

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 September 2010

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

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

Public Redacted Document

Prosecution's Response to "*Requête de la Défence aux fins d'une ordonnance visant à corriger et à déposer à nouveau le Deuxième Document Amendé contenant les 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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I. Introduction

1. On 22 September 2010, the Defence filed its *“Requête de la Défence aux fins d’une ordonnance visant à corriger et à déposer à nouveau le Deuxième Document Amendé contenant les Charges”* (“Defence Application”)¹ in which it requested the Trial Chamber III (“Chamber”) to order the Office of the Prosecutor (“Prosecution”) to file another Revised Second Amended Document Containing the Charges (“DCC”) and modify three paragraphs of it.

2. Pursuant to Regulation 24(1) of the Regulations of the Court and the oral ruling of the Chamber issued at the last status conference,² the Prosecution hereby files its response partially opposing the Defence Application.

3. The Defence Application challenges three paragraphs in the Revised Second Amended DCC.³ On the merits, the Prosecution agrees that one paragraph in the Revised Second Amended DCC contains a factual error and will correct it. As to the remaining two complaints, the Prosecution submits that the Revised Second Amended DCC complies with the Pre-Trial Chamber (“PTC”)’s *“Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”* (“Confirmation Decision”)⁴ and this Chamber’s *“Decision on the Defence application for corrections to the Document Containing the Charges and for the prosecution to file a Second Amended Document Containing the Charges”* (“DCC Decision”).⁵ The factual allegation in one paragraph is within the scope of the charges, as confirmed in the Confirmation Decision, as it is supported by

¹ ICC-01/05-01/08-894-Red, *Requête de la Défence aux fins d’une ordonnance visant à corriger et à déposer à nouveau le Deuxième Document Amendé contenant les Charges*, 22 September 2010.

² ICC-01/05-01/08-T-25-CONF-ENG, 24 September 2010, page 21, lines 10 to 13.

³ ICC-01/05-01/08-856, Prosecution’s submission of the revised second amended document containing the charges, 18 August 2010.

⁴ ICC-01/05-01/08-424, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute on the charges of the Prosecutor against Jean-Pierre Bemba Gombo, 15 June 2009.

⁵ ICC-01/05-01/08-836, Decision on the defence application for corrections to the Document Containing the Charges and for the prosecution to file a Second Amended Document Containing the Charges, 20 July 2010.

evidence relied upon by the PTC,⁶ whilst the allegation in the other paragraph was explicitly considered by the Chamber and dismissed.⁷ Accordingly, those challenges should be rejected.

II. Procedural background

4. On 15 June 2009, PTC II issued the Confirmation Decision,⁸ confirming most of the charges against the Accused. It declined to confirm three charges on the grounds that they are cumulative of other charges or that the Accused lacked sufficient pre-confirmation notice of their basis.⁹ The case was then transferred to the Chamber.

5. On 4 November 2009 the Prosecution filed a Second Amended DCC, following an order by the Chamber,¹⁰ to reflect the charges as confirmed by PTC II.¹¹

6. On 12 February 2010, the Defence filed its First Application contesting the Prosecution's Second Amended DCC.¹²

7. On 20 July 2010, the Chamber issued its DCC Decision,¹³ which partially granted the Defence request and ordered the Prosecution to file a revised DCC.

8. On 18 August 2010, the Prosecution filed its Revised Second Amended DCC in accordance with the DCC Decision.

⁶ See, for example, ICC-01/05-01/08-424, at paras. 466 to 468.

⁷ ICC-01/05-01/08-836, at para. 154.

⁸ ICC-01/05-01/08-424.

⁹ *Ibid*, at paras. 307, 311 and 312.

¹⁰ ICC-01/05-01/08-T-14-ENG, 7 October 2009, page 13, lines 5 to 12.

¹¹ ICC-01/05-01/08-593-Anx-Red, Prosecution's submission of the document containing the charges as confirmed by the Pre-Trial Chamber filed in accordance with the Chamber's order of 7 October 2009, 4 November 2009.

¹² ICC-01/05-01/08-694, Requête aux fins d'obtenir une décision ordonnant la correction et le dépôt du Second Document Amendé Contenant les Charges, 12 February 2010.

¹³ ICC-01/05-01/08-836.

9. On 22 September 2010, the Defence filed its Application to which the Prosecution's present submissions are directed.

III. Request for confidentiality

10. The Prosecution requests that this submission be received by the Chamber as Confidential, as it refers to witnesses who are known to the Defence but not the public.¹⁴

IV. Prosecution's submissions

A. Paragraph 69 of the Revised Second Amended DCC

11. Turning to the merits, the Defence Application argues in general terms that unless specifically confirmed by the PTC, the Prosecution's allegations are to be considered as rejected. The Defence further contends that - contrary to what is alleged in current paragraph 69 of the Revised Second Amended DCC - the Confirmation Decision did not accept or confirm specifically that the Accused had been involved in either strategic planning or field operations support or that he "retained control" through that planning or tactical support over the *Mouvement de Libération du Congo* ("MLC") troops in the Central African Republic ("CAR") as stated in paragraph 69.¹⁵

12. The Prosecution submits that the Defence's arguments are without merit. In its DCC Decision the Chamber, in order to assess whether the Second Amended DCC was in compliance with the Confirmation Decision, did not confine itself to the allegations specifically confirmed by the PTC. In a thorough analysis the Chamber

¹⁴ The Prosecution will file a redacted version of this document simultaneously.

¹⁵ ICC-01/05-01/08-894-Red, at para. 11.

went through the Second Amended DCC paragraph by paragraph and also took into account whether the allegations are supported by evidence, in particular witnesses' statements relied upon by the PTC in the Confirmation Decision. Contrary to the Defence's argument, the Chamber identified the allegations that modified or exceeded the scope of the charges in the Confirmation Decision, and instructed the Prosecution to take appropriate action to strike or modify the allegations to comply with the PTC's findings. The Prosecution notes that the sentence in paragraph 69 challenged by the Defence is not in the list of allegations to be either deleted or modified.

13. The Prosecution also disagrees with the Defence argument that the factual allegation in paragraph 69 - that the Accused was involved in strategic planning or tactical support or retained control by those means over the troops - was not confirmed specifically and therefore must be stricken from the charges. In fact, the allegation is supported in the evidence accepted and relied upon by the PTC regarding the Accused's *de facto* and *de jure* control over the MLC troops, including his decisions on the selection and deployment of MLC troops to the CAR, and redeployment of more MLC troops when required.¹⁶ This Chamber never further stated that specific factual statements in the charges that were not expressly confirmed by the PTC must be struck. Accordingly, the Defence argument is meritless.

B. Paragraph 71 of the Revised Second Amended DCC

14. The Defence further contends that - contrary to what is alleged in current paragraph 71 of the Revised Second Amended DCC - the Confirmation Decision does not substantiate the fact that [REDACTED] always requested or obtained prior

¹⁶ See, for example ICC-01/05-01/08-424, at paras. 466 to 468.

authorisation from his superiors in Gbadolite before executing operational instructions, to say nothing of any finding that he did so all the time.¹⁷

15. This Defence argument is without merit. The Chamber specifically addressed this factual allegation in paragraph 154 of its DCC Decision and explicitly dismissed the Defence challenge on the basis that the evidentiary findings of the PTC bring this allegation within the scope of the facts and circumstances relied upon in the Confirmation Decision.¹⁸ Paragraph 154 reads as follows: “In light of the findings of the PTC, the Chamber is of the view that the allegation in the first sentence of paragraph 73 [now para. 71 of the Revised DCC] is within the scope of facts and circumstances relied upon by the PTC in confirming the charges.”

C. Paragraph 79 of the Revised Second Amended DCC

16. As stated above, the Prosecution accepts the Defence argument concerning paragraph 79.¹⁹ The paragraph alleges that the Accused announced on *Radio France Internationale* (“RFI”) that he would take steps to punish soldiers who committed atrocities. Instead, RFI reported that the Accused had indicated that if his men had committed “atrocities, they would [have been] arrested and undergo[ne] trial under their Movement’s military laws”.²⁰ The Prosecution accordingly amends this paragraph as follows: *Radio France Internationale* (“RFI”) reported that during a telephone conversation they had had with BEMBA, he told them that if his MLC troops had perpetrated serious crimes against the CAR civilian population, they would have been arrested and tried under MLC’s military laws”. Because it would be more efficient to await a decision from the Chamber on the Defence Application,

¹⁷ ICC-01/05-01/08-894-Red, at para. 14.

¹⁸ ICC-01/05-01/08-836, at para. 154.

¹⁹ ICC-01/05-01/08-894-Red, at para. 18.

²⁰ ICC-01/05-01/08-424, at para. 470.

the Prosecution proposes that it not submit a corrected Revised Second Amended DCC, including this new paragraph, until the Chamber's decision is handed down.

V. Conclusion

17. For the above-explained reasons, the Prosecution agrees to make the amendment, noted previously, to paragraph 79 of the Revised Second Amended DCC. In all other respects, the Prosecution respectfully requests that the Chamber dismiss the Defence Application.



Luis Moreno-Ocampo, Prosecutor

Dated this 28th Day of September 2010

At The Hague, The Netherlands