

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: **28 July 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

**Prosecution's Response to Defence Request for French translations of
witness statements and other documents**

Source: The Office of the Prosecutor

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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I. Introduction

1. On 15 July 2010, the Defence filed an application (“Defence’s Application”),¹ requesting that the Trial Chamber III (“Chamber”) order the Office of the Prosecutor (“Prosecution”) to provide the Defence with the French translations of three witness statements, the In-Depth Analysis Chart of Incriminatory Evidence (“Analysis Chart”) and the Second Amended Document Containing the Charges (“Second Amended DCC”). Pursuant to Regulation 24(1) of the Regulations of the Court (“Regulations”), the Prosecution submits its response. The Prosecution will provide a translation of the Second Amended DCC. For the reasons stated below, the Prosecution objects to the remaining Defence requests.

II. Submissions

2. In support of its application, the Defence relies on Article 67(1)(e) and 67(2) of the Rome Statute (“Statute”), Rule 77 of the Rules of Procedure and Evidence (“Rules”), and a Decision issued by the Single Judge of Pre-Trial Chamber III on 4 December 2008 (“Single Judge’s Decision”).² As the Prosecution shows below, the Defence’s arguments wrongly rely on a misinterpretation of the provisions of the Statute and the Rules and of the Single Judge’s Decision.

¹ ICC-01/05-01/08-832-Conf, Requête aux fins d’obtenir la version française de certains actes de procédure et déclarations, 15 July 2010. The Prosecution notes that the Defence classified its application as confidential. Notwithstanding, the Prosecution submits this response as public, because there is no basis in the contents or the title that suggest a necessity to classify the response as confidential.

² ICC-01/05-01/08-307, Decision on the Defence’s Request Related to Language Issues in the Proceedings, 4 December 2008.

French version of the Analysis Chart

3. The Prosecution submits that there has neither been a Chamber's order, nor a practice in the case that the Analysis Chart be translated into a language that the Accused fully understands and speaks.

4. The Defence erroneously claims that the Single Judge's Decision refers to the Analysis Chart as one of the documents to be provided to the Defence in French. In fact, the Single Judge identified the specific documents that must be translated into French for the Accused.³ The Analysis Chart is not included in that list.

5. Moreover, as set forth in the Single Judge's Decision, the Accused is entitled to receive the French translation of the documents that inform him of the nature, cause and content of the charges brought against him.⁴ Trial Chamber II defined the Analysis Chart as *"nothing more than a procedural tool to make clear and accessible to the Defence and the Chamber the exact evidentiary basis of the Prosecution's case"*, and *"a tool to structure the presentation of the evidence and to ensure that the Prosecution's evidentiary case is easily accessible and comprehensible"*.⁵ This Chamber endorsed that definition of the Analysis Chart.⁶ Under the Chambers' analysis, therefore, the document does not

³ This list of documents include: i) the Prosecutor's application for a warrant of arrest and the Chamber's decision thereon; ii) the Document Containing the Charges and the List of Evidence as well as any amendment thereto; and iii) the statements of the Prosecution's witnesses.

⁴ ICC-01/05-01/08-307 at para. 16.

⁵ ICC-01/04-01/07-1088, Decision on the "Prosecution's Application for Leave to Appeal the 'Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol' and the 'Prosecution's Second Application for Extension of Time Limit Pursuant to Regulation 35'", 1 May 2009, at para. 24; ICC-01/04-01/07-956, Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol, 13 March 2009, at para. 12.

⁶ The definition of the Analysis Chart provided by Trial Chamber II was also endorsed by Trial Chamber III: see ICC-01/05-01/08-682, Decision on the "Prosecution's Submissions on the Trial Chamber's 8 December 2009 Oral Order Requesting Updating of the In-Depth -Analysis Chart", 29 January 2010, at para. 23.

“inform” him of the nature, cause and content of the charges. Accordingly, the Single Judge’s Decision does not require that a French version of the Analysis Chart need be provided to the Accused.

French translation of statements

6. The Defence has requested French translations of the statements of three persons (Witness 130, Witness 162, and Witness 40) who are not being called as Prosecution witnesses. The Prosecution submits that, pursuant to Rule 76(3) of the Rules, it has an obligation to provide translations only of statements of Prosecution witnesses. Statements of persons whom the Prosecution does not intend to call to testify at trial, such as the witnesses referred to in the Defence’s Application, do not fall within the scope of Rule 76(3) of the Rules.

7. The Defence’s reliance on Article 67(1)(e) and 67(2) of the Statute and Rule 77 of the Rules within the context of its application is ill-founded. Article 67(1)(e) of the Statute refers to the Defence’s right to examine witnesses, to present admissible evidence and to raise defences. Article 67(2) of the Statute and Rule 77 of the Rules address the Prosecution’s obligations concerning disclosure of evidence, without referring to translation of statements. None of the provisions in question deals with the issue at stake.

8. The Prosecution further observes that it has fully discharged its disclosure obligations related to Witness 162 and Witness 130 on 30 November 2009. Their statements were disclosed respectively as potentially exonerating evidence, and material to the preparation of the Defence under Rule 77 of the Rules. Transcripts of the statement given by Witness 40 in December 2009 were disclosed as potentially exonerating evidence on 1

March 2010. The Prosecution clarifies that any previous statements of Witness 40 and the related translations were provided to the Defence in November 2008 at a time when the Prosecution still intended to rely on that witness at trial.

French version of the Document Containing the Charges

9. As ordered by the Chamber,⁷ the Prosecution will file a revised version of the Second Amended DCC by the time limit of 19 August 2010. A French translation of the revised Second Amended DCC will be filed simultaneously.

Assistance of interpreter

10. The Prosecution notes that the Defence team has the assistance of an interpreter specifically to help with documents filed in English. Such assistance was previously ordered by the Pre-Trial Chamber III for the proceedings related to the confirmation of charges.⁸ Further, for the trial proceedings before the Chamber, the Defence did not object to continuing to use the services of the interpreter in responding to documents filed by the Prosecution.⁹ Recently, the Appeals Chamber ordered the Registrar to provide the Accused with French-English interpretation throughout the Appeals proceedings, and to assist with documents only available in English.¹⁰

⁷ ICC-01/05-01/08-836, 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.

⁸ ICC-01/05-01/08-307, page 9.

⁹ ICC-01/05-01/08-T-14-ENG, 7 October 2009, p. 35, lines 10-22.

¹⁰ ICC-01/05-01/08-827, Decision on the request for an extension of the time limit, page 3.

III. Relief Sought

11. For the foregoing reasons, the Prosecution respectfully responds that it will provide a French translation of the Second Amended DCC. As to all other requests, the Prosecution submits that the Defence's Application should be dismissed.



Luis Moreno-Ocampo, Prosecutor

Dated this 28th Day of July 2010

At The Hague, The Netherlands