

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 4 September 2009

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

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

Public Document

**Decision on Application for Leave to Submit *Amicus Curiae* Observations
Pursuant to Rule 103 of the Rules of Procedure and Evidence**

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

The Office of the Prosecutor
Fatou Bensouda, Deputy Prosecutor
Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence
Nkwebe Liriss
Karim A.A.Khan
Aimé Kilolo Musamba
Pierre Legros

Legal Representatives of the Victims
Marie Edith Douzima-Lawson
Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae
International Women's Human Rights
Law Clinic

REGISTRY

Registrar
Silvana Arbia

Defence Support Section

Deputy Registrar
Didier D. Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the "Chamber") of the International Criminal Court (the "Court") with respect to the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Mr Jean-Pierre Bemba"), except for all victims' issues,¹ is seized of a request for leave to submit *amicus curiae* observations under rule 103 of the Rules of Procedure and Evidence (the "Application").²

1. On 15 June 2009 the Chamber issued 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" (the "15 June 2009 Decision"), in which it was decided, *inter alia*, that there is sufficient evidence to establish substantial grounds to believe that the accused is criminally responsible under article 28(a) of the Rome Statute (the "Statute") for two counts of crimes against humanity and three counts of war crimes, and to commit him to a Trial Chamber.³

2. On 22 June 2009 the Prosecutor submitted his "Application for Leave to Appeal the Decision Pursuant to Article 61(7)(a) and (b) on the Charges against Jean-Pierre Bemba Gombo" pertaining, *inter alia*, to the issue of cumulative charging, as determined by the Chamber in its 15 June 2009 Decision (the "Prosecutor's Application").⁴

3. On 28 August 2009, the International Women's Human Rights Law Clinic, a non-governmental organization, filed the Application, which was notified to the Chamber on 31 August 2009.⁵ In the Application, the International Women's Human Rights Law Clinic proposed to furnish the Chamber with the "sources of law and international legal developments" relevant to the question of cumulative charging of

¹ Pre-Trial Chamber II, ICC-01/05-24; ICC-01/05-01/08-393.

² ICC-01/05-01/08-488 and its annexes.

³ Pre-Trial Chamber II, ICC-01/05-01/08-424.

⁴ ICC-01/05-01/08-427 and its annex.

⁵ ICC-01/05-01/08-488 and its annexes.

rape and torture.⁶ According to the International Women's Human Rights Law Clinic, the proposed brief tends, *inter alia*, to shed light on the drafting history of several provisions under the Statute, which "warrant cumulative charging" and demonstrate that such practice is consistent with "internationally recognized human rights" as required under article 21(3) of the Statute.⁷

4. The Single Judge notes article 67(1)(c) of the Statute and rule 103 of the Rules of Procedure and Evidence (the "Rules").

5. The Single Judge notes in particular rule 103(1) of the Rules, according to which the Chamber may, at any stage of the proceedings, "if it considers it desirable for the proper determination of the case, [...] grant leave to a State, organization or person to submit any observation on any issue that the Chamber deems appropriate".

6. The Single Judge also recalls that the Appeals Chamber has underlined that, when acting within the parameters of rule 103 of the Rules, the respective Chamber should take into consideration whether the proposed submission of observations may assist it "in the proper determination of the case".⁸

7. Although the proposed *amicus curiae* brief tends to provide legal information that the Chamber may find useful in the context of deciding on the Prosecutor's Application under article 82(1)(d) of the Statute, the Single Judge considers that her decision of whether to accept such Application should also be determined in light of the Chamber's duty to ensure the expeditiousness of the proceedings as one of the fundamental tenets of fairness.⁹

⁶ ICC-01/05-01/08-488, p. 3.

⁷ ICC-01/05-01/08-488, pp. 7-12.

⁸ Appeals Chamber, "Decision on 'Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence'", ICC-01/04-01/06-1289, para. 8.

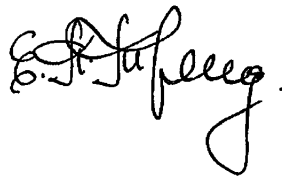
⁹ Pre-Trial Chamber II, "Decision on Request for Leave to Submit Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence", ICC-01/05-01/08-451, para. 15.

8. In this regard, the Single Judge highlights the time constraints of this case; the Chamber issued the 15 June 2009 Decision confirming the charges against the accused and the Prosecutor's Application was filed on 22 June 2009, both more than two months from the date of receipt of the present Application. The Deadline for the Defence to lodge a leave to appeal against the 15 June 2009 Decision following the notification of the French translation is 7 September 2009. This actually means that soon after 7 September 2009, the Chamber will continue to proceed expeditiously to finalize its decision on the Prosecutor's Application at the earliest opportunity. Thus, to grant the present *amicus curiae* request would in fact cause an unnecessary delay in the proceedings, particularly because the parties to the proceedings should be given the opportunity to respond to the observations submitted by the International Women's Human Rights Law Clinic pursuant to rule 103(2) of the Rules. In light of these considerations, the Single Judge finds that, at this advanced stage of the proceedings, it is neither desirable nor feasible to grant the current Application.

FOR THESE REASONS, THE SINGLE JUDGE

rejects the Application of the International Women's Human Rights Law Clinic.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Friday, 4 September 2009

At The Hague, The Netherlands