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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 Version

**Defence Reply to the Prosecution Response to the Defence Motion to Admit
Materials pursuant to the Chamber's Third Order (ICC- 01/05-01/08-2565)**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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A. SUBMISSIONS

(i) Witness D04-53

1. **Expert Report¹:** The Defence rejects the Prosecution's unfounded allegation that the impugned CAR documents are "forgeries" or "very likely forgeries"² for the reasons set out in the *Defence Response to the Prosecutions Motion to Exclude the CAR Documents*.³ The Prosecution's assertion that the expert report of Witness D04-53 is inadmissible because he considered these contemporaneous records in the making his report is, similarly, without merit. The Prosecution's position presupposes two findings of fact by the Trial Chamber; firstly that the CAR documents are not genuine, and secondly that the review of these CAR documents as part of the materials considered in the preparation of his report undermines Witness D04-53's conclusions in their entirety. As such, the Prosecution is attempting to usurp the Chamber's role in making self-serving assertions and on questions that can only be decided by the Chamber itself.

2. In any event, the Prosecution failed to raise timely objections to either the expert report or the CAR documents during the testimony of Witness D04-53. As such, the Prosecution never put its theory to Witness D04-53 that the CAR documents were forgeries, or that these documents undermined the witness' conclusions in whole or in part, thus depriving him of any opportunity to revise his conclusions if necessary. Nor has the Prosecution sought to recall Witness D04-53 to determine the effect, if any, its theories about the CAR documents would have on his conclusions or expert report. In such circumstances, the Prosecution's objection to the admission of the report is procedurally impermissible and manifestly unfair to both the witness, and the accused. Moreover, acceptance of the Prosecution's

¹ CAR-D04-0003-0342

² CAR-D04-0003- 0128; CAR-D04-0003- 0129; CAR-D04-0003- 0130; CAR-D04-0003- 0131; CAR-D04-0003- 0132; CAR-D04-0003- 0133; CAR-D04-0003- 0134; CAR-D04-0003- 0136; CAR-D04-0003- 0137; CAR-D04-0003- 0138; CAR-D04-0003- 0139; CAR-D04-0003- 0140; CAR-D04-0003- 0141.

³ ICC-01/05-01/08-2326-Conf

arguments would establish a precedent whereby expert reports are inadmissible on the basis that one party challenges the authenticity or credibility of the underlying material, leaving the Chamber's earlier decisions open to review. On this point, the Defence notes, for example, that the Prosecution linguistic expert Witness 222 based his expert reports on the witness statements of witnesses such as "[REDACTED]", and "[REDACTED]", and "[REDACTED]", the credibility of whom was vigorously challenged by the Defence during the course of the proceedings.⁴

3. **CAR Documents:**⁵ The Defence rejects the Prosecution's unfounded allegation that the impugned CAR documents are "forgeries" or "very likely forgeries"⁶ for the reasons set out in the *Defence Response to the Prosecutions Motion to Exclude the CAR Documents*.⁷ As far as the Prosecution's arguments are based on the "failure" of the Defence to provide originals of the documents in question for "forensic testing", these arguments ignore completely the established practice of the Chamber in the present case.⁸

(ii) Witness D04-60

4. **Map⁹:** The Prosecution's extensive reliance on the use of Lingala as a basis for identifying the perpetrators of crimes, and the amount of time dedicated by the Prosecution to attempting to establish this theory, including calling a linguistic expert, undermine any argument that the origins of this language are irrelevant to

⁴ CAR-OTP-0064-0305, at CAR-OTP-0064-0319.

⁵ CAR-D04-0003-0128; CAR-D04-0003-0129; CAR-D04-0003-0130; CAR-D04-0003-0131; CAR-D04-0003-0132; CAR-D04-0003-0133; CAR-D04-0003-0134; CAR-D04-0003-0136; CAR-D04-0003-0137; CAR-D04-0003-0138; CAR-D04-0003-0139; CAR-D04-0003-0140; CAR-D04-0003-0141.

⁶ CAR-D04-0003-0128; CAR-D04-0003-0129; CAR-D04-0003-0130; CAR-D04-0003-0131; CAR-D04-0003-0132; CAR-D04-0003-0133; CAR-D04-0003-0134; CAR-D04-0003-0136; CAR-D04-0003-0137; CAR-D04-0003-0138; CAR-D04-0003-0139; CAR-D04-0003-0140; CAR-D04-0003-0141.

⁷ ICC-01/05-01/08-2326-Conf

⁸First Decision on the Prosecution and Defence Requests for the admission of evidence, ICC-01/05-01/08- 2012-Conf.

⁹ The reference number of the document as originally appearing on the Defence List of documents for Witness CAR-D04-PPPP-0060, is CAR-OTP-0066-0122. The signed version for which the Defence now seeks admission is CAR-ICC-0001-0080.

the case. The Defence notes that the Chamber has admitted the expert report of Prosecution Witness 222,¹⁰ who writes at length about the origins and spread of both Lingala and Swahili (despite his self-professed expertise being in Sango).¹¹

(iii) Witness D04-59

5. **Expert Report¹²:** The Defence disputes the Prosecution's challenge to admissibility of the expert report Witness D-60 on the same grounds as outlined in paragraphs 1 and 2 above.

6. **Lusaka Accord,¹³ CEN-SAD Protocol,¹⁴ Pacte d'Assistance Mutuelle;¹⁵ Communiqué de Presse de l'ONU SC/7700;¹⁶ Communiqué de Presse de l'ONU SG/SM 8637¹⁷:**

7. The Prosecution objects to the admission of documents demonstrating the legitimacy of the MLC's intervention in the Central African Republic alleging that "the issue of whether the MLC's intervention in the CAR was "legitimate" has no bearing on questions related to the Accused's criminal responsibility for crimes against humanity and war crimes committed by his forces."¹⁸ This position is irreconcilable with the case as charged by the Prosecution in the *Revised Second Amended Document Containing the Charges*, where the Prosecution alleges, *inter alia*, that:¹⁹

¹⁰ ICC-01/05-01/08- 2012-Conf, para. 36.

¹¹ CAR-OTP-0064-0305.

¹² CAR-D04-0003-0398

¹³ CAR-D04-0003-0527

¹⁴ CAR-DEF-0001-0102

¹⁵ CAR-DEF-0001-0096

¹⁶ CAR-DEF-0001-0324

¹⁷ CAR-DEF-0001-0326

¹⁸ ICC-01/05-01/08-2616-Conf-AnxA

¹⁹ ICC-01/05-01/08-856-Conf-AnxA, para. 14.

In exchange for the provision of MLC troops, BEMBA received the benefit of securing the CAR as the MLC's strategic rear base, and deterring potential threats of attacks on the MLC from the DRC Government, in particular through the CAR route.

8. The various international conventions, covenants and agreements which not only legitimized but required the MLC to act to protect a neighbouring democratic regime from violent overthrow are therefore directly relevant to rebut allegations in the indictment against the accused. The Prosecution has also elicited evidence concerning the alleged motivation behind the MLC's intervention in the CAR during the course of the case, which the Defence is entitled to rebut through contrary evidence. Moreover, the question of the motivation behind the sending of MLC troops to the CAR is clearly a live issue for the Chamber itself. During the testimony of Witness D04-21, the Presiding Judge questioned the witness about whether Mr. Bemba received any "benefits" in exchange for having sent the troops in question. The Presiding Judge also read an extract of testimony from a Prosecution witness who had alleged that Mr. Bemba had been motivated by "ego" to send troops to assist President Patassé.²⁰ As such, no argument can be made that contemporaneous material evidence which provides an alternate explanation for the sending of MLC troops is irrelevant to the case. These documents are also relevant not only to the legitimacy of MLC intervention in the Central African Republic, but to the legitimacy of the MLC as an organisation and the status it was afforded during the events in question. The Defence also recalls that the events that form the basis of the charges against Mr. Bemba did not occur in a geo-political vacuum. The documents in question are relevant to providing important background and context, and are evidence of the system of pan-African defense in place at the time.

²⁰ ICC-01/05-01/08-T-306-CONF-ENG ET 12-04-2013 pp.75-77.

9. **Constitution de la République Centre Africaine:**²¹ The Chamber has previously refused to admit publically available legislation on the grounds that it may take judicial notice of such facts.²² The Defence notes, however, that the Chamber has not yet taken judicial notice of the content of the above constitution, and accordingly reiterates its request for its admission in the case.

(iv) **Witness D04-48**

10. **Letter Jean-Pierre Bemba to Général Cissé, SRSG of the UN; Response of General Cissé, SRSG of the UN to Jean-Pierre Bemba:**²³ The Defence withdraws its request for admission of these documents on the basis that they were admitted into evidence at the request of the Prosecution in its first bar table motion.²⁴

(v) **Witness D04-19**

11. **Report of Military Operation:**²⁵ The Prosecution has provided no basis for its position that the report should not be admitted for the truth of its contents. The Defence notes that the Prosecution's own witness CAR-OTP-PPPP-0065 confirmed the authenticity of this document.²⁶ Absent any basis being proffered, the Defence reiterates its request for its admission. The document has been properly proved by oral evidence, and its contents remain substantially unchallenged.

The whole respectfully submitted.

²¹ CAR-DEF-0001-0128

²² ICC-01/05- 01/08-2012- Conf, para. 81

²³ CAR-OTP-0017-0363; CAR-OTP-0033-0209.

²⁴ ICC-01/05-01/08-2299-Conf, para. 52.

²⁵ CAR-DEF-0002-0567.

²⁶ ICC-01/05-01/08-T-170-CONF-ENG ET 05-10-2011 p.58



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Done on the 20th of May 2013
At The Hague, The Netherlands