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No.: ICC-01/05-01/08
Date: 24 February 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

**Observations of the Legal Representatives of Victims regarding the review
of the detention of Mr. Jean-Pierre Bemba Gombo**

Source: Legal Representatives of Victims a/0278/08, a/0279/08, a/0291/08,
a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08,
a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08,
a/0467/08 et a/0271/08, a/0272/08, a/0273/08, a/0275/08, a/0277/08, a/0283/08, a/0284/08,
a/0285/08, a/0286/08, a/0287/08, a/0288/08, a/0289/08, a/0290/08, a/0294/08, a/0390/08,
a/0391/08, a/0393/08, a/0394/08, a/0395/08, a/0396/08, a/0468/08, a/0469/08, a/0470/08,
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a/0479/08, a/0480/08, a/0481/08

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

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Mrs. Marie Edith Douzima-Lawson

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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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Victims and Witnesses Unit

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**Victims Participation and Reparations
Section**

Other

I. Procedural Background

1. On 15 June 2008, Pre-Trial Chamber II rendered a Decision confirming five of the eight charges for which a warrant of arrest was issued against Mr. Bemba and committing him to trial.¹

2. On 18 September 2009, the Presidency issued its "Decision constituting Trial Chamber III (the "Chamber") and referring to it the case of The Prosecutor v. Jean-Pierre Bemba Gombo".²

3. On 08 December 2009, the Chamber last decided to continue Mr. Bemba's detention.³

4. On 09 December 2009, Trial Chamber III issued the "Decision on the Observations on legal representation of unrepresented applicants"⁴, wherein it held, *inter alia*, that the Office of Public Counsel for Victims (the "OPCV" or "Office") shall continue to represent a) the victim applicants it currently represents⁵ until the Chamber issues a decision on their application to participate, and b) those victim applicants who have not chosen a legal representative until a decision is made on

¹ See 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" (Pre-Trial Chamber II), No. ICC-01/05-01/08-424, 15 June 2009.

² See the "Decision constituting Trial Chamber III and referring to it the case of The Prosecutor v. Jean-Pierre Bemba Gombo" (Presidency), No. ICC-01/05-01/08-534, 18 September 2009.

³ Transcript of Status Conference (Trial Chamber III), No. ICC-01/05-01/08-T-18-Red ENG, 08 December 2009, p. 24, line 10 to p. 29, line 17.

⁴ See the "Decision on the Observations on legal representation of unrepresented applicants", (Trial Chamber III), No. ICC-01/05-01/08-651, 09 December 2009. Pursuant to Trial Chamber III's instruction, dated 28-01-2010, this document was reclassified as "Public".

⁵ Of the applicants granted the status of victims authorised to participate in the pre-trial stage, applicants a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08 and a/0467/08 are represented by the Office of Public Counsel for Victims (the "OPCV").

their application to participate.⁶ The Chamber further held that Ms Douzima Lawson shall continue to represent the victims she represented during the confirmation of charges phase of the case.⁷

5. On 19 February 2010, the Trial Chamber issued an order requesting the parties and participants to submit observations on the review of the continued detention of Mr. Bemba, being the Chamber must review its ruling on detention at least every 120 days and that, on 8 March 2010, Mr. Bemba will have been detained for 120 days since the last decision on the review of his detention, on 8 December 2009. The Chamber requested the legal representatives to submit their observations on the matter no later than 16:00 on 24 February 2010.⁸

6. On 22 February 2010, the Trial Chamber issued a decision on continuous participation, wherein it held, *inter alia*, that the 54 individuals who were granted the status of victim by the Pre-Trial Chamber shall continue to participate in the proceedings at the trial stage, subject to objection for good cause based on new material that has emerged since the original decision.⁹

7. Accordingly, the Legal Representatives of the victims jointly submit their observations on the matter of the detention of Mr. Bemba, as follows:

II. There are no changes in the circumstances regarding the detention of the Accused meriting a modification of the Trial Chamber's last detention order

⁶ See *supra* note 3, p. 10.

⁷ *Idem*, p. 11.

⁸ See the "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, (Trial Chamber III), No. ICC-01/05-01/08-698, 19 February 2010, par. 4.

⁹ See the "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants", No. ICC-01/08-01/05-699, 22 February 2010, p. 21.

8. Pursuant to article 60(3) of the Rome Statute, the Chamber shall periodically 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.”* According to the Appeals Chamber, *“the requirement of ‘changed circumstances’ 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.”*¹⁰

9. As this Chamber aptly stated in the Status Conference of 08 December 2009 (the “Status Conference”), *“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.”*¹¹ This Chamber found that none of the arguments presented by the Defence for Mr. Bemba during the last Status Conference on the issue of the detention of the Accused indicated a change in circumstances meriting a modification of the Pre-Trial Chamber’s decision on his detention.¹²

10. As far as the circumstances which exist at the present time and which the Chamber should consider in its current review of Mr. Bemba’s detention, they all militate in favour of maintaining Mr. Bemba in custody. Firstly, as the Appeals Chamber stated in its 02 December 2009 Decision, the gravity of the charges confirmed against the Accused and the overall length of sentence he faces if convicted are relevant factors in assessing the risk of him absconding.¹³ Indeed, and

¹⁰ See 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””, (Appeals Chamber), No. ICC-01/05-01/08-631-Red OA2, 02 December 2009, par. 1.

¹¹ See *supra* note 3, p. 25, lines 13-17.

¹² See *idem*, p. 25, line 22 to pg. 28, line 15. Trial Chamber III clarified at the Status Conference that, in its view, Pre-Trial Chamber II’s Decision of 14 April 2009 (No. ICC-01/05-01/08-403) was the operative decision on the issue of detention, rather than the Decision of 14 August 2009 (No. ICC-01/05-01/08-475), since the latter was overturned by the Appeals Chamber.

¹³ See *supra* note 10, paras. 66-70.

as has been previously argued numerous times, Mr. Bemba faces serious charges of war crimes and crimes against humanity under the Rome Statute, and the length of sentence that he would probably serve if convicted on these is further incentive for him to flee, if given the opportunity.

11. Compounded to the above-mentioned factor is that of Mr. Bemba's extensive means. Indeed, as stressed on previous occasions by Pre-Trial Chambers II and III, the Appeals Chamber and this Chamber, Mr. Bemba's political and professional position, his international contacts and ties, as well as his financial resources, all tip the scales in favour of his continued detention.¹⁴ This Chamber reiterated at the Status Conference that [Mr. Bemba] *"is a man who has had considerable power and influence and it is a proper inference [of the Chamber] that he could easily find financial support to flee."*¹⁵

12. In addition, the Legal Representatives wish to remind the Chamber of the security risks faced by the victims and witnesses due not only to the prominent position which the Accused holds in the community that supports him but also due to the means which he still possesses. Indeed, said security risks are very concrete, as demonstrated by the concerns expressed by the victims to their Legal Representatives. Furthermore, the Legal Representatives also point out that the actions of the members of Mr. Bemba's party or his supporters constitute a constant threat for victims and witnesses, as shown by numerous public sources which recount threats of death and intimidation against potential witnesses.¹⁶

¹⁴ See *idem*, paras. 71-74 ; See *supra* note 7, p. 28, line 24 to p. 29, line 8; See the "Decision on Application for Interim Release" (Pre-Trial Chamber III, Single Judge), No. ICC-01/05-01/08-321, 16 December 2008, par. 36; See the «Decision on the Prosecutor's Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo» (Pre-Trial Chamber III), No. ICC-01/05-01/08-14-tENG, 17 July 2008, par. 87; See the «Decision on Application for Interim Release», (Pre-Trial Chamber II, Single Judge), No. ICC-01/05-01/08-403, 14 April 2009, par. 45.

¹⁵ See *supra* note 3, p. 29, lines 7-8.

¹⁶ See, for instance, Digitalcongo.net, « Menace de mort visant A. Thambwe Mwamba et J. Endundo : la CPI n'affirme pas que ces deux ministres sont témoins contre JP Bemba », 05 September 2009, available at the following address : <http://www.digitalcongo.net/article/60822>, consulted on 07 September 2009. See

13. Moreover, article 68 of the Rome Statute puts emphasis on the nature of the crime, “*where the crime involves sexual or gender violence or violence against children*”. In this instance, a large number of crimes alleged against the Accused have a sexual, gender-based character to them, some of which have allegedly been committed against minors. In addition, although the identity of victims is for the time being protected, their security is nonetheless at risk since a lot of victims and witnesses are easily reachable. Indeed, the fact that some of them live far from urban areas makes them vulnerable to possible *impromptu* contact. The Legal Representatives therefore are concerned about the possibility of submitting victims to pressures and of putting their lives at risk.

14. In conclusion, the various grounds raised in the past by the Defence for Mr. Bemba before the Pre-Trial Chambers and this Chamber have consistently been rejected as not being grounds constituting a real change in circumstances within the meaning of article 60(3) of the Rome Statute; what is more, the grounds that merited his detention in the first place (and its prolongation thereof) not only continue to exist at present, but can be said to be all the more pertinent in view of the fact that the trial is set to commence in only two months’ time.

also Mail&Guardianonline, « *DRC ministers threatened in Bemba war crimes case* », 31 August 2009, available at the following address : <http://www.mg.coza/article/2009-08-31-drc-ministers-threatened-in-bemba-warcrimes-case>, consulted on 07 September 2009 ; Mouvement de Libération du Congo en France, « Leonard She Okitundu agressé à Londres », 14 October 2006, available at the following address: http://www.mlc-france.org/article.php3?id_article=301, consulted on 07 September 2009.

FOR THE FOREGOING REASONS, the Legal Representatives respectfully request that the Chamber find that there has been no change in the circumstances which would require a modification of the Trial Chamber's oral decision at the Status Conference of 08 December 2009, and further that Mr. Bemba's continued detention be ordered.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda

Marie Edith Douzima-Lawson

Dated this 24 February 2010
At The Hague, The Netherlands
and at Bangui, Central African Republic