

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 2 December 2009

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

Order scheduling a status conference

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

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod Jacome

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

1. Following the “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’” rendered by the Appeals Chamber of the International Criminal Court (“Court”) on 2 December 2009,¹ which reversed the decision of Pre-Trial Chamber II (see paragraph 2 below) with the result that Mr Jean-Pierre Bemba Gombo (“Mr Bemba”) is to remain in detention, Trial Chamber III (“Trial Chamber” or “Chamber”) now has the responsibility of conducting a periodic review of his detention.

2. On 14 August 2009, Pre-Trial Chamber II issued its “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”, whereby the Single Judge *inter alia* granted the conditional release of Mr Bemba, pending an agreement as to the State which was to receive him on his release.²

3. The conditions for pre-trial detention are set out in Article 58(1) of the Rome Statute (“Statute”):
 1. (a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and
 - (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.

¹ ICC-01/05-01/08-631-Conf-OA2 and ICC-01/05-01/08-631-Red-OA2.

² 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.

4. Pursuant to Article 60 of the Statute,

[...]

2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.

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.

[...]

5. Pursuant to Rule 118(2) of the Rules of Procedure and Evidence (“Rules”), “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 [...]”.

6. The Trial Chamber notes that the Statute refers only to review 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. The Trial Chamber considers it appropriate, in fairness to the accused, that his detention is reviewed by the Chamber 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. A similar approach was taken by Trial Chamber I in the case of *The Prosecutor v. Thomas Lubanga Dyilo*.³

7. The judgment of the Appeals Chamber on 2 December 2009 only concerned the Pre-Trial Chamber’s Decision of 14 August 2009 and it did not constitute a

³ Decision reviewing the “Decision on the Application for the Interim Release of Thomas Lubanga Dyilo”, 9 October 2007, ICC-01/04-01/06-976; Decision reviewing the Trial Chamber’s ruling on the detention of Thomas Lubanga Dyilo in accordance with Rule 118(2), 1 February 2008, ICC-01/04-01/06-1151; Decision reviewing the Trial Chamber’s ruling on the detention of Thomas Lubanga Dyilo in accordance with Rule 118(2), 29 May 2008, ICC-01/04-01/06-1359; Oral Decision of 18 November 2008, transcript of hearing on 18 November 2008, ICC-01/04-01/06-T-98-ENG-ET, page 38, line 16 to page 44, line 16.

review of his continuing detention. For these reasons, applying the 120 day deadline for review, the accused's detention should be reviewed before 11 December 2009.

8. The Chamber therefore schedules a status conference for Tuesday 8 December 2009 at 10.00 with the parties and participants when the Chamber will entertain any relevant submissions.
9. Additionally, the Trial Chamber will address the "Prosecution's Request for Authorisation to Add and Disclose Additional Evidence to be relied on at trial beyond 30 November 2009"⁴ filed on 30 November 2009.
10. Following the public status conference, there will be an *ex parte* prosecution-only status conference to consider aspects of the prosecution's disclosure to the defence arising out of the accused's proposed admissibility challenge.⁵

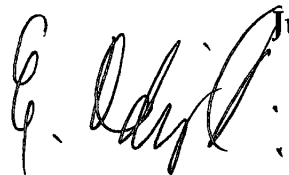
⁴ Prosecution's Request for Authorisation to Add and Disclose Additional Evidence to be relied on at trial beyond 30 November 2009, 30 November 2009, ICC-01/05-01/08-626.

⁵ Decision on the defence application for additional disclosure relating to a challenge on admissibility, 2 December 2009, ICC-01/05-01/08-632.

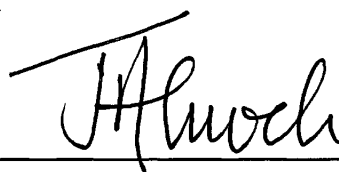
Done in both English and French, the English version being authoritative.



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge Joyce Aluoch

Dated this 2 December 2009

At The Hague, The Netherlands