for certain individuals, such conditions may not exist and there may be no conditions that would mitigate the risks identified in Article 58(1)(b) of the Statute to such an extent that conditional release would be warranted.

<sup>44</sup> ICC-01/05-01/08-1626-Red, paragraph 55.

<sup>45</sup> ICC-01/05-01/08-1626-Red, paragraph 55.

<sup>46</sup> ICC-01/05-01/08-1937-Red, paragraph 35; *see also* ICC-01/05-01/08-1722, paragraph 38 (explaining that the findings in *Bemba OA 7 Judgment* were made in relation to the “specific[...] situation” giving rise to that appeal and did not set down a general rule).

accept a detained person into its territory; and (c) the Chamber does not have sufficient information before it regarding the conditions of release to enable it to make an informed decision.<sup>47</sup> (emphasis added)

20. Due to the use of the conditional phrase “when [...] the Chamber is considering conditional release”, the Chamber understands the *Bemba OA 9 Judgment* to stand for the proposition (consistent with the passages quoted above in paragraph 16) that Trial Chambers have the discretion under Rule 119 of the Rules to consider the possibility of conditional release or to decline to consider such a possibility. Proceeding on the basis that this represents the current state of the law, the Chamber turns to its application in the present case.

21. In the present circumstances and in light of the factual findings detailed above in paragraphs 12 and 13, the Chamber declines to exercise its discretion to consider a grant of conditional release under Rule 119 of the Rules. As the Chamber has previously held, the accused constitutes a flight risk such that “release on his own recognisance [is] inappropriate”.<sup>48</sup> Because this finding has remained undisturbed on appeal and is unaltered by any “changed circumstances”,<sup>49</sup> the Chamber is of the view that it is appropriate at this stage for the accused to remain within a detention regime overseen by the Court. The Chamber therefore declines to exercise its discretion to consider a grant of conditional release. Because conditional release is not being considered, there is no reason for the Registry to undertake a security evaluation of the measures proposed by [REDACTED], as suggested by the defence.

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<sup>47</sup> ICC-01/05-01/08-1937-Red2, paragraph 35.

<sup>48</sup> ICC-01/05-01/08-1789-Red, paragraph 37.

<sup>49</sup> Article 60(3) of the Statute.

*There is no requirement to seek observations from [REDACTED]*

22. The defence suggests that [REDACTED] should be invited to provide observations on the Application.<sup>50</sup> Rule 119(3) is the provision that directs a Chamber to seek the views of “any relevant State” in relation to a request for the amendment of conditions restricting liberty. That provision applies only if the Chamber is considering conditional release.<sup>51</sup> As the Appeals Chamber has held:

[...] rule 119(3) does not apply to requests for interim release generally, but to a situation where a Chamber is considering the conditional release of detained person or the amendment of conditions already imposed. In the present case, the Trial Chamber had found that Mr Bemba's continued detention was necessary under article 58(1)(b)(i) of the Statute. As stated above, in such a situation the Chamber has the discretion to consider the possibility of conditional release or not to do so.<sup>52</sup> (emphasis in original)

23. For the reasons explained above, the Chamber has declined to consider a grant of conditional release. For this reason, and because the Letters are “sufficiently clear as to [their] meaning”<sup>53</sup> to “enable the Chamber to make an informed decision” on the Application,<sup>54</sup> there is no need to request observations from [REDACTED].

#### IV. Conclusion

24. For the foregoing reasons, the Chamber denies the Application.

<sup>50</sup> ICC-01/05-01/08-2000-Conf-Anx1, paragraphs 12-13.

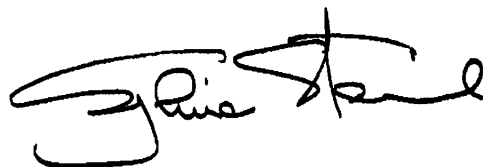
<sup>51</sup> See heading of Rule 119: “Conditional Release”.

<sup>52</sup> ICC-01/05-01/08-1626-Red, paragraph 82; see also ICC-01/05-01/08-1937-Red2, paragraph 35 (“The obligations identified by the Appeals Chamber in the *Bemba OA 7 Judgment* to specify possible conditions of detention and, if necessary, to seek further information [...] are only triggered when (a) the Chamber is considering conditional release [...]).

<sup>53</sup> ICC-01/05-01/08-1722, paragraph 38.

<sup>54</sup> ICC-01/05-01/08-1626-Red, paragraph 55.

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



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**Judge Sylvia Steiner**



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**Judge Joyce Aluoch**



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**Judge Kuniko Ozaki**

Dated this 3 January 2012

At The Hague, The Netherlands