

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: 6 August 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**

**Prosecution's Response to *Amicus Curiae* Observations of the Women's Initiatives for Gender Justice pursuant to Rule 103 of the Rules of Procedure and Evidence**

**Source: The Office of the Prosecutor**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**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**

## Procedural Background

1. On 15 June 2009, the Pre-Trial Chamber II (hereinafter referred to as 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” (hereinafter referred to as the “Confirmation Decision”).<sup>1</sup>
2. On 22 June 2009, the Office of the Prosecutor (hereinafter referred to as the “Prosecution”) submitted its “Prosecution’s Application for Leave to Appeal the Decision Pursuant to Article 61(7)(a) and (b) on the Charges against Jean-Pierre Bemba Gombo” (hereinafter referred to as the “Application for Leave to Appeal”).<sup>2</sup>
3. On 13 July 2009 the Women’s Initiative for Gender Justice filed the “Request for leave to submit *Amicus Curiae* observations pursuant to Rule 103 of the Rules of Procedure and Evidence” (hereinafter referred to as the “Request”).<sup>3</sup>
4. On 17 July 2009, the Single Judge issued the “Decision on Request for Leave to Submit *Amicus Curiae* Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence” granting the Request and in addition allowing the Prosecution and the Defence the opportunity to respond by 10 August 2009.<sup>4</sup>

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<sup>1</sup> ICC-01/05-01/08-424.

<sup>2</sup> ICC-01/05-01/08-427.

<sup>3</sup> ICC-01/05-01/08-447.

<sup>4</sup> ICC-01/05-01/08-451.

5. On 31 July 2009, the Women's Initiatives for Gender Justice filed its *Amicus Curiae* Observations pursuant to Rule 103 of the Rules of Procedure and Evidence (hereinafter referred to as the "*Amicus Curiae* Observations").<sup>5</sup>

### **Prosecution's Response**

6. The Prosecution welcomes the *Amicus Curiae* Observations in agreement with its position that considerations required for gender-based crimes "avoid unintentional adverse effects on gender"<sup>6</sup> and ensure that "crimes that occur against women and children during armed conflict are assiduously and fairly pursued."<sup>7</sup> The Prosecution further concurs with the position taken by the *Amicus Curiae* that "the Chamber's too narrow restriction of rape and torture" charges, through its interpretation of doctrines of cumulative charging and re-characterization in the Confirmation Decision in this case, "diminish the effective access of victims to justice"<sup>8</sup> As the Prosecution has submitted in its Application for Leave to Appeal, the restrictions imposed by the Confirmation Decision in this regard impact, *inter alia*, "on the fairness of the proceedings *vis-à-vis* victims who suffered from heinous crimes and will be denied the chance to have the full range of their suffering and victimization reflected in the charges".<sup>9</sup>
7. Therefore, the Prosecution considers that the arguments in the *Amicus Curiae* Observations that reflect the impact of the Chamber's rejection of cumulative charging on the fair and expeditious conduct of the proceedings,<sup>10</sup> and in particular on the

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<sup>5</sup> ICC-01/05-01/08-466.

<sup>6</sup> *Ibid*, para 40.

<sup>7</sup> *Ibid*, para 36.

<sup>8</sup> *Ibid*, para 39.

<sup>9</sup> ICC-01/05-01/08-427, para 23.

<sup>10</sup> See for instance, *Amicus Curiae* Observations, para 21 and 33.

interests of victims and their effective access to justice,<sup>11</sup> are relevant to the determination of the instant issue, and serve to further support the Prosecution's position that the Confirmation Decision entails appellable issues warranting intervention by the Appeals Chamber.

8. The Prosecution will not engage the substance of the *Amicus Curiae* Observations on the merits of the Confirmation Decision that is the object of the Prosecution's Application for Leave to Appeal. These matters are not for discussion at this stage of the proceedings. The Prosecution reserves its right to discuss the substance of the *Amicus Curiae* Observations at the appropriate time, if and when the Chamber grants the Application for Leave to Appeal.<sup>12</sup>



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Luis Moreno-Ocampo, Prosecutor

Dated this 6<sup>th</sup> day of August 2009

At The Hague, The Netherlands

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<sup>11</sup> See for instance, *Amicus Curiae* Observations, paras 34 – 40.

<sup>12</sup> The Prosecution does not necessarily agree with all the substantive arguments advanced by the *Amicus Curiae*.