

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: French

No.: ICC-01/05-01/08  
Date: 16 June 2011

**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**

**Observations on the Extremely Urgent Defence Application of 10 June 2011 for an  
exeat from the Detention Centre to allow Mr Jean-Pierre Bemba Gombo to perform  
his civic duties in the Democratic Republic of the Congo**

**Source:** Mr Zarambaud Assingambi, Legal Representative of Victims

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

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Ms Petra Kneuer

**Counsel for the Defence**  
Mr Nkwebe Liriss

**Legal Representatives of the Victims**  
Mr Assingambi Zarambaud  
Ms Marie-Edith Douzima- Lawson

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**Office of Public Counsel for Victims**  
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*Amicus Curiae*

## **REGISTRY**

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**Registrar**  
Ms Silvana Arbia  
**Deputy Registrar**  
Mr Didier Preira

**Counsel Support Section**

**Victims and Witnesses Unit**  
Ms Maria Luisa Martinod Jacome

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I) DEFENCE'S POSITION

- 1) In support of its application “on an extremely exceptional and urgent basis”, the Defence sets out the following arguments.
- 2) “It is imperative that [Mr Jean-Pierre Bemba Gombo] travel to the Democratic Republic of the Congo to perform his civic duties and obtain his voting card within the time limit prescribed under Congolese law, in preparation for the upcoming elections scheduled for November 2011”.
- 3) It was only on 25 May 2011 that the National Assembly adopted the bill amending and supplementing Law No. 06/006 of 9 March 2006 governing the organisation of presidential, legislative, provincial, urban, municipal and local elections; upon receiving this information, the Defence immediately took all the necessary steps to have Mr Jean-Pierre Bemba Gombo registered and issued with his voting card without having to leave the Detention Centre in The Hague.
- 4) These steps entailed proposing to the *Commission Electorale Nationale Indépendante* [National Independent Electoral Committee] (CENI), responsible for organising the electoral process under article 2 of the bill (sic) governing the organisation of elections, several solutions for Mr Jean-Pierre Bemba Gombo to register and to obtain his voting card while remaining in the Detention Centre in The Hague, or to travel in person to one of the embassies of the Democratic Republic of the Congo in a Schengen State.
- 5) On two occasions, CENI responded that identification and registration formalities may be completed only on the national territory and that accordingly, Mr Jean-Pierre Bemba Gombo must travel to the DRC if he wishes to be identified and registered. CENI further recalled that the

registration process ends on 30 June 2011 for Equateur, Orientale, and North Kivu Provinces and on 5 July for the city of Kinshasa.

- 6) Under these conditions, the only solution is for Mr Jean-Pierre Bemba Gombo to seek the Chamber's leave to make a one-day return journey, by air, paid for by his relatives and friends (departure at 06.00 and return at 21.00), in order to register in Equateur, Orientale, and North Kivu Provinces or in Kinshasa, according to his preference.
- 7) A favourable decision is expected from the Chamber by virtue of article 25 of the International Covenant on Civil and Political Rights, which enshrines the right to vote as an internationally recognised right, and by virtue of the case law from *Hirst v. The United Kingdom*, where the European Court of Human Rights held that a blanket ban on British prisoners exercising their right to vote is contrary to the European Convention on Human Rights.

The Defence also relies on a decision of the Pre-Trial Chamber of the International Criminal Court, a decision of the ICTY, and article 30 of the Congolese Constitution.

- 8) Should Mr Jean-Pierre Bemba Gombo "be refused leave to travel to the Congo for voter registration as requested by the Defence, he would be deprived of the right to stand in the next elections in the Democratic Republic of the Congo", such that, "[i]f he were subsequently acquitted of all of the charges against him before the International Criminal Court, such refusal would cause near-irreparable prejudice to the applicant, who has devoted so many years of his life to politics in his country and intends to continue these political activities".
- 9) Refusal by the Chamber would "[prevent] the applicant from spending approximately one hour on Congolese territory in order to complete voter registration formalities", which "would have serious personal and political repercussions for Mr Jean-Pierre Bemba Gombo and

would lead to irreparable prejudice in light of the legislation governing the electoral process in the Democratic Republic of the Congo”.

## II OBSERVATIONS

- 10) It should be noted from the outset that in support of its application, the Defence has only cited the “bill” amending and supplementing Law No. 06/006 of 9 March 2006 on the organisation of presidential, legislative, provincial, urban, municipal and local elections, which is purported to have been debated at the ordinary session of the National Assembly in March 2011 and adopted in May 2011.
- 11) Moreover, the Defence has not cited Law No. 06/006 of 9 March 2006.
- 12) It follows that it is impossible to know whether the bill was adopted in its entirety by the National Assembly of the Democratic Republic of the Congo; what is more, even if this bill, as it stands, is taken into account, it contains only those articles of Law No. 06/006 of 9 March 2006 proposed for amendment, to the exclusion of all others.
- 13) The responses provided by the National Independent Electoral Committee, which refer only to provisions it deems relevant and its understanding or interpretation of such provisions, can neither absolve the Defence from the duty of producing the law itself, nor be taken as gospel truth.
- 14) Moreover, the Defence has not cited Law No. 04/028 of 24 December 2004, whereas according to CENI’s letter of 3 June 2011, “[TRANSLATION] [p]ursuant to article 5 of Law No. 04/028 of 24 December 2004 to govern voter identification and registration in the Democratic Republic of the Congo, registration can only be done in a registration centre”.

15) The extreme urgency argued by the Defence is non-existent since, as stated in CENI's letter of 3 June 2011, not only is registration carried out "[TRANSLATION] [p]ursuant to article 5 of Law No. 04/028 of 24 December 2004 to govern voter identification and registration in the Democratic Republic of the Congo ...", but also and above all, "[TRANSLATION] [t]his exercise, which has already been completed for the Bas-Congo and Maniema Provinces, began on 9 March 2011 in the Katanga and Kasai Occidental Provinces, on 2 April 2011 in the Bandundu, Equateur, Oriental, North Kivu and South Kivu Provinces, and on 7 May in the city of Kinshasa", namely in the 3 provinces of the city of Kinshasa to which Mr Bemba wishes to travel in a last minute rush, causing the Chamber to set a time limit that derogates from ordinary law for the prosecution and the participants to submit their observations.

16) Hence, if Mr Bemba chose to rouse himself only at the very last minute, then he has only himself to blame, in keeping with the adage "*nemo auditur propriam turpitudinem allegans*" (nobody can benefit from his own wrong).

17) Moreover, Mr Jean-Pierre Bemba has even less reason to blackmail the Court or hold it responsible in advance for a failure on his part to register, as he is doing implicitly without fear of self-contradiction, by claiming that denial of his application would be tantamount to preventing him from travelling to the Congo and would cause him irreparable prejudice, whereas the Defence, at point 16 of its application, defers to the Chamber's "due consideration".

18) Any failure by Mr Jean-Pierre Bemba Gombo to register and participate in the elections, both as voter and candidate, should be blamed, not on the Chamber – far from it – but on the electoral law of his country,

which, according to his application, makes no provision for Congolese nationals abroad to participate in elections, as is currently the case in the Central African Republic, a country of only four million inhabitants, not to mention western countries.

- 19) There is no need for Mr Jean-Pierre Bemba Gombo to travel to the Democratic Republic of the Congo to challenge his country's electoral law before such court of the said country as may be appropriate, if that is his wish.
- 20) Whatever the case, should the Chamber reject his purported extremely urgent application of 10 June 2011 for exeat from the Detention Centre, Mr Bemba Gombo would not, as a result, be deprived definitively of all possibility of standing in the elections, as indicated in the penultimate paragraph of CENI's letter of 3 June 2011, which states, "[TRANSLATION] [h]owever, it is possible to acquire voter status for the purposes of identification and registration if a person registers as a candidate (art. 9(5) of Law No. 06/006 of 9 March 2006 to govern presidential, legislative, provincial, urban, municipal and local elections). For all intents and purposes, we attach the electoral calendar published by our institution on 30 April 2011".

Indeed, article 9(5) of the bill cited by the Defence provides that to be eligible, it is necessary, *inter alia*, "[TRANSLATION] to have voter status OR to be identified and registered when registering as a candidate".

The Defence has not furnished the electoral calendar provided by the CENI, which indicates that identification and registration formalities began well before March 2011, given that such formalities had already been concluded for the Bas-Congo and Maniema Provinces by the time they began on 9 March 2011 for the other provinces and the city of Kinshasa.

- 21) It is futile to invoke the Pre-Trial Chamber's decision to release Mr. Jean-Pierre Bemba Gombo on an interim basis, as that decision was set aside by the Appeals Chamber.
- 22) Similarly, there is no merit to the Defence invocation of the decision of the European Court of Human Rights in favour of prisoners in England, since it concerned English prisoners detained in England at election time.
- 23) Moreover, the European Court of Human Rights ruled against a State's blanket ban on its detained citizens exercising their right to vote, whereas in the instant case the Congolese State is not in any way prohibiting Mr Bemba from exercising his right to vote, since his participation would depend solely on the electoral law of his country, his failure to act in good time and the sovereign decision of the Chamber, and not on a decision by the Congolese State prohibiting him from participating in the elections.
- 24) The same applies to the invocation of article 25 of the International Covenant on Civil and Political Rights, which enshrines the right to vote and to be elected as a recognised international right, and of article 30 of the Congolese Constitution, which recognises the right of everyone living on Congolese territory to freedom of movement, to choose his residence on that territory, to leave the country and to return, and provides that no Congolese person may be expelled from the territory of the Republic, forced into exile, or forced to live outside his or her habitual residence.
- 25) In fact, with regard to the International Covenant on Civil and Political Rights, the Congolese State has not denied Mr Jean-Pierre Bemba his right to vote or to be elected provided he fulfils the legal conditions for his identification and registration like any other citizen; and with regard to article 30 of the Congolese Constitution, the Congolese State



has neither expelled Mr Bemba Gombo, nor forced him into exile, nor forced him to live outside his habitual residence; it should be recalled that Mr Bemba Gombo was arrested in Belgium by the Belgian State in execution of a warrant of the International Criminal Court and transferred to The Hague, where he is in the custody of the Court.

26) Concerning the decision of the International Criminal Tribunal of the former Yugoslavia granting Mr Haradinaj interim release and authorising him under certain conditions to participate in political activities, the political situation in Kosovo was radically different from the current situation in the Congo. Indeed, following a devastating internecine war, Kosovo was placed under United Nations administration and it became necessary to bring together all the former belligerents in order to prepare a return to lasting peace based on peaceful coexistence of the former belligerents, including those accused of crimes falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia.

In the Democratic Republic of the Congo, the meeting of former belligerents has already taken place, resulting in the Sun City Agreements in South Africa. Under these agreements, Mr Jean-Pierre Bemba was appointed Vice-President of the Republic, and subsequently elected as senator. Hence, there is no longer any need to authorise an individual accused of crimes falling within the jurisdiction of the International Criminal Court to go and contribute to a necessary process of reconciliation, since such a process has already taken place.

It follows, with regard to Mr Bemba, that only the detention conditions set out in article 58 must be taken into consideration, and those conditions have not changed since the Court's last decision.

27) Although Mr Bemba has given his most sincere assurance through his defence team that he "will comply with all the conditions imposed by

the Chamber, including having no contact whatsoever with third parties, except for his counsel, security officers and representatives of the Registry”, the Chamber, in its great wisdom, has certainly not forgotten that Mr Jean-Pierre Bemba did not need to contact his supporters personally for them to come and demonstrate noisily and violently, on 25 May 2011, before the seat of the Court, injuring three Dutch police officers, as [REDACTED] stated in their observations of 10 June 2011.

28) Moreover, at this time when the registration procedure, started since 9 March 2011 without any apparent problems, is about to be concluded, one does not need to be psychic to predict that Mr Jean-Pierre Bemba’s presence in the Congo may well lead, probably through no fault of his own and even against his wishes, to serious disruption of public order caused by the actions of his noisy and violent supporters, as was the case during his short-term release to attend his step-mother’s funeral.

**FOR THESE REASONS**

The Chamber is respectfully requested to reject the Defence’s application as being unfounded.

**[signed]**

Mr Assingambi Zarambaud

Done this 16 June 2011

At The Hague, the Netherlands