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PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova (Presiding Judge)
Judge Hans-Peter Kaul
Judge Mauro Politi

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

Public Document

**Prosecution's Response to Defence Objections to the
Form of the Amended Document Containing the Charges**

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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Introduction

1. The Office of the Prosecutor (“Prosecution”) requests that the Pre-Trial Chamber III (“the Chamber”) dismiss the Defence Challenge *in limine*, as it is out of time and it is not permissible or appropriate to seek to amend the form of the Amended Document Containing the Charges (“ADCC”) after the commencement of the Confirmation Hearing.

2. In the alternative, if the Chamber considers that the Defence’s Challenge is properly before it, the Prosecution submits the ADCC properly and sufficiently sets out the charges against Jean-Pierre Bemba, and complies with all of the relevant statutory requirements. The ability of Jean-Pierre Bemba to effectively prepare his defence and present his case is not materially impaired by the form of the ADCC.

Procedural Background

3. On 1 October 2008, the Prosecution filed its DCC and List of Evidence.¹

4. At that time, the Confirmation Hearing was scheduled to commence on 4 November 2008.² On 31 October 2008, the Confirmation Hearing was postponed until 4 December 2008.³

5. On 17 October 2008, the Prosecution filed its Amended DCC and Amended List of Evidence.⁴

¹ ICC-01/05-01/08-129 with annexes.

² ICC-01/05-01/08-T-3-FRA-ET-WT, page 10, line 2.

³ ICC-01/05-01/08-199.

⁴ ICC-01/05-01/08-169 with annexes.

6. A further updated DCC, along with an updated List of Evidence, was filed on 9 November 2008,⁵ implementing the third Decision on the Prosecutor's requests for redactions and related request for the regulation of contacts of Jean-Pierre Bemba.⁶

7. On 2 December 2008, the Confirmation Hearing was again postponed; the exact date was to be determined on 29 December 2008.⁷

8. On 19 December 2008, the Prosecution filed a further updated List of Evidence.⁸

9. On 29 December 2008, the Confirmation Hearing was scheduled to commence on 12 January 2009.⁹

10. On 29 December 2008, the Single Judge ordered that, in compliance with Rule 121(9) of the Rules of Procedure and Evidence ("Rules"), any written submissions on points of law or fact be filed by no later than 8 January 2009.¹⁰

11. The Confirmation Hearing commenced on 12 January 2009. During its opening statement, the Defence submitted that it would file a challenge to certain aspects of the charges.¹¹ On 14 January 2009, the Defence filed its "Defence Objections to the Form of the Amended Charges" ("Defence Challenge").¹²

⁵ ICC-01/05-01/08-264 with annexes.

⁶ ICC-01/05-01/08-215.

⁷ ICC-01/05-01/08-304, para. 6.

⁸ ICC-01/05-01/08-330 with annexes.

⁹ ICC-01/05-01/08-335.

¹⁰ ICC-01/05-01/08-335.

¹¹ ICC-01/05-01/08-T-9-ENG, 12 January 2009, p. 77 (lines 13-15).

¹² ICC-01/05-01/08-358.

The Defence Challenge is out of time and should be rejected *in limine*

12. In the first place, the Prosecution reiterates that any submissions pertaining to the specificity of the Amended DCC (“ADCC”) should have been raised at the latest on 8 January 2009.¹³ As stated above, the Single Judge ordered on 29 December 2008 that any written submissions on points of law or fact be filed by no later than 8 January 2009, pursuant to Rule 121(9) of the Rules.¹⁴ In particular, the Presiding Judge has already stated during the confirmation hearing “that any submissions in this regard will be rejected *in limine*”¹⁵ The Defence Challenge is such a submission. It is out of time, under both the order of the Single Judge and the mandatory provision of the Rules, and should consequently be dismissed.

13. This requirement that written submissions on points of law or fact be submitted in advance of the confirmation hearing is not a hollow or merely formalistic requirement. This time limit is important in the context of a challenge to the ADCC. The entire confirmation hearing is based upon this document, and a settled document is required in order for both the parties and the Chamber to prepare for and conduct the hearing. Thus the Rules prescribe strict time limits for the submission of the DCC and any amendments to it.¹⁶ The purported waiver by the Defence of its right to reasonable notice of any amendment¹⁷ does not address the fact that both parties, as well as the Chamber, have an interest in the content of the charges being settled prior to the confirmation hearing, so that the hearing and any decision may take place on a certain and settled basis.¹⁸

¹³ The Prosecution raised the Defence’s failure to comply with the deadline established by the Single Judge during the Confirmation Hearing: see ICC-01-05-01-08-T-9-ENG, 12 January 2009, p. 79 lines 4-19.

¹⁴ ICC-01/05-01/08-335.

¹⁵ ICC-01-05-01-08-T-10-ENG, 13 January 2009, p. 4 lines 12-18.

¹⁶ Rule 121(3) and (4). The consequences of a breach are also severe – see Rule 121(8).

¹⁷ Defence Submissions, para. 32.

¹⁸ See also jurisprudence from ICTY e.g. *Prosecutor v Halilovic*, IT-01-48-PT, Decision On Defence Motion Pursuant To Rule 65 *ter* (K) Requesting The Pre-Trial Judge To Grant Relief From Waiver And To Grant Relief Pursuant To Rule 72, 1 April 2003; *Prosecutor v Halilovic*, Decision On Defence Motion For Particulars, 16 December 2003 (noting that “this Trial Chamber previously issued decisions denying the request from the

14. The Defence should have raised any concerns that it has promptly, to allow them to be resolved prior to the confirmation hearing. The Defence should not be permitted to undermine the basis for the confirmation hearing after it has already commenced. In this case, there can be no excuse for the Defence only filing this Challenge half-way through the Confirmation Hearing. The Defence has had the DCC in substantially the same form since 1 October 2008, i.e. for three and a half months.¹⁹ This provided ample time for the Defence to raise, and for the Chamber and the parties to resolve, any concerns over the form of the DCC and its subsequently amended version well in advance of the confirmation hearing.²⁰ The Defence's failure to raise any concerns that it had with the form of the ADCC in a timely manner, and in any event no later than 8 January 2009, is inexcusable in the present case.

15. Although the Defence cites Article 61(6)(a) of the Rome Statute ("Statute") as the legal basis for their challenge,²¹ this does not apply. That provision allows the Defence to object to the substance of the charges presented by the Prosecution during the confirmation hearing. In contrast, the time-limits for any alteration to the charges – the necessary implication of a challenge to their form – is strictly prescribed in the Statute and Rules.²² This requirement and the overarching interest of all participants is a foundation for the confirmation hearing. The Prosecution therefore submits in

Defence to grant relief from its failure to timely bring a preliminary motion alleging defects in the form of indictment" and that "there are other avenues for seeking additional particulars, besides through a motion [...] alleging defects in the form of indictment, and that the Trial Chambers of the International Tribunal have endorsed the use of a motion for particulars, where the indictment is not so vague as to be defective on its face, but an accused needs more information to prepare for trial").

¹⁹ The Prosecution notes that the DCC and its Amended version are substantially the same. In the Amended DCC, the Prosecution added evidence relating to a murder from Witness 0087. This information can be found in para. 50 of the Amended DCC.

²⁰ In the *Katanga* case the Single Judge found that as a result of the advanced filing by the Prosecution of the DCC, "the Defence [...] is in a position to seek its amendment even prior to the initiation of the hearing" (ICC-01/04-01/07-648, 25 June 2008, para. 10).

²¹ Defence Challenge, para. 8.

²² See Article 61(4) and Rules 121(3), (4) and (8).

this context that Article 61(6)(a) of the Statute cannot be read to provide an additional right to challenge the form of the charges once the hearing has already commenced.

16. In light of the foregoing, the Prosecution submits that the Defence Challenge should be rejected *in limine* as out of time, in accordance with the Chamber's oral ruling of 13 January 2009.

The Defence Challenge is factually and legally unfounded

17. In the alternative, even if the Chamber considers that the Defence Challenge was properly filed, the Prosecution submits that the Amended DCC does not lack specificity. A particular paragraph in the ADCC should not be read in isolation but rather must be considered in the context of the other paragraphs of the ADCC.²³ In addition, according to the practice before this Court, the DCC "is to be read in conjunction with the Prosecution's List of Evidence".²⁴ In this case, the ADCC should also be read in the context of the detailed Analysis Charts that the Prosecution prepared and provided to the Defence and the Chamber pursuant to the instructions of the Chamber.²⁵

18. A charging document is required to plead the material facts upon which the Prosecution relies.²⁶ The Prosecution has provided ample precision in relation to particular details, especially the identity of the victims and the precise dates of the events, and the conduct of the suspect who was a superior and provided the concept of operation and controlled the persons who personally committed the acts giving rise to the charges against the suspect.²⁷

²³ *Prosecutor v. Rutaganda*, ICTR-96-3-A, Appeals Judgement 26 May 2003, para. 304.

²⁴ See ICC-01/04-01/07-648, 25 June 2008, para. 21 (c). See also Defence Challenge, para. 11.

²⁵ ICC-01/05-01/08-55, 31 July 2008, paras. 68-69 and p. 22.

²⁶ *Prosecutor v. Kvočka*, IT-98-30/1-A, Appeal Judgement, 28 February 2005, para. 65.

²⁷ *Prosecutor v. Kvočka*, IT-98-30/1-A, Appeal Judgement, 28 February 2005, para. 65.

19. The Amended DCC fully satisfies the requirements of Articles 61(3) and 67(1)(a) and (b) of the Statute, as well as Rule 121(3) of the Rules and Regulation 52 of the Regulations of the Court (“Regulations”). The majority of the Defence criticisms levelled at the ADCC are of a piecemeal nature, alleging that particular paragraphs or phrases taken in isolation do not meet the criterion of sufficiency. This approach ignores the purpose of the ADCC, namely that the document as a whole puts the Defence on full notice with respect to the specific facts and allegations on which the Prosecution bases its case.

20. The ADCC interpreted as a whole must provide sufficient notice of the relevant material facts so as to ensure that the suspect is reasonably able to identify the crime and criminal conduct alleged in the charging document.²⁸ The Prosecution submits that the Defence has been given sufficient notice of the material facts upon which the Prosecution relies and that the current form of the ADCC does not materially impair Jean-Pierre Bemba’s ability to prepare a defence.²⁹ The Prosecution therefore submits that any of the Defence’s arguments pertaining to the lack of specificity of the ADCC which the Chamber considers on their merits should be dismissed.

(a) Paragraph 7 of the ADCC is not misleading

21. The statements in paragraph 7 of the ADCC are neither misleading nor prejudicial.³⁰ It presents a neutral and objective description of events. This paragraph is included in the ADCC to provide a chronological overview of events leading up to the arrest of Jean-Pierre Bemba, and to thus provide basic context for this

²⁸ *Prosecutor v. Rutaganda*, ICTR-96-3-A, Appeals Judgement, 26 May 2003, para. 303; see also *Hadzihasanovic et al.*, Decision on Motion of the Accused Hadzihasanovic Regarding the Prosecution’s Examination of Witnesses on Alleged Violations not Covered by the Indictment, 16 March 2004 p. 5..

²⁹ *Prosecutor v. Kvočka*, IT-98-30/1-A, Appeal Judgement, 28 February 2005, para. 35.

³⁰ Defence Challenge, paras. 13-16.

prosecution. The Defence does not provide any explanation of how, in its assertion, the factual statements contained in this paragraph are misleading.

(b) The allegations of rape in paragraphs 53-55 of the ADCC provide a sufficient basis

22. The Defence states that the allegations of rape in paragraphs 53-55 of the ADCC lack specificity. In particular, the Defence contends that: (i) it is impossible to have a fair trial on the basis of the vague allegations contained in paragraphs 53-55;³¹ (ii) it is doubtful whether the relevant rapes were committed within the time period covered by the amended charges (26 October to 31 December 2002);³² and (iii) the Prosecution has failed to identify the victims of the relevant crimes.³³

23. The Prosecution should provide “a reasonable range of dates”, within which the alleged crimes have been committed.³⁴ What is reasonable in these circumstances varies from case to case.³⁵ It will depend among others on the nature or scale of the crimes and the proximity of the suspect to the physical perpetration of the crimes.³⁶ The Prosecution submits that in the present case the time-frame of the alleged crimes meets the applicable requirements of specificity.

24. This is particularly the case if the time-frame is read in the context of the ADCC as a whole, including the List of Evidence and the detailed Analysis Charts. In this context, it is evident that the charges included in paragraphs 54 and 55 of the ADCC refer to the period from about 26 October 2002 until 31 December 2002. Paragraphs 54 and 55 refer to incidents of mass rapes of women from the Central African Republic (“CAR”) committed by Bemba’s *Mouvement de Libération du Congo*

³¹ Defence Challenge, para. 18.

³² Defence Challenge, paras. 19 and 21.

³³ Defence Challenge, para. 20.

³⁴ *Prosecutor v. Brdjanin*, IT-99-36-PT, Decision on Objections by Momir Talic to the Form of Amended Indictment, 20 February 2001, para. 22.

³⁵ *Prosecutor v. Ndindabahizi*, ICTR-01-71-A, Appeals Judgement, 16 January 2007, para. 20.

³⁶ *Prosecutor v. Kvočka*, IT-98-30/1-A, Appeal Judgement, 28 February 2005, para. 65; *Prosecutor v. Ntagerura*, ICTR-99-46-T, Judgement, 25 February 2004, paras. 34-35.

("MLC") troops on the territory of the CAR. The ADCC specifies that MLC troops entered the CAR on or about 26 October 2002.³⁷ The evidence adduced by the Prosecution to support its charges under paragraphs 54 and 55 indicates that the alleged incidents of mass rapes were committed by MLC soldiers after they had been deployed in the CAR.³⁸ Hence, the Prosecution's allegations under paragraphs 54 and 55 of the ADCC refer to the time period between on or about 26 October 2002 and 31 December 2002 and therefore fall within the time period relevant to the charging document.

25. The Prosecution further submits that it has provided the Defence with sufficient information regarding the identification of the victims. In cases of mass criminality, the sheer scale of the offences makes it impossible to identify every single victim.^{39 40} This is even more so, given the nature of this case, where it is not alleged that the suspect was present at the crime scene or physically committed any of the crimes.⁴¹ It is sufficient that the Prosecution provide some identification of the victims such as by reference to their category or position as a group.⁴² The Prosecution has done so by referring to the victims as civilian women from the CAR,⁴³ or as women from the CAR.⁴⁴ In the *Katanga* case, the Single Judge agreed

³⁷ See DCC, paras. 14 and 16.

³⁸ See Summary Statement of CAR-OTP-WWWW-0047, CAR-OTP-0030-0137.

³⁹ *Prosecutor v. Brima et al.*, SCSL-04-16-PT, Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment, para. 46.

⁴⁰ *Prosecution v. Karemera et al.*, ICTR-98-44-T, Decision on Oral Motion for a Bill of Particulars, 8 June 2006, para. 9; *Prosecutor v. Nelatlic et al.*, IT-98-34-A, Appeals Judgement, 3 May 2006, para. 24; *Prosecutor v. Kupreskic et al.*, IT-95-16-A, Appeal Judgement, 23 October 2001, para. 89. See also *Prosecutor v. Ntakirutimana*, ICTR-96-10; 2: ICTR-96-17, Appeal Judgement, 13 December 2004, in which the Appeals Chamber pointed out that "the inability to identify victims is reconcilable with the right of the accused to know the material facts of the charges against him because, in such circumstances, the accused's ability to prepare an effective defence to the charges does not depend on knowing the identity of every single alleged victim. The Appeals Chamber recalls that the situation is different, however, when the Prosecution seeks to prove that the accused personally killed or harmed a particular individual. [...] [T]he Prosecution cannot simultaneously argue that the accused killed a named individual yet claim that the 'sheer scale' of the crime made it impossible to identify that individual in the indictment. Quite the contrary: the Prosecution's obligation to provide particulars in the indictment is at its highest when it seeks to prove that the accused killed or harmed a specific individual" (paras 73-74).

⁴¹ See para. 18 above.

⁴² *Prosecutor v. Ntagerura et al.*, ICTR-99-46-T, Judgement and Sentence, 25 February 2004, para. 32.

⁴³ DCC, paras. 53 and 55.

with the Prosecution that it must not provide the Defence with the identity of all of the specific victims of the alleged crimes.⁴⁵

26. For the above reasons, the Prosecution submits that the Defence's arguments in relation to these paragraphs should be dismissed.

(c) The pleading of the form of participation in paragraph 57 of the ADCC is sufficiently precise

27. The Prosecution has clearly set out the mode of liability which it considers to be applicable in this case, namely co-perpetration pursuant to Article 25(3)(a) of the Statute, as required by Regulation 52 of the Regulations. The fact that the Prosecution has set out this mode of liability, which it considers best describes the liability of Jean-Pierre Bemba for the crimes charged, does not exclude the possibility that the facts of this case may also fulfil the requirements for another mode of liability. The Prosecution is conscious of the power vested in the Trial Chamber under Regulation 55 of the Regulations to modify the legal characterisation of the facts pleaded during the trial, under certain circumstances.

28. The Prosecution's recognition of this possibility does not diminish the clear and consistent notice that the ADCC has provided regarding the mode of liability, namely that "BEMBA is individually criminally responsible pursuant to Article 25(3)(a) [... for the crimes] he committed jointly with Patasse through MLC troops." The nature and cause of the charge against the suspect is clear.⁴⁶ The pleading of the mode of liability has not impaired the Defence's ability to understand the case against it or prepare its defence in any way.

⁴⁴ DCC, para. 54.

⁴⁵ ICC-01/04-01/07-648, 25 June 2008, para. 28. See also Prosecution's submissions in ICC-01/04-01/07-590, 13 June 2008, paras. 14-15.

⁴⁶ See e.g. *Prosecutor v Delalic et al*, IT-96-21-A, Appeal Judgement, 20 February 2001, para. 351

(d) *The reference to a statement of a physical perpetrator while committing the crimes in paragraph 78 of the ADCC is properly included*

29. The reference to statements of members of the MLC while they were committing crimes against the civilian population of the CAR is not mere “glib statement”, as the Defence asserts.⁴⁷ The content of the statement in question is a material fact from which the Chamber can, in combination with other facts pleaded, infer that Jean-Pierre Bemba intended that his troops would commit crimes in the implementation of the common plan, and also that he made an essential contribution to the implementation of that plan. This material fact alleges that MLC troops told rape victims that thanks to Jean-Pierre Bemba, they were lucky to have sexual intercourse with women from the CAR. The fact that this allegation is presented in form of a quote and linked directly with a witness statement does not substantially impair Jean-Pierre Bemba’s ability to prepare a defence. The request by the Defence to strike this reference must therefore fail.

30. The analogy which the Defence attempts to draw with the *Katanga* case is misplaced. That case dealt with alleged statements which were unrelated to the underlying facts or their legal characterisation, and occurred a substantial time after the period covered by the charges.⁴⁸ In contrast, the statements in this case were made during, and form part of, the commission of the crimes in question. Moreover, the allegation that the relevant witness statement is hearsay evidence and lacks probative value is irrelevant for the purposes of the Defence’s objections to the form of the charges. The question of relevance and probative value of evidence are to be determined by the *trier of fact* independently from any decision on the form of the charges.

⁴⁷ Defence Challenge, para. 25.

⁴⁸ ICC-01/04-01/07-648, 25 June 2008, para. 35. In addition, the alleged statements in issue in the *Katanga* case were primarily made by the suspects themselves, and were denied.

(e) The ADCC properly sets out the counts

31. The Prosecution is free to organize and structure its charges,⁴⁹ as long as those charges provide the suspect with detailed notice of the nature, cause and the content of the case against him and comply with the formal requirements under Regulation 52 of the Regulations. The Prosecution submits that there is no legal bar preventing the Prosecution from including in a particular count more than one incident constituting the crime base for that count. Given the massive scale of the offences which the international criminal court has to deal with, it is impracticable to charge each offence in a separate count.⁵⁰

32. The manner in which the Prosecution presented the charges in this case is entirely consistent with the manner in which charges have been presented and confirmed in previous cases before this Court.⁵¹

33. The present form of the ADCC does not prevent the Defence from challenging any of the underlying incidents. Nor does it prevent the trier of fact from entering a separate factual finding in relation to each individual underlying incident presented in the ADCC. Hence the Defence Challenge discloses no error in the ADCC in this regard, and it must be dismissed.

(f) Counts 1 to 5 and 8 sufficiently identify the victims of those crimes

34. In relation to its charges of rape, torture, outrages upon personal dignity and pillaging (Counts 1 to 5 and 8), the Prosecution provided the Defence with the identities of a number of individual victims and also refers to 35 unidentified

⁴⁹ *Prosecutor v. Haradinaj et al.*, IT-04-84-PT, Decision on Motion to Amend the Amended Indictment, 12 January 2007, para. 17.

⁵⁰ *Prosecutor v. Brdanin et al.*, IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 61.

⁵¹ See for instance ICC-01/04-01/07-649-Anx1A, 26 June 2008.

victims.⁵² However, the Prosecution does not limit its charges in Counts 1 to 5 and 8 to the incidents of which those particular persons have been victims. In paragraph 40 of the ADCC, the Prosecution alleges the number of victims to be about one thousand, a majority of whom were rape victims. The Prosecution further alleges about two hundred and fifty cases of pillaging. All these crimes constitute the basis for the charges in Counts 1 to 5 and 8.

35. Section VIII of the ADCC incorporates the factual allegations made in the entire document. The phrase “not limited to” is intended to refer to those incidents of rape, torture, outrages upon personal dignity and pillaging that the Prosecution has not expressly referred to in Section VIII of the ADCC, but where it has nevertheless provided the Defence with sufficient notice of the relevant material facts. The ADCC sets out these material facts including the identification by group of the alleged perpetrators (MLC troops), the identification by group of the victims (civilians from the CAR), specification of the time period within which the alleged crimes have been committed (26 October to 15 March 2003)⁵³ and specification of the place where the alleged crimes have been committed (the CAR). Notice of these material facts has been provided in the ADCC and by reference in the List of Evidence and the Analysis Charts to evidence disclosed to the Defence.⁵⁴

36. As stated above, the Prosecution does not allege that Jean-Pierre Bemba was present at the crime scene or physically committed any of the alleged crimes. Hence, the notice provided to the Defence regarding the crimes of which the Prosecution is unable to identify the victim is sufficient to meet the specificity requirements set out

⁵² The Prosecution notes that the Defence challenges the use of the term “but are not limited to” under Counts 1 to 5 and 8 of the DCC. As under Counts 1 to 5 and 8 the DCC lists all identified victims, as well as the 35 unidentified victims, the Prosecution understands that the inclusion of all those victims under the respective Counts is not challenged by the Defence.

⁵³ The Prosecution notes that with respect to particular crime incidents, the Defence has been put on notice of a more specific time-frame.

⁵⁴ See paras 34, 38, 39, 40, 41 and 46 of the Amended DCC, as well as the evidence referred to these paragraphs of the Amended DCC in the Amended List of Evidence and relevant evidence referred to in the Analysis Chart.

in Articles 61(3) and 67(1)(a) and (b) of the Statute, as well as Rule 121(3) of the Rules and Regulation 52 of the Regulations.

37. The analogy drawn by the Defence with the *Katanga* case in this context is also misplaced.⁵⁵ The challenged language in the ADCC does not lead to an open-ended list of conduct of the suspect by which he is alleged to have contributed to the commission of the crimes. Rather it refers to specific crimes, which have been identified to the extent possible and with sufficient detail so as to meet the applicable requirements of specificity. This way of pleading crimes in the context of mass criminality has been endorsed by the ICTY.⁵⁶

(g) The inclusion of one unidentified victim in counts 6 and 7 is not erroneous

38. As set out above, the degree of specificity required in the charges, and in particular when detailing the particular incidents and identifying the individual victims, will depend on the nature of the Prosecution's case. In this context, the Prosecution reiterates the arguments made above.⁵⁷

39. In this case, the Prosecution has not pleaded that Jean-Pierre Bemba was present during, or physically participated in, the crimes in question. The inclusion of one unidentified victim in Counts 6 and 7, in the circumstances of this case, does not prevent it from effectively preparing its case. The Defence has failed to demonstrate how this single unidentified murder victim renders it "impossible to have a fair trial on these vague allegations." The challenge to Counts 6 and 7 must fail.

⁵⁵ See Defence Challenge, para. 30.

⁵⁶ See for instance *Prosecutor v. Kvocka*, IT-98-30-PT, Decision on Defence Preliminary Motions on the Form of the Indictment, 12 April 1999, para. 26. In this case, the Chamber expressly accepted that not all victims are listed in the charging document; see also *Prosecutor v. Hadzihasanovic et al.*, IT-01-47-PT, Decision on Form of Indictment, 7 December 2001, paras. 41-43, where the Chamber found that the Prosecution must not list in the indictment all the towns and villages attacked or victims killed.

⁵⁷ See paras. 34-38 above.

Request

40. For the above referred reasons, the Prosecution respectfully requests that the Chamber dismiss the Defence Challenge *in limine*, as it is out of time and it is not permissible or appropriate to seek to amend the form of the ADCC after the commencement of the Confirmation Hearing.

41. In the alternative, if the Chamber considers that it is properly seized of the Defence Challenge, the Prosecution requests that for the reasons set out above the Chamber dismiss the Defence Challenge in its entirety. The ADCC properly and sufficiently sets out the charges against Jean-Pierre Bemba, and complies with all of the relevant statutory requirements. Jean-Pierre Bemba has been able to effectively prepare and present his defence on the basis of these charges.



Luis Moreno-Ocampo, Prosecutor

Dated this 30th Day of January 2009

At The Hague, The Netherlands