Cour
Pénale
Internationale

International
Criminal
Court

Original: English

No.: **ICC-01/05-01/08 OA 2**

Date: **9 November 2009**

THE APPEALS CHAMBER

Before: **Judge Akua Kuenyehia, Presiding Judge**
Judge Sang-Hyun Song
Judge Erkki Kourula
Judge Anita Ušacka
Judge Daniel David Ntanda Nsereko

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF THE PROSECUTOR
v.
JEAN-PIERRE BEMBA GOMBO

Public Document

Decision on the application of 14 September 2009 for participation as an *amicus curiae*

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Decision/Order/Judgment to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia

Counsel for the Defence of Mr Jean-Pierre Bemba Gombo
Mr Nkwebe Liriss
Mr Karim A.A.Khan

Legal Representative of Victims
Ms Marie Edith Douzima-Lawson

The Office of Public Counsel for victims
Ms Paolina Massidda

REGISTRY

Registrar
Ms Silvana Arbia

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The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor dated 14 August 2009 and entitled "Prosecution's Appeal against 'Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa'" (ICC-01/05-01/08-476);

Having before it the "*Corrigendum*, Application for Leave to Intervene as *Amicus Curiae* in the Case of *the Prosecutor v. Jean-Pierre Bemba Gombo*, Pursuant to Rule 103 of the Rules of Procedure and Evidence" (ICC-01/05-01/08-522-Corr-tENG) of 16 September 2009;

Renders unanimously the following

DECISION

The application for leave to submit observations under rule 103 (1) of the Rules of Procedure and Evidence is rejected.

REASONS

I. RELEVANT PROCEDURAL HISTORY

1. The organisation *Association pour la promotion de la démocratie et du développement de la République démocratique du Congo* [Aprodec asbl] (hereinafter: "Aprodec") filed an application for leave to submit observations pursuant to rule 103 of the Rules of Procedure and Evidence, dated 14 September 2009 and registered on 15

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September 2009.[1] On 16 September 2009, Aprodec filed a corrigendum to the application entitled "*Corrigendum*, Application for Leave to Intervene as *Amicus Curiae* in the Case of *the Prosecutor v. Jean Pierre Bemba Gombo*, Pursuant to Rule 103 of the *Rules of Procedure and Evidence*"[2] (hereinafter: "*Amicus* Application").

2. Aprodec sought leave to make observations on the appeal proceedings in respect of the following issues:

> A. The criteria, in a decision on conditional release, for the objective assessment of the changed circumstances with respect to: - a) the risk of a suspect absconding; and- b) endangering the victims and witnesses; such criteria being read in conjunction with articles 58(1), 60(2) and 3 of the Rome Statute;
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> B. The procedure for conditional release and the issue of determining a receiving country and adequate conditions in light of articles 66, 67, 86, 87 and 88 of the Rome Statute.[3]

3. Aprodec indicates that it is a Belgian non-profit organisation whose main goal is to defend the interests and rights of Congolese people, and that it has considerable expertise in national and international cases involving the Congolese people. Aprodec avers that it is interested in this case because of the Congolese citizens who reside in the Central African Republic.[4]

4. On 29 September 2009, Aprodec filed a "Supplementary Note in Support of the Application for Leave to Intervene as *Amicus Curiae* in the Case of the Prosecutor v. Jean-Pierre Bemba Gombo, Pursuant to Rule 103 of the Rules of Procedure and Evidence, of 16 November 2009"[5] (hereinafter: "Supplementary Note"). In this note, apart from reiterating that the "sole purpose of its analyses and observations is to enable truth and justice to prevail [...]", Aprodec wished to inform the Court "that its experts

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[1] "Demande d'autorisation d'intervenir comme Amicus Curiae dans l'Affaire le Procureur c. Jean Pierre Bemba Gombo, en vertu de la Règle 103 du Règlement de Procédure et de Preuve de la Cour", ICC-01/05-01/08-522.
[2] ICC-01/05-01/08-522-Corr-tENG.
[3] *Amicus* Application, pp. 11 and 22.
[4] *Amicus* Application, paras 3-6.
[5] ICC-01/05-01/08-538-tENG.

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work closely with the internationally renowned law firm Uyttendaele-Gérard & Associés."[6]

5. On 6 October 2009, the Prosecutor filed a response to the *Amicus* Application (hereinafter: "Prosecutor's Response").[7] The Prosecutor requests that the application be dismissed because the *Amicus* Application presents substantive arguments before Aprodec was granted leave to participate. The Prosecutor is also opposed to the participation of Aprodec because in his view the observations that it wished to provide are "unrelated to the current proceedings or incapable of assisting the Chamber."[8]

6. Mr Bemba did not file a response to the *Amicus* Application.

II. THE PROSECUTOR'S RESPONSE TO THE APPLICATION

7. As noted in paragraph 5 above, the Prosecutor filed a response to the *Amicus* Application on 6 October 2009. In this regard, the Appeals Chamber recalls its "Reasons for 'Decision on the Application of 20 July 2009 for Participation under Rule 103 of the Rules of Procedure and Evidence and on the Application of 24 August 2009 for Leave to Reply'", filed on 9 November 2009 in the case of *Prosecutor vs. Mr Omar Hassan Al Bashir* (ICC-02/05-01/09-51, hereinafter: "Reasons of 9 November 2009), in which it considered that "under the express wording of rule 103 (1) of the Rules [of Procedure and Evidence], the Prosecutor is not entitled to respond to an application under rule 103 (1). Therefore, in the future, such responses may not be filed without the leave of the Appeals Chamber."[9] The Appeals Chamber explained that in that appeal "although the Prosecutor had not been granted leave by the Appeals Chamber, it nevertheless decided to accept the Prosecutor's Response as it considered it to be in the interests of justice to do so and since this is the first time that the Appeals Chamber is addressing the question of his entitlement to respond to applications under rule 103 (1) of the Rules [of Procedure and

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[6] Supplementary Note, paras 4-5.
[7] "Prosecution's Response to 'Demande d'autorisation d'intervenir comme Amicus Curiae dans l'Affaire le Procureur c. Jean Pierre Bemba Gombo, en vertu de la Règle 103 du Règlement de Procédure et de Preuve de la Cour'", 6 October 2009, ICC-01/05-01/08-544.
[8] Prosecutor's Response, para 24.
[9] Reasons of 9 November 2009, para. 8.

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Evidence."[10] In the circumstances of the present case, the Appeals Chamber will also accept the Prosecutor's Response, given that the ruling on the entitlement of the parties to respond to an application pursuant to rule 103 of the Rules of Procedure and Evidence was addressed for the first time in the Reasons of 9 November 2009, which was rendered after the Prosecutor's Response was filed.

III. THE FORM OF THE APPLICATION TO PARTICIPATE AS AN AMICUS CURIAE

8. The *Amicus* Application indicates in paragraph 2 that, if leave is granted, Aprodec will submit written observations on two issues and requests, at paragraph 75, leave from the Appeals Chamber to do so. However, the Appeals Chamber notes that the *Amicus* Application also provides Aprodec's substantive observations on these two issues in paragraphs 35 through 74.

9. The Appeals Chamber considers that in accordance with rule 103 of the Rules of Procedure and Evidence, the submission of substantive observations is only permissible after a Chamber has decided to invite or grant leave to do so. In the present circumstances, Aprodec submitted substantive observations on the appeal in paragraphs 35 through 74 of the application without leave. For that reason, the Appeals Chamber shall disregard the substantive submissions contained in the *Amicus* Application. Furthermore, the Appeals Chamber considers that rule 103 of the Rules of Procedure and Evidence does not provide for the supplementation of an application once said application has been filed. Thus, the Supplementary Note shall also be disregarded.

IV. DETERMINATION ON THE *AMICUS* APPLICATION

10. A decision of the Appeals Chamber under rule 103 (1) of the Rules of Procedure and Evidence is discretionary.[11] The decision may be made after a request for leave to address the Chamber as an *amicus curiae* by an organisation, person or State, or the

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[10] Reasons of 9 November 2009, para. 8.

[11] *Prosecutor v. Thomas Lubanga Dyilo,* "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'", 22 April 2008, ICC-01/04-01/06-1289.

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Chamber may, *proprio motu*, invite an organisation, person or State to participate as an *amicus curiae* if the Chamber considers it desirable to do so.

11. In the present application, the Appeals Chamber finds that the observations that Aprodec wishes to make would serve merely to repeat submissions already provided by the parties and participants. Therefore, in the circumstances of the present case, the Appeals Chamber does not find it desirable for the proper determination of the case to receive submissions from Aprodec. Thus, in accordance with rule 103 (1) of the Rules of Procedure and Evidence, the *Amicus* Application is rejected.

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

Judge Akua Kuenyehia
Presiding Judge

Dated this 9th day of November 2009
At The Hague, The Netherlands

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