

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 19 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 6 January 2012 Decision on the defence's
28 December 2011 "Requête de Mise en liberté provisoire de M. Jean-Pierre
Bemba Gombo"**

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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Counsel for the Defence

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Mr Aimé Kilolo Musamba

Legal Representatives of the Victims

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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

Competent authorities of the Republic of
[REDACTED]

Amicus Curiae

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Harry Tjonk

Victims Participation and Reparations Section

Other

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Decision on the Defence’s 28 December 2011 “Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo”.

I. Background and submissions

1. On 19 December 2011, the Chamber issued its Decision on the “Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo” (“December 2011 Decision”),¹ denying the defence’s 12 December 2011 application for 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.² The defence has not appealed the December 2011 Decision.
2. On 28 December 2011, the defence filed another “Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo” (“Application”).³ The Application seeks the same relief as the 12 December 2011 application.⁴
3. The Application is based upon a letter dated 20 December 2011 from [REDACTED]’s Ministry of Foreign Affairs, which appears to have been faxed on 27 December 2011 (“27 December Letter”),⁵ in which [REDACTED] confirms its previous undertakings regarding the accused’s

¹ Decision on the “Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo”, 19 December 2011, ICC-01/05-01/08-2022-Conf. A public redacted version was filed on 3 January 2012: Public redacted version of the 19 December 2011 Decision on the “Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo”, 3 January 2012, ICC-01/05-01/08-2022-Red.

² 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.

³ Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo, 28 December 2011, ICC-01/05-01/08-2029-Conf and two confidential annexes.

⁴ ICC-01/05-01/08-2029-Conf-Anx1, paragraphs 1 and 12.

⁵ Compare letter reference and date above letterhead (20 December 2011) with facsimile transmission confirmation at the top of the page (27 December 2011).

proposed provisional release into the territory of [REDACTED].⁶ Specifically, [REDACTED] reiterates certain undertakings contained in its letter of 28 July 2011 – namely, that it would (i) “immediately arrest the accused in the event of any violation or attempted violation of the conditions laid down by the Chamber” pursuant to Rule 119 of the Rules of Procedure and Evidence; (ii) “inform the Chamber immediately of any violation or attempted violation of the conditions and take the necessary steps to return the accused to the Court’s detention centre in The Hague”; and (iii) “ensure that the accused returns to The Netherlands to appear at trial as soon as the Chamber so orders”.⁷ [REDACTED] also reiterates the undertaking contained in its 5 December 2011 letter to the Court to make 10 police officers or gendarmes available to monitor the accused, asserting that this “will prevent [him] from escaping from [REDACTED]”.⁸

4. The defence argues that the 27 December Letter constitutes “a significant change in circumstances”, justifying a modification of the December 2011 Decision pursuant to Article 60(3) of the Rome Statute.⁹ In the defence’s submission, the 27 December Letter “states unambiguously and unconditionally that [the accused] will not constitute a flight risk if released into the territory of [REDACTED] given that a dozen [sic] policemen or gendarmes will be personally assigned to his supervision”.¹⁰ The defence argues that this undertaking “demonstrates not only the willingness, but the ability of [REDACTED] to prevent the risk of flight of [the accused, which goes] beyond the simple practicalities of his being monitored, [and] will ensure [that] there is no risk of flight of the accused in the territory of [REDACTED]”.¹¹

⁶ ICC-01/05-01/08-2029-Conf-AnxA (referring to, and confirming, undertakings made in letters of 20 June, 28 July and 5 December 2011).

⁷ ICC-01/05-01/08-2029-Conf-AnxA.

⁸ ICC-01/05-01/08-2029-Conf-AnxA.

⁹ ICC-01/05-01/08-2029-Conf-Anx1, paragraphs 1-2.

¹⁰ ICC-01/05-01/08-2029-Conf, Anx1, paragraph 7.

¹¹ ICC-01/05-01/08-2029-Conf, Anx1, paragraph 8.

5. Pursuant to an expedited schedule requested by the defence¹² and ordered by the Chamber,¹³ the Office of the Prosecutor (“prosecution”) filed its observations on 30 December 2011.¹⁴ The prosecution argues that the Application should be rejected because [REDACTED]’s 27 December Letter “is substantively no different than its prior guarantee and does not constitute changed circumstances that would merit a review of the [December 2011 Decision]”.¹⁵ In the prosecution’s view, [REDACTED]’s confirmation of its previous undertakings does “not mitigate or eliminate the risk that the Accused, if released, will choose not to return to trial”.¹⁶ On this basis, the prosecution argues that “the details provided in the most recent letter from [REDACTED] do not alter the factual underpinnings of the [December 2011 Decision], and detention of the Accused continues to be necessary”.¹⁷

II. Relevant provisions

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

III. Analysis

7. A Chamber may modify an earlier order relating to a person’s detention under Article 60(3) of the Statute only “if it is satisfied that changed

¹² ICC-01/05-01/08-2029-Conf, Anx1, paragraph 9.

¹³ Decision shortening time for observations on the “Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo”, 28 December 2011, ICC-01/05-01/08-2030-Conf.

¹⁴ Prosecution Response to Defence Request for Provisional Release of Mr Jean-Pierre Bemba Gombo of 28 December 2011, 30 December 2011, ICC-01/05-01/08-2031-Conf.

¹⁵ ICC-01/05-01/08-2031-Conf, paragraph 6.

¹⁶ ICC-01/05-01/08-2031-Conf, paragraph 8.

¹⁷ ICC-01/05-01/08-2031-Conf, paragraph 9.

circumstances so require”.¹⁸ 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.’”¹⁹ 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.”²⁰

8. The Chamber’s most recent detention ruling is the December 2011 Decision, which found the accused’s continued detention to be necessary under Article 58(1)(b)(i) of the Statute to ensure his appearance at trial.²¹ This conclusion was based upon the Chamber’s determination that there was no change in the four factors upon which the Chamber based its previous findings that the accused constituted a flight risk: (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.²²

9. The issue is whether the 27 December Letter alters the above factual findings to such a degree that a modification of the December 2011

¹⁸ Article 60(3) of the Statute.

¹⁹ 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).

²⁰ ICC-01/05-01/08-1019 OA4, paragraph 52.

²¹ ICC-01/05-01/08-2022-Red, paragraphs 11-13.

²² ICC-01/05-01/08-2022-Red, paragraphs 11-13.

Decision is warranted.²³ In the Chamber's view, the 27 December Letter has no bearing on whether the accused continues to pose a flight risk and does not alter the four factors upon which the Chamber has based its previous detention decisions. Instead, the 27 December Letter merely reiterates undertakings that [REDACTED] made in its earlier letters, which the Chamber has previously determined to be insufficient to warrant the accused's release.²⁴ Indeed, the text of the 27 December Letter is largely a *verbatim* repetition of that contained in [REDACTED]'s letters of 28 July and 5 December 2011.²⁵ In sum, the 27 December Letter contains no new factual information bearing on the accused's risk of flight and cannot be seen as a "changed circumstance" warranting a modification of the December 2011 Decision, much less "a significant change", as the defence argues.²⁶

10. For this reason, and because there do not appear to have been any other changes in circumstances in the brief period since the December 2011 Decision that bear on the accused's risk of flight,²⁷ the Chamber concludes that the accused's detention continues to be necessary to ensure his appearance at trial and is therefore warranted under Article 58(1)(b)(i) of the Statute.

²³ 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.

²⁴ See ICC-01/05-01/08-2022-Red, paragraphs 2, 12 and note 38; 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, paragraphs 11-13, 23 and 34-38.

²⁵ Compare ICC-01/05-01/08-2029-AnxA with ICC-01/05-01/08-1621-Anx1 and ICC-01/05-01/08-2000-Conf-AnxB.

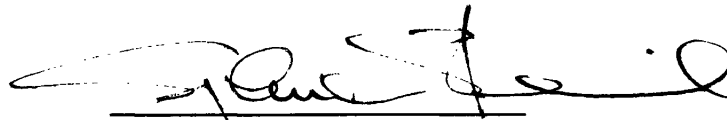
²⁶ ICC-01/05-01/08-2029-Anx1, paragraph 2.

²⁷ See 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 information which has a bearing on the subject").

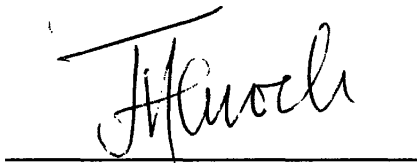
IV. Conclusion

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

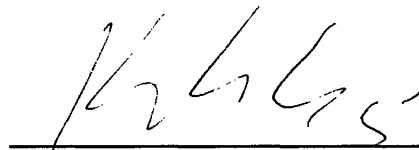
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 19 January 2012

At The Hague, The Netherlands