



Original: **French**

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

Date: **22 April 2009**

**PRE-TRIAL CHAMBER II**

**Before: Judge Hans-Peter Kaul, Single Judge**

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

**Public Document**

**Decision concerning the Application by the Legal Representative of Victims  
a/0278/08, a/0279/08, a/0291/08 to a/0293/08, a/0296/08 to a/0298/08, a/0455/08 and  
a/0457/08 to a/0467/08 filed on 20 April 2009**

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, Trial Lawyer

**Counsel for the Defence**

Mr Nkwebe Liriss  
Mr Karim A.A. Khan  
Mr Aimé Kilolo-Musamba  
Mr Pierre Legros

**Legal Representatives of the Victims**

Ms Marie-Edith Douzima-Lawson

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(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**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**Judge Hans-Peter Kaul**, judge at the International Criminal Court (“the Court”), acting as Single Judge of Pre-Trial Chamber II (“the Chamber”) in matters relating to the participation of victims,<sup>1</sup> has before him an application by the Legal Representative of Victims a/0278/08, a/0279/08, a/0291/08 to a/0293/08, a/0296/08 to a/0298/08, a/0455/08 and a/0457/08 to a/0467/08 (“*the Application by the Legal Representative of the Victims*”)<sup>2</sup> requesting leave to submit observations on a document filed by Amnesty International, which has been authorised to participate in the proceedings as *amicus curiae*.<sup>3</sup>

1. On 09 April 2009, Ms Marie-Edith Douzima-Lawson and the Principal Counsel of the Office of Public Counsel for Victims (“the OPCV”), Legal Representatives of the Victims, submitted, at the Chamber’s request,<sup>4</sup> observations on the amended document containing the charges filed on 30 March 2009 (“the Observations of 9 April 2009”).<sup>5</sup> These observations mainly concerned the “[TRANSLATION] scope of the responsibility of military commanders and other superiors provided by article 28 of the Rome Statute”.<sup>6</sup>

2. On 20 April 2009, Amnesty International presented, in the interests of the administration of justice, written observations on the issue of the scope and interpretation of article 28 of the Rome Statute (“the Statute”).<sup>7</sup>

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<sup>1</sup> Pre-Trial Chamber II, *Decision Designating Single Judges*. ICC-01/05-01/08-393, paragraph b) of the operative part.

<sup>2</sup> ICC-01/05-01/08-407 and ICC-01/05-01/08-407-Corr.

<sup>3</sup> Pre-Trial Chamber II, *Decision on Application for Leave to Submit Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence*, ICC-01/05-01/08-401.

<sup>4</sup> Pre-Trial Chamber III, *Decision Adjourning the Hearing pursuant to Article 61(7)(c)(ii) of the Rome Statute*. ICC-01/05-01/08-388, paragraph d) of the operative part. Pre-Trial Chamber III was reconstituted as Pre-Trial Chamber II by the decision of 19 March 2009, ICC-01/05-01/08-390.

<sup>5</sup> ICC-01/05-01/08-400.

<sup>6</sup> ICC-01/05-01/08-400, part II, pp. 4 to 27.

<sup>7</sup> “Amicus Curiae Observations on Superior Responsibility Submitted Pursuant to Rule 103 of the Rules of Procedure and Evidence”, ICC-01/05-01/08-406.

3. On the same day, the Principal Counsel of the OPCV, acting as Legal Representative of the Victims mentioned above, requested leave to submit observations in response to the document filed by Amnesty International.

4. The Single Judge notes article 68(3) of the Statute and rule 103 of the Rules of Procedure and Evidence (“the Rules”).

5. The Single Judge recalls that article 68(3) of the Statute “gives the Single Judge the authority to determine whether the presentation and consideration of views and concerns of victims during the stage of confirmation of charges pursuant to article 61 of the Statute is appropriate and not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Furthermore, this provision gives the Single Judge the authority to determine *where it is appropriate* that such views and concerns may be presented by the legal representatives of victims during the stage of confirmation of charges [...]”.<sup>8</sup>

6. Furthermore, the Single Judge recalls paragraph 110 of the *Fourth Decision on Victims’ Participation*, and in particular the fact that the right of victims to make written submissions is exercised pursuant to article 68(3) of the Statute on two conditions: i) that victims prove first that their interests are affected; and ii) that it is deemed appropriate by the Chamber, or in this case the Single Judge.<sup>9</sup>

7. The Single Judge also recalls rule 103(2) of the Rules, which expressly gives the parties alone the opportunity to respond to the observations submitted by the *amicus curiae*. Accordingly, the Single Judge considers that the right of victims to respond to the observations made by an *amicus curiae* is consistent with article 68(3) of the Statute and subject to the two aforementioned conditions.

8. The Single Judge notes that, in the instant case, the Legal Representative of the Victims has already expressed their views and concerns relating to the scope of

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<sup>8</sup> Pre-Trial Chamber III, ICC-01/05-01/08-253, para. 7.

<sup>9</sup> Pre-Trial Chamber III, ICC-01/05-01/08-320.

article 28 of the Statute in her Observations of 9 April 2009. The Single Judge considers that the said observations are sufficient to allow the Chamber to examine, pursuant to article 68(3) of the Statute, the views and concerns of the victims concerning application of article 28 of the Statute in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.

9. Accordingly, the Single Judge does not deem it appropriate in the instant case for the Legal Representative of the Victims to submit observations in response to those presented by the *amicus curiae*, Amnesty International.

**FOR THESE REASONS, THE SINGLE JUDGE**

**rejects** the Application by the Legal Representative of the Victims.

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

**[signed 22/4/09]**  
**Judge Hans-Peter Kaul**  
**Single Judge**

Dated this 22 April 2009

At The Hague, The Netherlands