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

Date: 30 March 2009

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova (Presiding Judge)
Judge Hans-Peter Kaul
Judge Fumiko Saiga

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

Public Document
**Prosecution's Submission of Amended Document Containing the Charges,
Amended List of Evidence and Amended In-Depth Analysis Chart of
Incriminatory Evidence
with
Under Seal, *Ex Parte* Prosecution Only Annexes 1A, 1B, 1C, 1D, 1E
and
Confidential, Prosecution and Defence Only Annexes 2A, 2B, 2C, 2D, 2E
and
Public Annexes 3, 4 and 5**

Source: Office of the Prosecutor

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

The Office of the Prosecutor
[2 names maximum]

Counsel for the Defence
Mr Nkwebe Liriss
Mr Karim A.A. Khan
Mr Aimé Kilolo-Musamba
Mr Pierre Legros

Legal Representatives of Victims
Ms Marie Edith Douzima-Lawson

Legal Representatives of Applicants
[1 name per team maximum]

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**
Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**
[2 names maximum]

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The Office of the Prosecutor ("Prosecution") submits, in appended annexes to this document, an amended Document Containing the Charges against Jean-Pierre Bemba ("Amended DCC"), an amended List of Evidence ("Amended List of Evidence") and the related In-Depth Analysis Chart of Incriminatory Evidence ("Amended Analysis Chart")¹. These annexes are submitted in response to the "Decision Adjourning the Hearing pursuant to Article 61(7)(c)(ii) of the Rome Statute"² issued by the Pre-Trial Chamber (the "Chamber") on 3 March 2009, and pursuant to Articles 61(7)(c)(ii) of the Rome Statute (the "Statute") as well as Regulation 52 of the Regulations of the Court (the "Regulations").

II. Procedural History

2. On 19 November 2008 the Prosecution filed the "Prosecution's Communication of Amended Document Containing the Charges and Amended List of Evidence pursuant to the Third Decision on the Prosecutor's Requests for Redactions and Related Request for the Regulation of Contacts of Jean-Pierre Bemba Gombo"³. In the appended DCC of 19 November 2008, the Prosecution charged Jean-Pierre Bemba with crimes

¹ The annexes appended to this document are the following: Annexes 1A to 1E (*ex parte*, available to the Prosecution only): 1A: Unredacted Amended DCC (English); 1B: Unredacted Amended DCC (unofficial French translation); 1C: Unredacted Amended List of Evidence (English); 1D: Unredacted Amended List of Evidence (unofficial French translation); 1E: Unredacted Amended Analysis Chart (English); Annexes 2A to 2E (confidential, available to Prosecution and Defence only): 2A: Redacted Amended DCC (English); 2B: Redacted Amended DCC (unofficial French translation); 2C: Redacted Amended List of Evidence (English); 2D: Redacted Amended List of Evidence (unofficial French translation); 2E: Redacted Amended Analysis Chart (English); Annex 3: Public Redacted version of the Amended DCC (English); Annex 4: Structure of Amended Analysis Chart; Annex 5: List of Authorities (Jurisprudence and Legislation).

² ICC-01/05-01/08-388.

³ ICC-01/05-01/08-264 with annexes.

against humanity and war crimes under Article 25(3)(a) of the Statute, without excluding any other applicable mode of liability⁴.

3. From 12 to 15 January 2009, during the Confirmation of Charges Hearing in the case against Jean-Pierre Bemba, the parties made their presentations, *inter alia*, on the mode of liability included in the Amended DCC.
4. On 26 January 2009, the Defence⁵, the victims' legal representatives⁶ and the Prosecution⁷ filed supplementary written submissions on the evidence presented in the Confirmation Hearing after having been granted leave by the Chamber on 15 January 2009 to file such submissions⁸.
5. On 3 March 2009, the Chamber adjourned the hearing based, *inter alia*, on the finding that the evidence submitted appears to establish a different crime within the jurisdiction of the Court in accordance with Article 61(7)(ii) of the Statute⁹. In its decision, the Chamber requested the Prosecution to consider submitting to the Chamber no later than 30 March 2009 an Amended DCC addressing Article 28 of the Statute as possible mode of criminal liability and its related analysis chart on the basis of the evidence already submitted to the Chamber¹⁰.
6. In response to the Chamber's request, the Prosecution hereby submits an Amended DCC, Amended List of Evidence and the related Amended

⁴ ICC-01/05-01/08-264-Conf-AnxA, para. 57. The Prosecution has filed previous versions of the DCC on 1 October (ICC-01/05-01/08-129-Conf-Anx2A) and 17 October 2008 (ICC-01/05-01/08-169-Anx3A) containing the same charges.

⁵ ICC-01/05-01/08-379-Corr.

⁶ ICC-01/05-01/08-376; ICC-01/05-01/08-380-Conf.

⁷ ICC-01/05-01/08-377.

⁸ ICC-01/05-01/08-T-12-CONF-ENG ET, p. 141, lines 9-15.

⁹ ICC-01/05-01/08-388, p. 3.

¹⁰ ICC-01/05-01/08-388, p. 19.

Analysis Chart, charging Jean-Pierre Bemba primarily pursuant to Article 25(3)(a) of the Statute and alternatively pursuant to Article 28 of the Statute.

III. Request for the Receipt of Certain Annexes as *Ex Parte* – Prosecution Only and Certain Other Annexes as Confidential – Prosecution and Defence Only

7. The Prosecution requests that Annexes 1A-1E, appended to this document, be received by the Chamber as “*Ex Parte* – Prosecution Only” as these annexes contain identifying information of witnesses and victims for whom the Chamber has granted protection. The Prosecution also requests that the appended Annexes 2A-2E be received by the Chamber as “Confidential – Prosecution and Defence Only” as they contain identifying information of witnesses and victims who are known to the Defence but not to the public. These requests are made to protect victims and witnesses pursuant to Article 68(1) of the Statute and Rule 81(4) of the Rules of Procedure and Evidence (the “Rules”).

IV. Amendments addressing Article 28 of the Statute

8. The Prosecution recalls the Chamber’s assessment that the evidence submitted *appears* to establish a different crime within the jurisdiction of the Court in accordance with article 61(7)(c)(ii) of the Statute.¹¹ The Chamber clarified that this assessment was without any predetermination on the possible application of the form of participation invoked by the Prosecution, observing moreover that the Prosecution had stated that it did not exclude any other applicable mode of liability beside article 25 of the Statute.¹² In particular, in connection with certain portions of the evidence and arguments submitted, the Chamber concluded: “[a]lthough the parties and participants

¹¹ ICC-01/05-01/08-388, paras 1, 17-18.

¹² ICC-01/05-01/08-388, para. 41, 46.

referred implicitly or explicitly to article 28 of the Statute in their oral presentations and some of them in their written submissions, the Chamber still believes that the idea of a different form of participation pursuant to article 28 of the Statute was not sufficiently addressed.”¹³

9. On the basis of the above, the Prosecution has included in the DCC the liability of a superior pursuant to article 28 of the Statute as an alternative to, not in substitution of, the liability of Jean-Pierre Bemba as a principal to the crime pursuant to article 25(3)(a) of the Statute. Accordingly, should the Chamber conclude that portions of the evidence submitted supports a finding of substantial grounds to believe that Jean-Pierre Bemba committed the crime as a principal while certain portions of the evidence equally establish substantial grounds for his liability as a superior, both modes of responsibility should be confirmed in the alternative.
10. The Prosecution submits that the charges should preserve the choice for a future Trial Chamber by preserving its flexibility to render a determinative ruling on the appropriate form of participation having heard in full all of the evidence pertaining to the case.¹⁴
11. Thus, in response to the Chamber’s request to consider amending the DCC addressing Article 28 of the Statute, the Prosecution charges Jean-Pierre Bemba primarily pursuant to Article 25(3)(a) of the Statute, for the crimes against humanity and war crimes referred to in Articles 7 and 8 of the Statute. Alternatively, Jean-Pierre Bemba is criminally responsible by virtue of his superior-subordinate relationship with MLC troops pursuant to Article 28(a), or in the alternative Article 28(b), of the Statute, for crimes against humanity and war crimes, as described in the appended DCC and

¹³ ICC-01/05-01/08-388, paras 41-48.

¹⁴ See *Separate and partly dissenting opinion of Judge Ušacka*, ICC-02/05-01/09-3, para. 62 and fn 135.

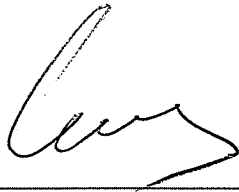
enumerated in Counts 1 to 8, which were committed by MLC troops under his effective command, or authority, and control as a result of his failure to exercise control properly over these forces.

12. For the Chamber's convenience, the Prosecution refers the Chamber regarding all modifications and amendments of the Amended DCC to paragraphs 5 (last sentence), 15 (last sentence), 57-58 and 86-134 describing the modes of criminal liability.

V. Amended In-Depth Analysis Chart

13. Furthermore, the Prosecution submits an Amended Analysis Chart in Annexes 1E and 2E, reflecting the Prosecution's amendments to the DCC relating to Jean-Pierre Bemba's criminal responsibility pursuant to Article 28 of the Statute. The chart analyses incriminatory evidence disclosed by the Prosecution prior to the Confirmation Hearing and contained in the Prosecution's Amended List of Evidence.
14. The Prosecution has analysed incriminatory evidence by linking the facts to the constituent elements of the charged crimes, including the contextual elements of those crimes, and to the constituent elements of the mode of liability with which the suspect is charged. Where a specific fact applies to more than one element, the Prosecution has linked this fact to several issues in an effort to be precise. Therefore, in many cases, a specific fact is reflected in different sections of the chart.
15. The Prosecution also submits as Annex 4 a clean sample of the amended chart that has been used to perform the analysis, including the amendments relating to the mode of liability. Sections I and II of the Amended Analysis Chart (Crimes against Humanity and War Crimes) follow the structure of the

In-Depth Analysis Chart previously filed by the Prosecution¹⁵, whereas Section III (Mode of Liability) includes a new sub-section for the analysis of evidence relating to Article 28 of the Statute.



Luis Moreno-Ocampo, Prosecutor

Dated this 30th day of March 2009

At The Hague, The Netherlands

¹⁵ ICC-01/05-01/08-278 with annexes.