



Original: **French**

No.: **ICC-01/05-01/08**
Date: **7 November 2008**

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Mauro Politi

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF**

THE PROSECUTOR v. Jean-Pierre BEMBA GOMBO

Public Document

**Request for Transmission of Pleadings in the Language Chosen by the Suspect,
namely French**

Source: Mr Jean-Pierre Bemba Gombo's Defence Team

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

The Office of the Prosecutor

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Facts and Background

1. On 13 April 2006, the Central African Court of Cassation referred the situation in the Central African Republic to the International Criminal Court.
2. On 22 May 2007, the Prosecutor of the International Criminal Court announced the opening of an investigation into crimes in the Central African Republic.
3. Pursuant to an international warrant of arrest issued on 23 May 2008 by Pre-Trial Chamber III of the International Criminal Court, the Office of the Prosecutor at the International Criminal Court addressed to the State of Belgium a request for the arrest and surrender of Mr Jean-Pierre Bemba Gombo.
4. On 25 May 2008, a Belgian judge issued a warrant of arrest for Mr Jean-Pierre Bemba Gombo.
5. On 3 July 2007, Pre-Trial Chamber I issued a decision scheduling Mr Jean-Pierre Bemba's initial appearance hearing for 4 July 2008.¹
6. At his first appearance on 4 July 2008, Mr Jean-Pierre Bemba Gombo opted for the use of the French language in the conduct of all proceedings concerning him before the Court.
7. On 29 July 2009, Mr Jean-Pierre Bemba appointed Mr Nkwebe Liriss as Lead Counsel of his Defence team.²
8. On 30 July 2008, Mr Nkwebe Liriss accepted his appointment as Lead Counsel of Mr Jean-Pierre Bemba Gombo's Defence team.³

¹ ICC-01/05-01/08-35-tENG – Original: [French](#).

² ICC-01/05-01/08-54-Anx1, Original: [French](#).

9. The working language of the Lead Counsel for the Defence is French. The same applies to one of the Associate Counsel, Mr Aimé Kilolo.

10. Considering that Mr Jean-Pierre Bemba Gombo chose the French language for the conduct of proceedings concerning him before the Court and that the working language of his Lead Counsel and one of his Associate Counsel is French, the Defence team of Mr Jean-Pierre Bemba Gombo respectfully requests Pre-Trial Chamber III that all pleadings transmitted to the Defence be translated into French and that all time limits relating to pleadings transmitted in a language other than the one chosen by Mr Bemba should take effect from the date the French version is received.

Legal Basis

11. The Defence notes that article 50(3) of the Statute states that:

[a]t the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.

12. Furthermore, pursuant to article 67 (1) of the Statute:

In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused **fully understands and speaks** [...]; (f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings of or documents presented to the Court are not in a language **which the accused fully understands and speaks**.

³ ICC-01/05-01/08-54-Anx2, Original: [French](#).

13. The same principle is enshrined in several international instruments.⁴

14. The Defence notes that at his first appearance, Mr Jean-Pierre Bemba Gombo expressed the wish that all proceedings concerning him be conducted in French, a language in which he is fully proficient and which, moreover, is the working language of his Defence Counsel.

15. In its decision of 27 May 2008,⁵ the Appeals Chamber stated that the standard required by article 67(1)(a) of the Statute is higher than that of other international instruments. Thus, the Chamber noted that the words used by this article, namely "fully understands and speaks" relate to a language in which the accused person is fully proficient without any deficiency.⁶

16. The Defence notes that the aim of this decision is to enable the person prosecuted to be informed of the nature, cause and content of the charges in a language which he or she fully understands and speaks and ensure his or her full participation in the trial. The same applies to his Defence Counsel who have to work in a language in which they have full proficiency, especially as it is the language chosen by their client, namely the French language.

17. The Defence notes that in its decision of 15 May 2006, Pre-Trial Chamber I confirmed, first of all, that article 67 of the Statute applies to an accused during the confirmation of charges phase and, secondly, that the rights enshrined in article 67 of

⁴ Article 6(3) of the *European Convention on Human Rights* provides that everyone charged with a crime has the right to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him.

The same principle is enshrined in article 14(3)(a) of the ICCPR, article 8(2)(a) of the *American Convention on Human Rights*, article 20 of the ICTR Statute and article 21(4)(a) of the ICTY Statute.

⁵ ICC-01/04-01/07-522, *Judgment on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber I entitled "Decision on the Defence Request Concerning Languages"*.

⁶ ICC-01/04-01/07-522, paras. 40-42.

the Statute are minimum guarantees which the Chamber may exceed in order to protect the right to a fair hearing.⁷

18. In light of the foregoing, the Defence respectfully submits to Pre-Trial Chamber III that Mr Jean-Pierre Bemba Gombo chose the French language for the conduct of all proceedings concerning him. The Defence requests that this choice be respected, especially with regard to pleadings filed in a language other than French. The Defence notes that a large body of both international⁸ and national⁹ case law upholds respect for an accused's or suspect's choice of language to be used in proceedings. In the instant case, Mr Jean-Pierre Bemba has chosen French, the language in which he is fully proficient and which, moreover, is the working language of his Counsel.

19. It follows that the right to a fair hearing as prescribed in articles 67(1)(a) and (f) would not be respected if pleadings continue to be transmitted to the Defence in a language other than the one chosen by Mr Jean-Pierre Bemba and which, moreover, is not the working language of his Lead Counsel.

⁷ ICC-01/04-01/06-102, para. 97, *Decision on the Final System of Disclosure and the Establishment of a Timetable*.

⁸ *Prosecutor v. Milosevic, Decision on Prosecution Motion for Permission to Disclose Witness Statements*, <http://wtm.un.org/ic/mflozevic/triaic/decision-e/10919DE516312.hlm>.

See *Decision on Prosecution's Motion for Order Appointing Counsel to Assist Vojislav Seselj with his Defence*, 9 May 2003, <http://faww.un.org/ictv/saeli/trialc/decision-e/030509.htm>.

⁹ Supreme Court of Canada, *R. v. Tran*, 1994 Carswell NS 24 32 C.R. (4Ut) 34, 170 N.R. 81, [1994] 2 S.C.R. 951, 133 N.S.R. (2d) 81, 380 A.P.R. 81, 92 C.C.C. (3d) 218, 117 D.L.R. (4th) 7.23 C.R.R. (2d) 32, 133 N.S.R. (2d) 81 at para. 4 and S0.

See also the High Court of the Transvaal in the Republic of South Africa which, in ruling on translation issues in a criminal case, expressly stated that "the interpretation will be in a language which the accused fully understands and not into a language he understands partially." *S. v. Ngubane* 1995 (1) SACR 384 (T). In RSA, judges have interpreted language rights in proceedings as the right of the accused to be able to participate in the proceedings in an official language of his or her choosing. See *Mdietwa v. de Bruin NO et al.*, 1998 (3) BCLR 336 (NX p. 338). Similarly, in *S. v. Pienaar* 2000 (2) SACR 143 (NC). See commentary in D. Cole, *The Right to Language Use in South African Criminal Courts* (2005).

See also New Zealand, *R v. DC Whangarei* T63/96, 3/6/97 [1997]: The Court decided that the accused, whose mother tongue was Maori, had the right to a Maori-English interpreter, even though he used English at previous proceedings and had not yet made known his choice to speak Maori. The judges observed that: "It is not sufficient that an accused has some understanding and ability to speak the language used in court: they must be able to understand and speak it sufficiently well to be able to obtain..., and enjoy and exercise all their rights in the proceedings to the best of their abilities. Unless they have that level of understanding, and speaking ability, to deny them the services of an interpreter would be to deny or unreasonably derogate from the pivotal right to a fair hearing (s 25 (a)) and would be a failure to observe the principles of natural justice (s 26 (1))."

20. With a view to fully protecting the right to a fair hearing, the Defence requests Pre-Trial Chamber III that all pleadings relating to the case of *The Prosecutor v. Mr Jean-Pierre Bemba Gombo* be transmitted to him in French, the language in which the suspect is fully proficient and the working language of his Lead Counsel. Furthermore, the Defence requests that it be decided that any time limit relating to a pleading to which it must respond should take effect only from the date it receives the French version.

FOR THESE REASONS,

MAY IT PLEASE PRE-TRIAL CHAMBER III TO:

- declare that this request is admissible and has merit;
- order that all pleadings filed in a language other than the one chosen by Mr Jean-Pierre Bemba be translated and transmitted to him and his Counsel in French; and
- order that all procedural time limits take effect from the date the French version is received by Counsel and Mr Jean-Pierre Bemba.

And justice shall be done.

[signed]
Nkwebe Liriss,
Lead Counsel

Dated this 7 November 2008

At Kinshasa, Democratic Republic of the Congo