

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 2 July 2009

PRE-TRIAL CHAMBER II

Before: Single Judge, Ekaterina Trendafilova

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

**Urgent
Confidential Document**

Prosecution's Response to Defence's Urgent « Requête de Mise en liberté provisoire sous le bénéfice de l'extrême urgence en vue de permettre à Mr Jean-Pierre Bemba Gombo de participer aux funérailles de son défunt Père, Mr Jeannot Bemba Saolona »

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence of Jean-Pierre Bemba

Mr Nkwebe Liriss

Mr Karim A. Khan

Mr Aimé Kilolo-Musamba

Mr Pierre Legros

Legal Representatives of Victims

Marie Edith Douzima-Lawson

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Paolina Massidda

The Office of Public Counsel for the

Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Other Section

Background

1. On 2 July 2009, the Defence filed its Urgent "*Requête de Mise en liberté provisoire sous le bénéfice de l'extrême urgence en vue de permettre à Mr Jean-Pierre Bemba Gombo de participer aux funérailles de son défunt Père, Mr Jeannot Bemba Saolona*"¹ informing the Court of the death of the Accused's father as well as seeking conditional release with a view to permitting the Accused to participate in the funeral ceremony of his deceased father. In its request, the Defence sought interim release to the Kingdom of Belgium, for a period of ten (10) days (between 2 and 12 July 2009)² on the following terms; (a) that the Accused be allowed to stay in his fixed residential address in Belgium specified in the Request;³ (b) that the Accused be given time to visit the mortuary regularly;⁴ (c) that the Single Judge adopt the 20 guarantees advanced by the Defence at the hearing held on 29 June 2009, as conditions for his temporary release and;⁵ (d) finally, that the Accused be permitted to participate in the program of events set out in the Request. In support of its request, the Defence relied on Article 60(3) of the Rome Statute (hereinafter the "Statute") and Rule 118(2) of the Rules of Procedure and Evidence (hereinafter the "Rules"). The Prosecution hereby files its response to the Defence's Request.

Prosecution's Response

Legal Basis

2. There are no provisions in the Statute, the Rules or the Regulations of the Court (hereinafter the "Regulations") concerning modification of conditions of detention of the type sought by the Defence. Furthermore, the Prosecution notes that the authorities from

¹ ICC-01/05-01/08-430-Conf

² ICC-01/05-01/08-430-Conf, page. 5

³ ICC-01/05-01/08-430-Conf, page 5.

⁴ *Ibid*, page 5.

⁵ *Ibid*.

the International Criminal Tribunal for former Yugoslavia (hereinafter the "ICTY") cited by the Defence provide little assistance because there is a specific provision regulating modifications of conditions of detention in the ICTY.⁶ For the reasons stated above, the Defence's Request pursuant to Article 60(3) and Rule 118(2) is not founded within the Statute and the Rules and should be dismissed.

3. The Prosecution submits, arguendo, that if the Chamber is inclined to accept the Accused's request, conditions should be adopted to ensure that; (a) the Accused appears at trial; (b) the Accused does not interfere with the investigations, affect the witnesses and victims or the ongoing proceedings and; (c) the overall integrity of the proceedings are preserved.

4. The Chamber *inter alia* should consider the following conditions:

- (a) The Accused shall leave the premises of the Court only for the purpose of attendance to the burial ceremony over a period of one day;
- (b) The Accused shall not be authorized to attend public meetings, to speak to the press or a gathering, or to be filmed;
- (c) The Accused shall be transported to Brussels by the Dutch authorities and an officer designated by the Court;
- (d) At the border, the custody of the Accused shall be provisionally transmitted to a designated official of The Kingdom of Belgium; should the authorities of Belgium agree, he/ she shall accompany the Accused for the remainder of his travel in Brussels;

⁶ ICTY Rule 65, in particular Rule 65 (I) (iii) which provides for special circumstances warranting a release.

- (e) On his return, the Accused shall be accompanied by the same designated official of The Kingdom of Belgium (or by such other designated official as the Single Judge may, by order, accept), who shall deliver the Accused into the custody of the Dutch authorities in The Kingdom of The Netherlands no later than the specified day, and the Dutch authorities shall then transport the Accused back to the Detention Facility of the Court at Scheveningen;
- (f) The Accused shall bear all expenses concerning his transport from the Detention Facility in Scheveningen to his place of temporary residence in Brussels and back;
- (i) The Accused shall only travel to the church and funeral service;
 - (ii) The Accused shall be under the custody of the authorities of The Kingdom of Belgium;
 - (iii) The Accused shall surrender any other travel documents to the authorities of The Kingdom of Belgium;
 - (iv) The Accused shall not have any contact whatsoever or in any way interfere with victims or potential witnesses or otherwise interfere in any way with the proceedings or the administration of justice;
 - (v) The Accused shall not have any contact in any manner whatsoever with persons other than his relatives, and persons necessary to his father's memorial services;
 - (vi) The Accused shall not discuss the case with anyone, including the media, other than his Defence counsel;
 - (vii) The Accused shall comply strictly with any order of the Trial Chamber varying the terms of, or terminating, his temporary release.

5. In addition to the conditions specified above, the Prosecution notes that the cooperation and undertakings of both the Belgian and Dutch Authorities are essential to the implementation of the modification of the Accused's conditions of detention. Accordingly, the Prosecution requests the Single Judge to consult with and obtain the necessary undertakings from these two authorities to ensure the implementation of any order modifying the conditions of detention.

Conclusion

6. In view of the foregoing, the Prosecution respectfully requests the Single Judge to reject the request. Arguendo, should the Chamber consider the request, the conditions mentioned should apply.



Luis Moreno-Ocampo,
Prosecutor

Dated this 2nd day of July 2009

At The Hague, The Netherlands