

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 18 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

**Decision on the «REQUETE AUX FINS DE DIVULGATION DES ELEMENTS
PERTINENTS RELATIFS A L'ADMISSIBILITE »**

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
Aimé Kilolo Musamba

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

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* (the “Case”), except for all victims’ issues,¹ is seized of an application for disclosing relevant evidence pertaining to the admissibility of the Case (the “Defence’s Application”).²

1. On 30 November 2006 Pre-Trial Chamber III issued the “Decision Requesting Information on the Status of the Preliminary Examination of the Situation in the Central African Republic” in which it requested the Prosecutor, *inter alia*, to provide the Chamber and the Government of the Central African Republic (the “CAR”) with a report, including the information on the status of the preliminary examination of the CAR situation and the time frame where a decision pursuant to article 53(1) of the Rome Statute (the “Statute”) would be taken.³

2. On 15 December 2006 the Prosecutor filed his report in which he stated, *inter alia*, that in November 2005 a mission consisting of four representatives from his office was sent to Bangui to collect additional information on the conduct of national proceedings prior to the referral. In carrying out this mission, the Prosecutor’s representatives “held meetings with representatives from the CAR Government and the CAR judiciary, members of non-governmental organizations, as well as representatives from international organizations and diplomatic missions”.⁴

3. On 23 May 2008 Pre-Trial Chamber III issued a warrant of arrest against Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”)⁵ and on 24 May 2008 he was arrested in the Kingdom of Belgium.

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

² «REQUETE AUX FINS DE DIVULGATION DES ELEMENTS PERTINENTS RELATIFS A L’ADMISSIBILITE », ICC-01/05-01/08-458.

³ Pre-Trial Chamber III, ICC-01/05-6.

⁴ ICC-01/05-7.

⁵ ICC-01/05-01/08-1.

4. On 10 June 2008 Pre-Trial Chamber III issued the “Decision on the Prosecutor’s Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo”.⁶ On the same date, Pre-Trial Chamber III issued a new warrant of arrest, which entirely replaced the one of 23 May 2008.⁷

5. On 3 July 2008 Mr Jean-Pierre Bemba was surrendered to the seat of the Court where his first appearance took place before Pre-Trial Chamber III on 4 July 2008.⁸

6. On 19 March 2009 the Presidency decided to dissolve Pre-Trial Chamber III and to assign the situation in the CAR to Pre-Trial Chamber II.⁹

7. 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”, 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 (the “15 June 2009 Decision”).¹⁰

8. On 22 July 2009 the Single Judge received the Defence’s Application in which it stated in paragraph 3 that:

[w]ithout prejudice to the fact that the challenge to admissibility in the instant case may be brought even prior to the composition of the trial chamber, the Defence respectfully submits that, at this stage, with the decision on the confirmation of charges of 15 June 2009 having not yet become final prior to the exhaustion of the time limits for appeal, it is still within the time limits for the challenge to be admitted.¹¹

⁶ ICC-01/05-01/08-14-tENG.

⁷ ICC-01/05-01/08-15.

⁸ ICC-01/05-01/08-T-3-ENG ET.

⁹ ICC-01/05-01/08-390.

¹⁰ Pre-Trial Chamber II, ICC-01/05-01/08-424.

¹¹ ICC-01/05-01/08-458.

9. The Defence accordingly requested to order the Prosecutor to disclose “all relevant correspondence” sent to or received from the national authorities in the executive and judicial or legislative power of the CAR and the Democratic Republic of the Congo (the “DRC”) that may be relevant to the issue of admissibility. The Defence also requested the disclosure of “any minutes” of the meetings with representatives of the CAR and the DRC pertaining to the issue of admissibility.¹²

10. On 13 August 2009 the Prosecutor filed his response to the Defence’s Application in which he argued, *inter alia*, that the request from the Defence amounted to a legal error since it failed to request directly from his office the disclosure of the documents sought “as mandated by the operative *inter partes* disclosure system”. In the Prosecutor’s view, “it is only failing the obligation to honour such a request [...] that an application to the Chamber to order disclosure would be appropriate”. Moreover, he submitted that the disclosure obligations have been fulfilled between October and November 2008 and that the Defence is in possession of the relevant documents concerning the issue of admissibility. Should the Defence seek other material relevant to admissibility, the Prosecutor invites it to identify these alleged undisclosed documents. Such request will then be reviewed and responded to in due time. In light of the foregoing the Defence’s Application should be dismissed.

11. The Single Judge notes articles 19(4) and 19(6) of the Statute and rule 60 of the Rules of Procedure and Evidence (the “Rules”).

12. The Single Judge observes that according to the last sentence in paragraph 3 of the Defence’s Application, the Defence requested the Prosecutor to disclose certain materials merely for the sake of challenging the admissibility of the Case before this Chamber.

¹² ICC-01/05-01/08-458.

13. In this regard, the Single Judge notes that according to article 19 (4) of the Statute challenges to the admissibility of the Case “shall take place prior to or at the commencement of the trial”. Furthermore, pursuant to the first sentence of article 19(6) of the Statute any such challenge prior to the confirmation of the charges “shall be referred to the Pre-Trial Chamber”. However, according to the second part of article 19(6) in conjunction with rule 60 of the Rules, a challenge to be lodged after the confirmation of the charges should not be referred to the Pre-Trial Chamber but to the Presidency if the competent Trial Chamber was yet to be constituted or designated.

14. Since the Chamber has decided to confirm some of the charges brought against Mr Jean-Pierre Bemba on 15 June 2009, the Single Judge considers that the Defence has no more *locus standi* to challenge the admissibility of the Case at the pre-trial level, if it intended to do so as stated in its application. Even in case that the 15 June 2009 Decision should not be deemed as final before the time limits required for appeal have expired, this interpretation suggested by the Defence would not support a change in the Single Judge’s finding. The Single Judge reminds that today the Chamber has decided to reject the Prosecutor’s application for leave to appeal the 15 June 2009 Decision. This makes the latter decision final and thus the Defence has no more *locus standi* to challenge the admissibility of the Case at the pre-trial level. It follows that the Defence’s Application requesting to order the Prosecutor to disclose certain materials for the purpose of challenging the admissibility of the Case before the Chamber becomes moot at this particular stage of the proceedings and must be rejected.

FOR THESE REASONS, THE SINGLE JUDGE

rejects the Defence's Application.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Friday 18 September 2009

At The Hague, The Netherlands