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Situation Case	Central African Republic 01/05-01/08 The Prosecutor vs. Jean-Pierre Bemba Gombo	<i>Mouvement pour la libération du Congo</i> (Movement for the Liberation of the Congo) (MLC).
Hearing Chamber	Trial Proceedings Trial Chamber III: Judge Sylvia Steiner (Presiding Judge), Judge Joyce Aluoch and Judge Kuniko Ozaki	Participants: 1713 victims represented by Legal Representatives for Victims: Ms. Marie Edith Douzima-Lawson and Mr. Assingambi Zarambaud
Parties:	OTP: Ms. Bensouda, Ms. Kneuer and team Defence: Mr. Nkwebe Richard Liriss, Mr. Aimé Kilolo-Musamba and team	Alleged crimes: <u>Jean-Pierre Bemba Gombo</u> is allegedly responsible, as military commander, of: <ul style="list-style-type: none">○ Crimes against humanity: Murder and rape.○ War crimes: Murder, rape and pillaging.

Jean-Pierre Bemba Gombo: born in 1962 in Bokada, Equateur Province; National of the DRC; Alleged President and Commander-in-chief of the

Start of Trial: 22 November 2010

This week one witness testified:

Witness 219, Mr. Daniel Ishmael Opande (36th OTP witness), was the former commander of the UN peacekeeping missions in West Africa and Liberia. Mr. Opande drafted expert military report at the request of the OTP.

5 December 2011 - No hearing

6 December 2011

The Prosecution commenced its examination-in-chief of witness 219, Mr. Opande.

During examination-in-chief by the Prosecution, the witness provided insight on:

- **His own career as a military commander:** The witness testified that, as a commander of international peacekeeping forces, he was deployed in various African countries including Namibia, Sierra Leone, Mozambique, Angola and Kenya and that he interacted with various rebel forces including those in Liberia and Namibia.
- **Previous testimonies:** Mr. Opande stated that he testified as expert witness in other international criminal proceedings, including in the Abu Garda case before the ICC and the RUF case before the SCSL¹.
- **The expert military report:** Mr. Opande was contacted by the OTP in order to draft an expert military report on the chain of command and control within the MLC² forces deployed in CAR. In preparing the draft, the witness read

¹ SCSL: Special Court for Sierra Leone.

² MLC: *Mouvement pour la Libération du Congo* (Movement for the Liberation of the Congo). This is an informal and unofficial summary of the trial hearings. Whilst every effort has been made to ensure accuracy, the CICC is not responsible for any omissions or inaccuracies contained within the following summary, which is provided for informational purposes only. Please do not forward without prior consultation with CICC staff.

meticulously all the documents received relying upon his extended experience as military commander.

- **Common structure within guerrilla forces:** The witness stated that, based on his experience, the guerrilla forces tend to have the same structure, ranks and division of labour and command of the official military structures.
- **Responsibility in case of misconduct:** In case of a violation, whether the commander of a battalion has not been able to act, it is responsibility of its superior in chief to hold those responsible accountable. A leadership which is keen to enforce discipline represents a much 'healthier' example than a relaxed leadership. Allegedly any misconduct could effectively and promptly be investigated and prosecuted in accordance to the chain of command in place, and in relation to the disciplinary instruments that every military system possesses.
- **The role of the chief of staff:** In a traditional military structure the chief of staff is not a commander and cannot take any kind of decision. The chief of staff should give advices to the commander on which different courses of action can be taken with regard to a particular situation. Mr. Opande explained that he does not know whether a chief of staff can take decisions in a guerrilla structure. He gave a detailed explanation of the duties held by the logistic, operational and intelligence staff within the military forces.
- **Guidelines for deployment of troops located abroad:** The commander of a force dislocated abroad should clearly define the mandate of the mission, the actions which are allowed, the actions which are prohibited, the chain of coordination with other allies forces eventually present in the territory and the means of communication he intended to use.
- **Mr. Bemba as political and military supreme leader of the MLC:** The witness confirmed the statements made in his report that Mr. Bemba was both the political and military leader of the MLC during 2002 and 2003, and that the militia obeyed strictly to his instructions.
- **Sustained command and control:** The expression 'sustained command and control' means that such chain of command within an armed force can be maintained during all phases of an operation without been removed. The witness then stated that, according to the information available to him, Mr. Bemba was continuously giving instructions to his subordinates on the field and he was able to use a refined system of communication to exchange information and have a constant clear picture of what was happening in CAR. The distance is immaterial in the case a commander has the effective means to be constantly in control of his troops deployed elsewhere.
- **The importance of clear orders:** Mr. Opande stated that it is of absolute importance that a commander issues its orders in a manner that all its subordinates are able to clearly understand. If there are any limitations for the troops' actions, they should all be clearly laid down in the orders.
- **Protection of civilians:** The commander's orders should always be clear on the fact that soldiers are responsible for the protection of civilians. Allegedly soldiers should be made aware of the disciplinary consequences in case of an offence against a civilian. The witness concluded asserting that in his experience as a military commander he had always provided his soldiers with a code of conduct, with training and simulations in order to prepare them in dealing with civilians.

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- **Staff officers within the MLC:** Mr. Opande stated that the MLC headquarters had a staff organization which was well developed in terms of logistic and operational and intelligence matters, but that he had no available information of whether such 'staff organization' was present at the 'battalion level'.
- **Logistics:** The MLC forces were deployed in CAR with a fair amount of logistic support.

7 December 2011

The Prosecution continued its examination-in-chief of witness 219, Mr. Opande. The LRV asked questions and the Defence commenced its cross-examination.

During examination-in-chief by the Prosecution, Mr. Opande provided insight on:

- **Control over Bangui³:** In the fighting which erupted in CAR, the possibility of taking control over Bangui represented both a strong moral incentive and a strategic move in order to prevent the enemy from controlling an important source of resources and supplies.
- **Means of communication:** A well developed system of means of communication is paramount for an effective functioning of the chain of command and control during war time.
- **Situation Reports:** The reports which are usually produced by military organizations during an armed conflict are called 'situation reports' (*Sit-Rep*). It is of crucial importance that such reports should be drafted on a daily basis, both in peace and war time, and should be transmitted, following the chain of command, from the lowest to the highest commander within a military organization. Allegedly such reports should cover logistic, operational and intelligence matters and they should describe both the situation of the proper forces and of the enemy. Mr. Opande then stated that, according to his experience, also rebel armed forces often make use such documents but that it depends from each commander in chief how refined such reports are.
- **Misconduct by a commander:** Every misconduct or contradictory behaviour showed by a commander or by a commission officer have a devastating effect on the consequent behaviour of their troops.
- **Removal and promotion of military officers:** Mr. Opande stated that, according to his experience, a supreme commander of a military force has normally all the channels available to remove a lower commander. The witness then alleged that a commander should promote an officer after a period of training and course only if that officer has demonstrated excellent records in terms of discipline and respect of the orders.

During the questioning by Maitre Zarambaud, Legal Representative for Victims, Mr. Opande provided insight on:

- **Control over the MLC troops in CAR:** Mr. Opande alleged that, according to the information available to him, Mr. Bemba had effective control over his troops in CAR through the intermediation of his field commanders and thanks to a developed system of radio and phone communication.
- **Misconduct by MLC troops:** Mr. Opande asserted that, from the documents he reviewed, there are numerous allegations that MLC troops deployed in CAR had

³ Bangui: is the capital city of the Central African Republic.

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committed various offences against civilians such as murder, rape, burning of houses and pillaging. The witness then claimed that he had no evidence of any steps taken by field commanders in order to investigate and prosecute such offences. Mr. Opande finally stated that, according to his experience, field commanders should have reported such allegations to their commander in chief in Gbadolite (DRC), namely Mr. Bemba.

During its questioning by Maitre Douzima-Lawson, Legal Representative for Victims, Mr. Opande provided insight on:

- **Deploying troops in another country:** Mr. Opande stated that, according to his experience, in order to effectively deploy troops for a mission abroad a commander should select his best troops; he should lay down a clear and comprehensive plan and conclude a memorandum of understanding with the hosting country. A wise commander should also adequately train their troops and, once the troops are deployed, ensure that they receive a sustained support from the base.
- **Absence of consultation and insufficient support to MLC troops:** Mr. Opande confirmed that, from the evidence he reviewed, the MLC troops deployed in CAR had not sufficient logistic means and support for a 'sustained abroad operation'. The witness then claimed that the absence of consultation between relevant actors was one of the main causes of the difficulties encountered by the MLC forces in CAR and their subsequent widespread misconducts.

During cross-examination by the Defence, the witness provided insight on:

- **The expert report:** Mr. Opande stated that the OTP provided him with all the documents for his expert report. Mr. Opande asked the OTP whether it was possible to interview MLC commanders or officers on the ground but the OTP answered that it was not necessary. Mr. Opande then explained that the OTP requested him to submit a supplementary report in order to clarify some issues concerning the chain of command and control within MLC forces. Mr. Opande denied that he had received from the OTP any document containing orders from Mr. Bemba.

8 December 2011 - The Defence continued its cross-examination of the witness.

- **Reliability of the witness report:** Mr. Opande stated that he asked to interview MLC officers on the field only in order to confirm the chain of command and control within MLC forces which was already clear in his mind. The information he had received were sufficient for him to draw a comprehensive report. The victims' statements he had received from the OTP played only a secondary role in his evaluation.
- **Information given to the ICC by State Prosecutor in CAR:** Mr. Opande stated that he was not aware of all the information that the State Prosecutor of Bangui has given to the ICC about field operations and intelligence exchange occurred during the relevant period⁴.
- **MLC structure in the territory of the DRC:** Mr. Opande stated that when he prepared the diagram concerning the MLC hierarchical structure in 2002 and

⁴ Relevant period: it is the period which is relevant for this case: October 2002 to March 2003. This is an informal and unofficial summary of the trial hearings. Whilst every effort has been made to ensure accuracy, the CICC is not responsible for any omissions or inaccuracies contained within the following summary, which is provided for informational purposes only. Please do not forward without prior consultation with CICC staff.

2003, he was looking only at the structure with regard to CAR operations and not at the hierarchical structure in the DRC as this point was not included in the instructions he had received from the OTP.

- **Changing in the chain of command of MLC forces:** Mr. Opande stated that the chain of command existing before the effective deployment of the MLC troops in CAR did not remain the same once that force started to operate on the ground. Mr. Opande was confronted with numerous statements of military officers and ICC witnesses on the chain of command and control existing between the MLC battalions deployed in CAR and the FACA forces. In particular, Mr. Opande stated that at the time he was drafting the Report he was not aware of 'Mr. Leonard' and 'Mr. Marcel'⁵ statements according to which when Mr. Bemba arrived in Bangui he stated that his troops were placed under the authority and control of the CAR authorities and that General Mustafa⁶ was receiving orders from the FACA head of staff. The witness then confirmed that at the time he was writing the report he was not aware of any orders given by President Patassé to General Mustafa and that all such information would have been of relevance in his evaluation of the chain of command and control within the MLC.
- **Order to deploy forces in CAR:** Mr. Opande testified that, according to the information available to him, the order to deploy MLC soldiers in CAR came directly from Mr. Bemba himself.

09 December 2011

The Defence concluded its cross-examination of witness 219. The prosecution and the Defence asked then final questions.

During its cross-examination by the Defence, witness 219 provided testimony on:

- **Military officers statements to the OTP:** The witness testified that at the time he was drafting his report he was not aware of Mr. Marcel's statement to the OTP according to which General Mustafa was sending daily reports to his superior, FACA General Masi nor that he was aware of Colonel Lengbe's statement to the Court concerning the chain of command within the CAR military forces.
- **Joint military operation in Bangui:** The witness stated he was not aware of a specific joint military operation organized by the FACA forces with the support of MLC in order to drive out Colonel Bozize forces from Bangui. The witness then claimed that at the time he was preparing the report he was not aware of Colonel Lengbe's and Mr. Bernard statements according to which the decision to conduct the operation was taken by the CAR Ministry of Defence and implemented by the FACA head of staff while the MLC brigades movements were directed by the FACA Centre of Operations in Bangui. The witness confirmed that such information would have been relevant in the preparation of his report.
- **Colonel Lengbe's statements:** Mr. Opande explained that he was not aware of Colonel Lengbe's diagram on the chain of command within the FACA and neither the MLC armed forces nor he was aware of Lengbe's prior statements on the functioning of the operational command unit as the colonel testified after the witness' report was drafted.

⁵ Mr. Leonard, Mr. Marcel, Mr. Bernard are the pseudonyms of military officers who testified before the Court under protective measures.

⁶ General Mustafa: General Commander of the MLC troops in CAR.

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During its re-examination by the Prosecutor, Mr. Opande testified on:

- **Reliability of his report:** Mr. Opande asserted that, although he would have preferred to interview military officers active on the field, this element cannot change the assessment he has done in his report that he considers reliable. The witness then stated that even after his examination and cross-examination he still stands by his report and the conclusions written on it.
- **Supplementary report:** The witness confirmed that, after having issued the first report, he was contacted by the OTP in order to clarify some issues related to the chain of command and control within the MLC forces deployed in CAR. Allegedly it was for this reason that he had drafted the supplementary report which, in his view, does not contain anything new but represents only a clarification of previous findings.

During final questioning by the Defence, witness 219 provided insight on:

- **Reliability of his report:** The witness claimed that, even after having heard all the additional information provided to him by the Defence, he still reposes that he had sufficient information to come out with a fair and well-balanced assessment of how the military operations in CAR unfolded. Allegedly all the information provided by the Defence would not have changed the conclusions he drew in the report.

At the end of the hearing the Prosecution requested the Chamber to submit the 'witness expert military report' as evidence. The Defence did not object in principle to the Prosecution' request.

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