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Date: 29 September 2010

TRIAL CHAMBER III

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

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

Public

**Legal Representative's Response to the Defence's Request for revision of the
Revised Second Amended Document Containing the Charges**

Source: Office of Public Counsel for Victims, as Legal Representative of Victims
a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08,
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a/0464/08, a/0465/08, a/0466/08, a/0467/08, a/0130/09, a/0131/09, a/0132/09, a/0133/09,
a/0134/09, a/0135/09, a/0136/09, a/0137/09, a/0138/09, a/0139/09, a/0141/09, a/0427/09,
a/0432/09, a/0511/08, a/0512/08, a/0513/08, a/0515/08, a/0516/08, a/0562/08, a/0563/08,
a/0564/08, a/0565/08, a/0566/08, a/0567/08, a/0568/08, a/0569/08, a/0570/08, a/0571/08,
a/0572/08, a/0651/09, a/0652/09 and a/0653/09

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

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Other

I. Procedural Background

1. On 4 November 2009, the Prosecution submitted its Document containing the Charges¹ as confirmed by Pre-Trial Chamber II².
2. On 12 February 2010, the Defence filed a Request for the revision of the said Document containing the Charges³.
3. On 20 July 2010, Trial Chamber III (the "Chamber") issued its Decision on the Defence's Application partially granting the Defence's Request and ordering the Prosecution to revise the Document containing the Charges according to its instructions⁴.
4. On 18 August 2010, the Prosecution filed its "Revised Second Amended Document Containing the Charges" (the "Revised Document")⁵.
5. On 22 September 2010, the Defence submitted a Request for the further revision of the said Revised Document⁶.

¹ See the "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", No. ICC-01/05-01/08-593 and No. ICC-01/05-01/08-593-Anx-Red, 4 November 2009.

² See 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" (Pre-Trial Chamber II), No. ICC-01/05-01/08-424, 15 June 2009.

³ See the "Requête aux fins d'obtenir une Décision ordonnant la correction et le dépôt du Second Document Amendé Contenant les Charges", No. ICC-01/05-01/08-694, 12 February 2010.

⁴ See the "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" (Trial Chamber III), No. ICC-01/05-01/08-836, 20 July 2010.

⁵ See the "Prosecution's Submission of the Revised Second Amended Document Containing the Charges", No. ICC-01/05-01/08-856-AnxA-Red, 18 August 2010.

⁶ See the "Requête de la Défense aux fins d'une ordonnance visant à corriger et à déposer à nouveau le Deuxième Document Amendé contenant les Charges", No. ICC-01/05-01/08-894-Red, 22 September 2010. Pursuant to Trial Chamber III's Oral Order dated 24 September 2010, access was finally granted to the legal representatives of victims to the original (confidential) version of this filing on 27 September 2010.

6. On 24 September 2010, in the course of a status conference, the Chamber issued an oral decision, granting the Legal Representatives of victims until 29 September 2010 to respond to the Defence's Request⁷.

7. Following the instruction of the Chamber and in accordance with Regulation 24(2) of the Regulations of the Court, the Principal Counsel of the Office of Public Counsel for Victims (the "OPCV"), acting as Legal Representative of victims a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08, a/0467/08, a/0130/09, a/0131/09, a/0132/09, a/0133/09, a/0134/09, a/0135/09, a/0136/09, a/0137/09, a/0138/09, a/0139/09, a/0141/09, a/0427/09, a/0432/09, a/0511/08, a/0512/08, a/0513/08, a/0515/08, a/0516/08, a/0562/08, a/0563/08, a/0564/08, a/0565/08, a/0566/08, a/0567/08, a/0568/08, a/0569/08, a/0570/08, a/0571/08, a/0572/08, a/0651/09, a/0652/09 and a/0653/09 (the "Legal Representative")⁸, respectfully submits her Response to the Defense's Request.

II. Response to the Defence's Request

8. Primarily, the Legal Representative submits that the Document containing the Charges as amended by the Prosecution on 18 August 2010 does fulfill the criteria set by the Rome Statute⁹ and the Regulations of the Court¹⁰, as well as by the decisions issued by Trial Chambers I¹¹ and II¹² in the *Lubanga* and *Katanga/Ngudjolo Chui* cases,

⁷ See the transcripts of the Status Conference held by Trial Chamber III on 24 September 2010, No. ICC-01/05-01/08-T-25-CONF-ENG CT.

⁸ See the "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants" (Trial Chamber III), No. ICC-01/08-01/05-699, 22 February 2010; see also the "Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings" (Trial Chamber III), No. ICC-01/05-01/08-807 and No. ICC-01/05-01/08-807-Conf-Exp-AnxA, 30 June 2010.

⁹ See Articles 61, 64(8)(a) and 67(1) of the Rome Statute.

¹⁰ See Regulation 52 of the Regulations of the Court.

¹¹ See the "Order for the prosecution to file an amended document containing the charges" (Trial Chamber I), No. ICC-01/04-01/06-1548, 9 December 2008.

respectively. In this respect, the Legal Representative underlines that as drafted, the Revised Document ensures *“that there is a complete understanding of the “statement of the facts” underlying the charges confirmed by the Pre-Trial Chamber (...) [and] enable a fair and effective presentation of the evidence (as part of a fair and expeditious trial in accordance with Article 64 of the Statute).”*¹² Moreover, the Legal Representative submits that the Revised Document respects the framework of the case as set by Pre-Trial Chamber II¹⁴ and by Trial Chamber III¹⁵.

9. Secondly, in order to specifically address the issues raised by the Defence in its Request, the Legal Representative responds to each of them consecutively.

10. With regard to the first issue raised by the Defence, the Legal Representative reads, contrary to the Defence, that Pre-Trial Chamber II did find that M. Bemba was involved in the strategic organization of its troops and had control over them. Indeed, not only did the Chamber found that *“there is sufficient evidence to establish substantial grounds to believe that Mr Jean-Pierre Bemba, at all times relevant to the charges, effectively acted as a military commander and had effective authority and control over the MLC troops who committed the crimes against humanity of murder and rape and the war crimes of murder, rape and pillaging in the CAR from on or about 26 October 2002 to 15 March 2003”* but also that the *“MLC – a non-governmental force - was a hierarchically organized group over which Mr Jean-Pierre Bemba had effective authority and control”*¹⁶. Moreover, the Chamber also underlined that *“albeit the number of contacts Mr Jean-Pierre Bemba might have had with the MLC Commander of Operations in the CAR, the latter was still in contact with his hierarchy in Gbadolite during the 2002-2003 intervention in the*

¹² See the “Decision on the Filing of a Summary of the Charges by the Prosecutor” (Trial Chamber II), No. ICC-01/04-01/07-1547-tENG, 21 October 2009.

¹³ See *supra* notes 7 and 8.

¹⁴ See *supra* note 2.

¹⁵ See *supra* note 4. See also the Legal Representative’s arguments contained in its “Réponse du Représentant légal des victimes a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08 et a/0467/08 à la Requête de la Défense concernant le Document amendé contenant les charges”, No. ICC-01/05-01/08-719, 8 March 2010.

¹⁶ See *supra* note 2, par. 446.

CAR”¹⁷. Drawing its conclusion “*from the fact that the MLC Commander of Operations in the CAR referred to his hierarchy in Gbadolite for disciplinary matters, logistical purposes, and for manpower reinforcements [, the Chamber was also] of the opinion that the three points referred to by the Defence demonstrate that the MLC troops remained under the control of MLC headquarters in Gbadolite*”¹⁸. Regarding strategic decisions, the Chamber finally also pointed out that “*the disclosed evidence demonstrates that Mr Jean-Pierre Bemba took the decision to withdraw his troops from the CAR and signed a joint “communiqué” with Mr Ange-Félix Patassé in January 2003 announcing the gradual withdrawal of the MLC troops from the CAR*”¹⁹. More specifically, the Chamber already found “*that Mr Bemba retained control of MLC forces through his direct involvement in strategic planning and field operations [and], that he provided operational support*”, stating that “*Mr Bemba’s direct involvement in strategic planning and operations, is within the scope of the facts and circumstances relied on in confirming the charges, namely that Mr Bemba had effective control over the military as Commander-in-Chief.*”²⁰

11. The Legal Representative also wishes to recall that the Chamber has previously specifically decided to address the Accused’s responsibility under the light of article 28(a) of the Rome Statute. Indeed, the Legal Representative submits that the mode of criminal responsibility addressed in said article precisely involves that the person accused, being in a position of military commander, is responsible for the crimes committed by the forces under his effective command or authority and control²¹.

12. Regarding the second issue raised by the Defence, the Legal Representative notes the finding of the Chamber in its previous decision on a similar request,

¹⁷ *Idem* par. 474.

¹⁸ *Ibidem* par. 476.

¹⁹ *Idem* par. 477.

²⁰ See *supra* note 4, paras. 147-148.

²¹ See Article 28 of the Rome Statute. See also the “Decision Adjourning the Hearing pursuant to Article 61(7)(c)(ii) of the Rome Statute” (Pre-Trial Chamber III), No. ICC-01/05-01/08-388, 4 March 2010.

according to which “Mr Bemba as President of the MLC and Commander-in-Chief of the ALC had effective authority and control over his forces.”²² As the Chamber pointed out, “the Pre-Trial Chamber noted that the evidence showed that the brigade and battalion commanders were all appointed by Mr Bemba. It also concluded that at all relevant times, Mr Bemba served as the de jure Commander-in-Chief of the ALC and had de facto ultimate control over MLC commanders.”²³ Moreover, the Legal Representative refers to the Chamber’s previous finding according to which ““in compliance with the hierarchical structure of the MLC, the MLC Commander of Operations in the CAR contacted the Chief of Staff of the MLC, who in turn reported to Mr Bemba, the Commander-in-Chief of the MLC.” The Chamber also noted that “the MLC Commander of Operations in the CAR referred to his hierarchy in Gbadolite for disciplinary matters, logistical purposes, and for manpower reinforcements”. The Pre-Trial Chamber found that “the MLC Commander of Operations was contacted at least once” by Mr Bemba, and that throughout the 2002-2003 intervention, Mr Bemba had the ability to contact his Commander of Operations in the CAR.””²⁴

13. On the third issue raised by the Defence with regard to the content of the RFI Press Release, the Legal Representative understands the Defence’s concerns, but nevertheless thinks that the issue at stake corresponds to a *nuance* that would not at this stage affect the case nor infringe upon the rights of the Accused to a fair and impartial trial.

14. Indeed, the Legal Representative notes that the Defence’s Request with regard to this issue is based on the *nuance* that M. Bemba would not have personally and directly made a declaration during the course of the interview but would have made such declaration during a conversation over the phone with the journalist author of

²² See *supra* note 4, par. 66.

²³ *Idem*, par. 70.

²⁴ *Ibidem*, par. 154. In this regard, the Legal Representative notes the Response filed by the Prosecution to the Defence’s Request, sustaining the same point. See the “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””, No. ICC-01/05-01/08-907-Red, 28 September 2010, par. 15.

the press release concerned. Although the Legal Representative admits that Trial Chamber III previously instructed the Prosecution to amend such allegation in order to accurately reflect the precise finding of Pre-Trial Chamber II, she also notes that the Prosecution indeed has revised and changed its allegation in its last version of the Revised Document²⁵. Be that as it may, the Legal Representative observes that the words referred to in the press release are attributed to the Accused himself, whether he allegedly made such a declaration during the course of the interview or during a phone conversation with the same journalist author of the press release. Furthermore, the Legal Representative cannot but note that Pre-Trial Chamber II itself took the press release into consideration in its assessment of the charges brought by the Prosecution against the Accused²⁶, an element which is not debated by the Defence in its Request.

15. Finally, the Legal representative notes the suggestion made by the Prosecution in its Response²⁷ and would like to draw the attention of the Chamber on a different reading she has of the evidence quoted. Indeed, notwithstanding the argument presented above, the Legal Representative notes that the exact terms used by the concerned media are the following: *“Le chef du mouvement rebelle congolais affirme avoir donné des instructions et pris des sanctions contre tous les soldats reconnus coupables d’exactions.”* (RFI Press Release²⁸ - suggesting that the accused was aware of the commission of such crimes and already took measures in response); *“si mes hommes ont commis des exactions, ils seront arrêtés et traduits devant la justice militaire de notre mouvement”* (RFI Broadcast²⁹ - suggesting that if it the accused was to be informed of the commission of such crimes, he will take measures in response); *“If my men have*

²⁵ See *supra* note 1, par. 81 and *supra* note 5, par. 79.

²⁶ See *supra* note 2, par. 470.

²⁷ See *supra* note 24, par. 16.

²⁸ See the RFI Press Release dated 5 November 2002 and untitled “Peur sur Bangui”. This document is referenced as EVD-P-02104 (CAR-OTP-0005-0133). We underline.

²⁹ See the RFI audio broadcast referenced as EVD-P-02162 at track 06 from 06:22 onwards, cited in 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” (Pre-Trial Chamber II), No. ICC-01/05-01/08-424, 15 June 2009, footnote 650. We underline.

committed atrocities, they will be arrested and undergo trial under our movement's military laws." (BBC Press Release³⁰). If the Prosecution was to amend its Document containing the charges using the wording proposed - *"(...) 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"* – suggesting that the accused rather said that its troops did not commit such crimes otherwise they would have undergone appropriate sanctions - the accuracy of the evidence quoted and on which Pre-Trial Chamber based its assessment would be completely truncated, insofar as such a wording would not reflect the accused's alleged statement to the journalist³¹.

³⁰ See the BBC Press Release untitled "Government to investigate 'executions of Chadians'" and dated 5 November 2002. This document is referenced as EVD-P-00019 (CAR-OTP-0004-0668). It does constitute the "Text of report by Radio France Internationale on 4 November". The words used in this Press Release correspond to the exact translation of the French words used in the RFI Broadcast.

³¹ The Legal Representative also recalls that in the Decision confirming the charges, Pre-Trial Chamber II also underlined that "[b]ased on the conclusions of the report submitted by the commission of enquiry on 28 November 2002, seven soldiers were charged with pillaging before the Military Court in Gbadolite previously established on 25 March 2002." See *supra* note 2, par. 470.

FOR THE ABOVE-MENTIONED REASONS, the Legal Representative of victims a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08, a/0467/08, a/0130/09, a/0131/09, a/0132/09, a/0133/09, a/0134/09, a/0135/09, a/0136/09, a/0137/09, a/0138/09, a/0139/09, a/0141/09, a/0427/09, a/0432/09, a/0511/08, a/0512/08, a/0513/08, a/0515/08, a/0516/08, a/0562/08, a/0563/08, a/0564/08, a/0565/08, a/0566/08, a/0567/08, a/0568/08, a/0569/08, a/0570/08, a/0571/08, a/0572/08, a/0651/09, a/0652/09 and a/0653/09 respectfully requests the Chamber to reject the Defence's Request.



Paolina Massidda
Principal Counsel

Dated this 29 September 2010

At The Hague, The Netherlands