

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 9 April 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

**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

Legal Representatives of the 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

Silvana Arbia

Defence Support Section

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 of the International Criminal Court (the "Court"),¹ is seized of an application for leave to submit *amicus curiae* observations under rule 103 of the Rules of Procedure and Evidence (the "Rules")² in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Mr Jean-Pierre Bemba").

1. On 23 May 2008 Pre-Trial Chamber III issued a warrant of arrest against Mr Jean-Pierre Bemba,³ and on 24 May 2008 he was arrested in the Kingdom of Belgium.

2. On 10 June 2008 the Chamber issued the "Decision on the Prosecutor's Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo" (the "10 June 2008 Decision").⁴ On the same date, the Chamber issued a new warrant of arrest, which entirely replaced the one of 23 May 2008.⁵

3. On 1 October 2008 the Prosecutor filed the "Prosecution's Submission of Public Redacted Version of the Document Containing the Charges against Jean-Pierre Bemba Gombo" to which he appended the "Document containing the charges" as annex A.⁶

4. On 17 October 2008 the Prosecutor filed the "Prosecution's Submission of Amended Document Containing the Charges and Amended List of Evidence" to which he appended an "Amended Document Containing the Charges" as annex 3A.⁷

5. On 19 November 2008 the Prosecutor filed the "Prosecution's Communication of Amended Document Containing the Charges and Amended List of Evidence pursuant to the Third Decision on the Prosecutor's Requests for Redactions and

¹ Pre-Trial Chamber II, "Decision Designating Single Judges", ICC-01/05-24; ICC-01/05-01/08-393.

² ICC-01/05-01/08-399.

³ ICC-01/05-01/08-1.

⁴ ICC-01/05-01/08-14-tENG.

⁵ ICC-01/05-01/08-15.

⁶ ICC-01/05-01/08-136-AnxA.

⁷ ICC-01/05-01/08-169-Anx3A.

Related Request for the Regulation of Contacts of Jean-Pierre Bemba Gombo” to which he appended an “Amended Document containing the charges” as annex A.⁸

6. On 3 March 2009 Pre-Trial Chamber III issued the “Decision Adjourning the Hearing pursuant to Article 61 (7) (c) (ii) of the Rome Statute” (the “Adjournment Decision”) in which it requested the Prosecutor to “consider submitting (...) no later than 30 March 2009 an amended document containing the charges addressing article 28 of the Statute as possible mode of criminal liability (...)”.

7. On 30 March 2009 the Prosecutor filed the “Prosecution’s Submission of Amended Document Containing the Charges, Amended List of Evidence and Amended In-Depth Analysis Chart of Incriminatory Evidence” to which he appended an “Amended Document containing the charges” (the “Amended DCC”) as annex 3. In the Amended DCC, the Prosecutor charged Mr Jean-Pierre Bemba “primarily” for his alleged criminal responsibility under article 25(3)(a) and in the alternative under article 28 of the Statute.⁹

8. On 6 April 2009 Amnesty International submitted the “Application for Leave to Submit Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence” (the “Request/Application”), in which it requested to provide observations on specific legal aspects of superior responsibility under article 28 of the Rome Statute (the “Statute”).¹⁰

9. The Single Judge notes rule 103 of the Rules and regulation 37(1) of the regulations of the Court (the “Regulations”).

10. 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

⁸ ICC-01/05-01/08-264-Conf-AnxA.

⁹ ICC-01/05-01/08-395-Anx3.

¹⁰ ICC-01/05-01/08-399.

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”.

11. The Single Judge further notes that, in the “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”, the Appeals Chamber underlined that, when acting within the frame 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”.¹¹

12. The Single Judge considers that the proposed brief for which Amnesty International seeks leave to submit tends to present pertinent information on legal issues that the Chamber may find useful. Accordingly, she considers that granting the Request is desirable and appropriate for the proper determination of the case. However, the Single Judge underlines that Amnesty International must confine its submission to the legal aspects outlined in the Request and refrain from making any indication or link to the specific facts of the case.

13. The Single Judge notes that pursuant to rule 103(2) of the Rules the Prosecutor and the Defence shall have the opportunity to respond to the observations submitted under rule 103(1) of the Rules.

14. The Single Judge also notes rule 103(3) of the Rules and regulation 37(1) of the Regulations according to which the Chamber is empowered to set a time and page limit for the filing of *amicus curiae* observations and the parties’ responses for the purpose of these proceedings.

¹¹ 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.

15. The Single Judge considers, however, that both the time and page limit to be granted to the applicant and the parties have to be determined in view of the duty of the Chamber to ensure the expeditiousness of the proceedings as one of the fundamental tenets of their fairness.

16. The Single Judge considers, therefore, that Amnesty International shall be granted leave to submit written observations which do not exceed 30 pages, no later than 20 April 2009, and that the parties shall have the opportunity to respond by 27 April 2009.

FOR THESE REASONS, THE SINGLE JUDGE

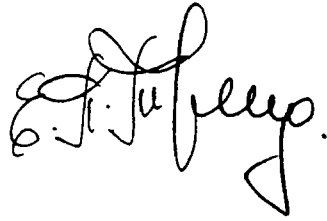
a) grants Amnesty International, subject to paragraph 16 of this decision, leave to submit observations under rule 103(1) of the Rules on the following issues:

- i) The requisite mental element for military commanders;
- ii) Liability for the failure to punish as applied to non-state actors and;
- iii) Whether causation is an element of superior responsibility.

b) orders the Registrar to provide copies of the written observations submitted by Amnesty International to the Prosecutor the Defence.

c) grants only the Prosecutor and the Defence the opportunity to respond to the observations submitted under rule 103(1) of the Rules within the time limit specified in paragraph 16 of this decision.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday, 9 April 2009

At The Hague, The Netherlands