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No.: ICC-01/05-01/08
Date: 18 October 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

**Prosecution's response to the defence application for leave to appeal the
"Decision on the defence application to obtain a ruling to correct the revised
Second Amended Document containing the Charges"**

Source: Office of the Prosecutor

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

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Other

Background

1. On 20 July 2010, the Chamber rendered its “Decision on the Defence application for corrections to the Document Containing the Charges”,¹ in which it ordered the Prosecution to partially revise the Second Amended Document Containing the Charges.²
2. On 18 August 2010, the Prosecution filed the “Revised Second Amended Document Containing the Charges” (“Revised Second Amended DCC”).³
3. On 22 September 2010, the Defence filed an application to correct the Revised Second Amended DCC (“Defence Application”),⁴ arguing that the Prosecution has not complied with the instructions of the Chamber.
4. On 8 October 2010, the Chamber rejected the Defence Application *in limine*, having found that it was filed outside the time-limit referred to in Regulation 34 (“Decision”).⁵ In addition, the Trial Chamber also re-iterated its prior decision that “the Confirmation Decision is the authoritative document for all trial proceedings” and found that “to the extent that there is any disparity between the charges contained in the revised Second Amended DCC and the charges as confirmed by the PTC and contained in the Confirmation Decision, the latter document takes precedence”.⁶
5. On 13 October 2010, the Defence filed an application for leave to appeal the Decision (“Defence ALA”).⁷ The only issue for which leave to appeal is sought is whether the Chamber erred in law when considering the Defence Application as a response pursuant to Regulation 34 and finding that it has been filed too late (“Issue”).⁸ The Defence specified that the Issue concerns a procedural question regarding the proper application of Regulation 34.⁹

¹ ICC-01/05-01/08-836.

² ICC-01/05-01/08-836, para. 280.

³ ICC-01/05-01/08-856 And Conf-Annexes A and B.

⁴ ICC-01/05-01/08-894-Red.

⁵ ICC-01/05-01/08-935; see in particular paras. 7-9.

⁶ Decision, paras. 11-12.

⁷ ICC-01/05-01/08-949.

⁸ Defence ALA, para. 4.

⁹ Defence ALA, para. 5.

Arguments

6. The Prosecution submits that the Defence ALA should be rejected since the issue for which leave to appeal is sought does not fulfil the applicable statutory requirements.
7. It need to be stressed from the outset that the Issue does not concern whether the charges included in the Revised Second Amended DCC are correctly pleaded, but whether the Chamber correctly interpreted the scope of Regulation 34 when deciding to dismiss the Defence Application *in limine*. But since the Trial Chamber also found separately that the Accused will not be prejudiced by the alleged pleading errors in the document, revisiting the Chamber's interpretation of Regulation 34 would not change the Chamber's decision on the merits.
8. None of the limbs of Article 82(1)(d) are met in the instant case. As to the first requirement, the burden is on the Defence to demonstrate whether and how an issue that it wishes to have certified on appeal impacts on the fairness of the proceedings. However, in its Application, the Defence does not advance a single argument demonstrating that the Issue would significantly affect the fair conduct of the proceedings. In fact, the Defence does not even expressly state that the Issue *does* affect the fairness of the proceedings. It simply requests the Trial Chamber to be granted leave to appeal pursuant to Article 82(1)(d).¹⁰
9. Irrespective of the Defence's failure to meet its burden, the Prosecution submits that the Chamber's treatment of the Defence Application as a response pursuant to Regulation 34 and its consequential dismissal causes no prejudice to the Defence. The Defence has been on notice of all the facts that form the basis of the trial; it received the original DCC on 19 November 2008,¹¹ and the Pre-Trial Chamber issued its confirmation decision on 15 June 2009.¹² Consequently it has had sufficient time to prepare for its case. The mere fact that the Defence disagrees with some of the factual allegations included in the Revised Second Amended DCC cannot, in and of itself, demonstrate any impact on the fairness of

¹⁰ Defence ALA, paras. 4 and 8.

¹¹ ICC-01/05-01/08-264.

¹² ICC-01/05-01/08-424.

the proceedings. In addition, the Prosecution notes that the Accused can only be convicted of “the facts and circumstances described in the charges and any amendments to the charges”.¹³

10. The Defence argues that the Issue has an impact on the expeditious conduct of the proceedings, as it is forced to use its limited resources to defend itself against facts that are not included in the decision on the confirmation of charges.¹⁴ Although such an impact may exist in theory, the Defence has not provided any information to demonstrate that the Issue is likely to have such an impact in practice,¹⁵ much less that this impact would be significant as required by Article 82(1)(d).

11. The Defence also does not provide any argument to suggest that the Issue has an impact on the outcome of the trial.

12. Finally, the Defence does not provide any argument why the immediate resolution of the Issue by the Appeals Chamber may materially advance the Proceedings. In the absence of a concrete showing, it cannot be assumed that the interpretation of the scope of Regulation 34 by the Appeals Chamber will have this effect, simply because it contributed to the Chamber’s decision to reject the Defence Application.

¹³ Article 74(2).

¹⁴ Defence ALA, paras. 6-7.

¹⁵ Trial Chamber I found that an issue did not meet the requirements for leave to appeal “[i]n the absence of any supporting particulars”, because “purely general complaints [were] advanced” (ICC-01/04-01/06-2463, para. 31).

Relief sought

13. For the reasons set out above, the Prosecution requests that the Trial Chamber reject the Defence Application.



Luis Moreno-Ocampo
Prosecutor

Dated this 18th day of October 2010

At The Hague, The Netherlands