

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 July 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 on the OPCV Request for Leave to Submit a Reponse to *Amicus Curiae*
Observations**

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
Women's Initiatives for Gender Justice

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 Hans-Peter Kaul, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”) with respect to all victims’ issues in relation to the proceedings of the situation in the CAR and the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Mr Jean-Pierre Bemba”),¹ is seized of a request by the Office of Public Counsel for Victims (the “OPCV”) to be granted leave to submit a response to the *amicus curiae* observations of the Women’s Initiatives for Gender Justice, which will be submitted on 31 July 2009.²

1. On 15 June 2009 the Chamber II confirmed some of the charges against Mr Jean-Pierre Bemba and committed him to a Trial Chamber whilst it declined to confirm others as it rejected the cumulative charging approach of the Prosecutor.³

2. On 22 June 2009 the Prosecutor lodged a leave to appeal the Chamber’s decision of 15 June 2009 (the “Request for leave to appeal”) pertaining, *inter alia*, to the issue of cumulative charging pursuant to article 82(1)(d) of the Rome Statute (the “Statute”). The OPCV responded to the Prosecutor’s Request for leave to appeal on 26 June 2009.⁴ The decision on whether to grant leave to appeal is still pending.

3. On 13 July 2009 the Women’s Initiatives for Gender Justice (the “Women’s Initiatives”), a non-governmental organization, sought leave to submit *amicus curiae* observations on, *inter alia*, the issue of cumulative and non-cumulative charging, pursuant to rule 103 of the Rules of Procedure and Evidence (the “Rules”). Such leave was granted by decision on 17 July 2009⁵ and the Prosecutor and the Defence were granted the opportunity to respond to the *amicus curiae* observations.

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

² ICC-01/05-01/08-455.

³ Pre-Trial Chamber II, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ICC-01/05-01/08-424.

⁴ ICC-01/05-01/08-428.

⁵ 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.

4. On 21 July 2009 OPCV requested leave to be given the opportunity to respond to the *amicus curiae* observations of the Women's Initiatives and requested the Chamber to order the notification of these submissions to the victims' representatives.

5. The Single Judge notes article 68(3) of the Statute and rule 103 of the Rules. It is recalled 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. However, the Single Judge observes that rule 103 of the Rules must be interpreted in light of article 68(3) of the Statute.

6. The Single Judge recalls the "Third Decision on the Question of Victims' Participation Requesting Observations from the Parties" in which he clarified 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 pursuant to article 61 of the Statute (emphasis added)."⁶

7. Bearing in mind the rudimentary and discretionary language of article 68(3) of the Statute, the Single Judge further recalls his findings in the "Fourth Decision on Victims' Participation" dated 12 December 2008 in which the modalities of limited victims' participation have been further defined. To this end, he wishes to refer in particular to paragraphs 103, 106 and 110 of said decision. Whereas the rights of access to the case record and notification of public documents are sufficiently defined in the decision and the Court's legal texts, the Single Judge wishes to highlight once again that the right of victims to provide written submissions is dependent on the Single Judge's determination that two requirements have been met: (i) victims must prove first *by way of application* that their interests *are* affected

⁶ Pre-Trial Chamber III, ICC-01/05-01/08-253, para. 7.

by the issue under examination and (ii) it is *deemed appropriate* by the Chamber (emphasis added).

8. The Single Judge notes that the OPCV, representing some of the victims who have been granted participatory rights in the present proceedings, simply contends that the abovementioned criteria have been met and has not presented any facts which would allow the Single Judge to conclude that and why the “personal interests of the victims” it represents “*are affected*” (emphasis added).

9. The Single Judge clarifies that victims, having been granted the right to participate in the present proceedings, are not to be perceived as parties to the proceedings, which are the Prosecutor and the Defence. They are granted the right to participate if certain conditions, which the Statute and the Chamber’s rulings demand, are met.

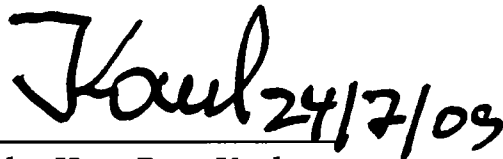
10. In addition, the Single Judge observes that the OPCV has already provided its observations to the Prosecutor’s Request for leave to appeal on 26 June 2009. He therefore believes that the OPCV has provided sufficient information to allow the Chamber to take an informed decision on the Prosecutor’s Request for leave to appeal within the parameters of article 82(1)(d) of the Statute.

11. Concerning the notification of the *amicus curiae* observations by the Women’s Initiatives to both victims’ representatives, the Single Judge observes that rule 121(10) and 92(6) of the Rules and his finding in the Fourth Decision on Victims’ Participation of 12 December 2008 provide sufficient answer to the second request raised by the OPCV. A further ruling by the Single Judge is therefore not necessary.

FOR THESE REASONS, THE SINGLE JUDGE

a) **does not grant** OPCV the opportunity to respond to the *amicus curiae* observations of the Women's Initiatives for Gender Justice.

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



Judge Hans-Peter Kaul
Single Judge

Dated this Friday 24 July 2009

At The Hague, The Netherlands