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No.: ICC-01/04
Date: 17 August 2007

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Document

**Decision on the Request submitted pursuant to rule 103(1) of the Rules of
Procedure and Evidence**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Ms Fatou Bensouda

Mr Ekkehard Withopf

Legal Representatives for Victims

Mr Emmanuel Daoud

Other participants

Women's Initiatives for gender Justice

Ms. Sureta Chana

PRE-TRIAL CHAMBER I of the International Criminal Court (“the Chamber” and “the Court”, respectively)

NOTING the warrant of arrest against Thomas Lubanga Dyilo issued by the Chamber on 10 February 2006;¹

NOTING the “Prosecutor’s Information on Further Investigation”² filed by the Prosecution on 28 June 2006 informing the Chamber that it temporarily suspended the investigation in relation to other potential charges against Thomas Lubanga Dyilo until the end of the present case against him;

NOTING the “Decision on Request pursuant to Rule 103(1) of the Statute”³ issued by the Chamber on 26 September 2006, whereby the Chamber denied the Women’s Initiatives for Gender Justice (“the Women’s Initiatives”) the leave to submit observations under rule 103(1) of the Rules of Procedure and Evidence (“the Rules”) in the proceedings of the confirmation of charges in the case against Thomas Lubanga Dyilo⁴, finding that the request had no link with the case and invited the Women’s Initiatives “to re-file their request for leave to submit observations in the record of the DRC situation”;

NOTING the “Request submitted pursuant to rule 103(1) of the Rules for leave to participate as *amicus curiae* with confidential annex 2”⁵ submitted by the Counsel for Women’s Initiatives on 10 November 2006, whereby Women’s Initiatives applied for leave to submit observations as *amicus curiae* in the Situation in the Democratic Republic of the Congo (“the DRC”), namely on: (i) the role of the Pre-Trial Chamber

¹ ICC-01/04-01/06-8-US-Corr

² ICC-01/04-01/06-170.

³ ICC-01/04-01/06-480.

⁴ ICC-01/04-01/06-403.

⁵ ICC-01/04-313.

in supervising prosecutorial discretion; and (ii) the criteria for determining victims' status;

NOTING the "Prosecution's response to Request Submitted pursuant to rule 103(1) of the Rules of Procedure and Evidence for Leave to participate as *Amicus Curiae* in the Situation in the Democratic Republic of Congo"⁶ filed by the Prosecution on 5 December 2006, requesting the Chamber to reject the request for leave to participate as *amicus curiae* pursuant to rule 103 of the Rules submitted by Women's Initiatives.

HEREBY RENDERS THIS DECISION:

1. Rule 103 of the Rules of Procedure and Evidence ("the Rules") states that "at any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate".
2. Pursuant to rule 103 of the Rules, spontaneous applications can be submitted either by States, organizations or individuals willing to participate in the proceedings before the Court. The Chamber notes that the request from Women's Initiatives represents the first spontaneous application for leave to participate as *amicus curiae* before the Court.
3. In deciding whether to grant the leave to an applicant to submit observations as *amicus curiae*, according to rule 103 of the Rules the Chamber shall evaluate whether this is "desirable for the proper determination of the case" and whether

⁶ ICC-01/04-316.

the observations relate to an issue that the Chamber deems appropriate. This determination shall necessarily be made by the Chamber on a case by case basis.

4. Furthermore, it is the view of the Chamber that the rationale for admitting *amicus curiae* in the proceedings is to have the opportunity to get experts' information on relevant issues of legal interest for the proceedings in order to provide the Chamber with a contribution to the proper determination of the case.
5. The submission of Women's Initiatives presents two points for which the Chamber is requested to grant leave. The first point of Women's Initiatives concerns the role of the Pre-Trial Chamber in supervising prosecutorial discretion when the Prosecutor decides "not to prosecute a particular person or not to prosecute a person for particular crimes"⁷. In the situation at hand, however, investigations in the Situation in the DRC are ongoing and the Prosecutor has not taken any decision not to investigate or prosecute.⁸ The Chamber therefore deems this issue as not appropriate at the present stage of the proceedings.
6. The second point raised by Women's Initiatives relates to the criteria for determining victim status⁹. The Chamber observes that the position of Women's Initiatives in the present request is not acting as a legal representative of victims admitted to participate in the proceedings at the investigation stage of the Situation in the DRC but rather acting as an *amicus curiae*. The Chamber therefore deems this issue as not appropriate at the present stage of the proceedings.

⁷ ICC-01/04-313, par. 13.

⁸ ICC-01/04-316, par. 19.


⁹ ICC-01/04-313, par. 24.

7. As the Chamber does not consider the submission of further observations as *amicus curiae* from Women's Initiatives to be of assistance to it in this instance, it finds that it would not be desirable for the proper determination of the case that leave be granted in respect of these issues pursuant to rule 103 of the Rules.


FOR THESE REASONS

REJECTS the request of Women's Initiatives for leave to submit observations as *amicus curiae*.

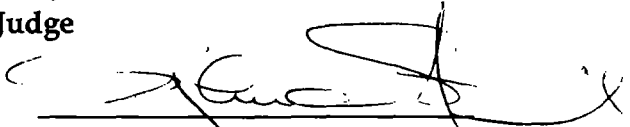
Done in both English and French, the English version being authoritative.



Judge Akua Kuenyehia
Presiding Judge



Judge Anita Ušacka



Judge Sylvia Steiner

Dated this Friday 17 August 2007

At The Hague, The Netherlands