

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 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 Document

**Decision on the defence application to obtain a ruling to correct the revised
Second Amended Document containing the Charges**

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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor
Ms Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Mr Nkwebe Liriss
Mr Aimé Kilolo-Musamba

Legal Representatives of the Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants

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**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* hereby delivers the following Decision on the defence application to obtain a ruling to correct the revised Second Amended Document containing the Charges (“Application to correct the revised Second Amended DCC” or “Application”).¹

I. Background and Submissions

1. On 20 July 2010, the Chamber rendered its “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”² (“20 July 2010 Decision” or “Decision”) partially granting the defence application and ordering the Office of the Prosecutor (“prosecution”) to revise the Second Amended Document Containing the Charges (“Second Amended DCC”) according to the instructions in its Decision and to re-file the document by 19 August 2010.³
2. Pursuant to the Chamber’s order in its 20 July 2010 Decision, the prosecution duly filed a revised Second Amended DCC on 18 August 2010.⁴
3. On 22 September 2010, the defence filed its Application to correct the revised Second Amended DCC in which it submits that the prosecution has not complied with the Chamber’s 20 July 2010 Decision and requests that the prosecution is ordered to re-file its revised Second Amended DCC in

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

² 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, ICC-01/05-01/08-836.

³ ICC-01/05-01/08-836, paragraph 280.

⁴ Prosecution’s Submission of the Revised Second Amended Document Containing the Charges, 18 August 2010, ICC-01/05/01/08-856 and Conf-Annexes A and B and public redacted version of Annex A, ICC-01/05-01/08-856-Red-AnxA. The confidential Annex B corresponds to the unofficial translation into French of the Revised Second Amended Document Containing the Charges, Traduction de la version révisée du Deuxième Document modifié de notification des charges, 18 August 2010, ICC-01/05-01/08-Conf-AnxB.

accordance with the Chamber's conclusions.⁵ The defence details the paragraphs in which it submits that the prosecution has not followed the Chamber's orders and suggests revisions to these paragraphs.⁶

4. The prosecution filed a response partially opposing the defence Application on 28 September 2010 ("Response").⁷ The prosecution concurs that paragraph 79 in the revised Second Amended DCC contains a factual error which it agrees to correct.⁸ Save for that concession, 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") and the Trial Chamber's Decision.⁹ The prosecution makes comprehensive submissions on each of the contentions raised by the defence in its Application with specific reference to the paragraphs concerned.¹⁰

5. On 29 September 2010, the legal representative filed a response to the defence Application, submitting that the revised Second Amended DCC does fulfill the criteria set out in the Rome Statute and the Regulations of the Court, as well as the jurisprudence from Trial Chambers I and II and it also respects the framework of the case as set out by PTC II and Trial Chamber III.¹¹ The legal representative sets out reasons for its contentions against the defence

⁵ ICC-01/05-01/08-894-Red, paragraph 8.

⁶ ICC-01/05-01/08-894-Red, paragraphs 9 – 18.

⁷ Prosecution's Response to "Requête de la Défense aux fins d'une ordonnance visant à corriger et à déposer à nouveau le Deuxième Document Amendé contenant les Charges", 28 September 2010, ICC-01/05-01/08-907-Conf and public redacted version, ICC-01/05-01/08-907-Red. See oral instruction for the filing of responses on 24 September 2010: ICC-01/05-01/08-T-25-CONF-ENG ET, pages 20-21.

⁸ ICC-01/05-01/08-907-Red, paragraphs 3 and 16.

⁹ ICC-01/05-01/08-907-Red, paragraph 3.

¹⁰ ICC-01/05-01/08-907-Red, paragraphs 11 – 16.

¹¹ Legal Representative's Response to the Defence's Request for revision of the Revised Second Amended Document Containing the Charges, 29 September 2010, ICC-01/05-01/08-910, paragraph 8.

Application on an issue by issue basis and requests that the Chamber rejects the Application.¹²

II. Relevant Provisions

6. In accordance with Article 21(1) of the Statute, the Trial Chamber has considered the following provisions:

Regulation 33 of the Regulations of the Court **Calculation of time limits**

1. The calculation of time for the purposes of any proceedings before the Court shall be made as follows:
 - a) Days shall be understood as calendar days. When the last day of a time period falls upon a Saturday, a Sunday or an official holiday of the Court, the next working day of the Court shall be considered the last day;
 - b) Days shall only be understood as 'full days', the day of notification of a document or the day of filing of a response or a reply by a participant to that document not being taken into consideration for the calculation of the time period available to file a document.

[...]

Regulation 34 of the Regulations of the Court **Time limits for documents filed with the Court**

[...]

- b) A response referred to regulation 24 shall be filed within 21 days of notification in accordance with regulation 31 of the document to which the participant is responding;

[...]

III. Analysis and Conclusion

7. Pursuant to Regulation 34 of the Regulations of the Court, a response shall be filed within 21 days of notification of the document to which the participant is responding. The prosecution filed its submission of the revised Second

¹² ICC-01/05-01/08-910, paragraphs 8 – 15.

Amended DCC on 18 August 2010 and so any response thereto should have been filed by 10 September 2010 (as 9 September was an official ICC holiday).

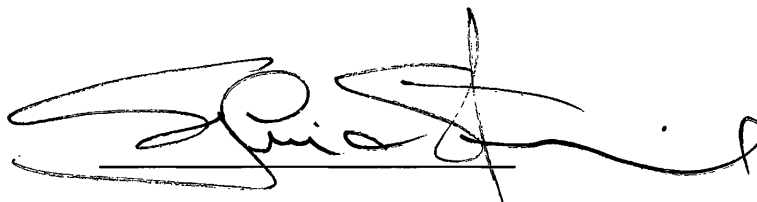
8. The defence Application was actually filed on 22 September 2010, 12 days outside the time-limit referred to in Regulation 34 of the Regulations of the Court. There was also no application made by the defence to extend the prescribed time-limit.
9. In light of the above, the Chamber therefore rejects the defence Application *in limine*.
10. Since a non-contentious factual error contained in paragraph 79 of the revised Second Amended DCC has been brought to the attention of the Chamber, and given that the prosecution has agreed to rectify this mistake, the prosecution is hereby requested to make the correction as stipulated in paragraph 16 of its Response.
11. For the sake of clarity, and without rehearsing the purpose of having a DCC as provided by the Rome Statute Framework since this is addressed at length in the Chamber's Decision, it is nonetheless appropriate to re-iterate that:

As decided by Trial Chamber II the Confirmation Decision is the authoritative document for all trial proceedings. Thus, whenever the prosecution refers to the charges against the accused, this should be by way of the exact language of the Confirmation Decision, and with specific reference to the relevant paragraph.¹³

12. 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, in keeping with the jurisprudence of the Court.

¹³ ICC-01/05-01/08-836, paragraph 37.

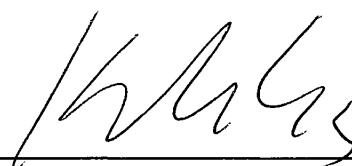
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 8 October 2010

At The Hague, The Netherlands