



Original: **French**

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

Date: **15 July 2010**

TRIAL CHAMBER III

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge Joyce Aluoch

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF
THE PROSECUTOR v. Jean-Pierre Bemba Gombo

Confidential

**Defence Application to Obtain the French Version of Certain Filings and
Statements**

Source: Defence Team for Mr Jean-Pierre Bemba Gombo

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 the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
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REGISTRY

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Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 7 November 2008, the Defence submitted a request for the transmission of filings in French (“the Defence Request”).¹
2. On 4 December 2008, that request was partially rejected.²
3. However, the Single Judge stated that, in her opinion, article 67(1) suggested that the Accused must be provided with all documents, in a language that he fully understands and speaks, which are essential for his proper preparation to face the charges presented by the Prosecutor and which form the basis of the determination of those charges:

*In the Single Judge’s opinion, this suggests that the accused shall not be served with all documents in a language he fully understands and speaks but only with those documents which are essential for his proper preparation to face the charges presented by the Prosecutor and which form the basis of the determination by the Chamber of those charges.*³

4. The Single Judge further specified the subject matter of those documents, indicating that the Accused should be entitled to a French translation of those documents **that inform him in detail of the nature, cause and content of the charges against him**, and that he should therefore be provided with a French version of the following documents (...) (ii) the Document Containing the Charges and the List of Evidence as well as any amendment thereto; and (iii) the statements of Prosecution witnesses:

*...in accordance with article 67(1)(a) and (f) of the Statute, Mr Jean Pierre Bemba should enjoy the right to interpretation throughout the whole proceedings but is only entitled to received the French translation of such documents that inform him in detail of the nature, cause and content of the charges brought against him. Accordingly, Mr Jean Pierre Bemba should be provided with a French version of the following documents: (i) the Prosecutor’s application for a warrant of arrest and the Chamber’s decision thereto; (ii) **the Document Containing the***

¹ ICC-01/05-01/08-221-tENG.

² ICC-01/05-01/08-307.

³ ICC-01/05-01/08-307, paragraph 12.

*Charges and the List of Evidence as well as any amendment thereto; and('iii) the statements of production witnesses.*⁴

5. At the status conference on 7 October 2009, the Honourable Presiding Judge of the Trial Chamber questioned the Prosecution in the following manner on the subject of translations:

Presiding Judge Fulford: *That demonstrates that no two trials are the same, Ms. Kneuer.*

Now, English translations of the Prosecution witness statements. As we understand the position, these are now fully available, although some of them are in draft form.

We understand that in the general decision on disclosure of 31 July 2008, which is document 55, the Single Judge, as I recall it was, ordered that these translations should be filed in the Court system using the eCourt protocol.

So my question, Ms. Kneuer, is: Are these now all in final form or are some of them still in draft and have they been filed in the Court system?

6. The Prosecution gave the following response:

Ms KNEUER: *Your Honour, the translations that relate to the witnesses that we relied upon during the confirmation hearing were filed in the record.*

Presiding Judge Fulford: *Translated?*

Ms KNEUER: *Yes....*⁵

7. On 11 March 2010, the Defence asked the Prosecution, in accordance with the Single Judge's Decision discussed above, to provide it with a French version of its Updated In-Depth Analysis Chart of Evidence, as well as French translations of the statements of certain witnesses, including WWWW-0040.⁶

8. The Defence refused that request, arguing (1) that a previous application submitted to the Single Judge had been rejected⁷ (2) that the statements of WWWW-0040, [REDACTED] and [REDACTED] did not fall within the scope of rule 76(3), and that it did not follow from any decision or practice that the In-Depth Analysis Chart of Evidence should be provided in French, especially as it was provided in English before the Pre-Trial Judge.

⁴ ICC-01/05-01/08-307, paragraph 16.

⁵ Transcript of 07/10/2009, p. 22 line 15.

⁶ E-mail exchange with the OTP on 11 and 12 March 2010.

⁷ ICC/01/05-01/08-307.

9. The Defence submits the present Application in opposition to that stance and in order to request that the Honourable Trial Chamber III instruct the Prosecution to comply with the Single Judge's Decision, with the Single Judge's statements at the status conference and with article 67(e) of the Statute.

a) In-Depth Analysis Chart of Evidence

10. This document is indeed listed in the Single Judge's decision as having to be made available to the Accused in French.⁸

11. It is true that it was submitted in English during the pre-trial phase;

12. But it was submitted well before the Single Judge rendered her Decision, the effects of which henceforth govern future situations.

13. The Prosecution's refusal to provide a French version of the In-Depth Analysis Chart of Evidence, a refusal which is based on an alleged practice or the absence of a decision, is therefore totally irrelevant.

b) WWW-0040, [REDACTED] and [REDACTED]

14. The Prosecution, like the Defence, relied on WWW-0040 during the pre-trial phase.⁹

15. Yet it (the Prosecution) asserted at the status conference that the translations concerning the witnesses **on whom it had relied during the confirmation hearing had been translated and filed.**¹⁰

16. Either the assertion that the statements forming the basis of the Prosecution's arguments during the confirmation hearing had all been translated is true (which the Defence does not doubt for a moment), in which case we do not understand its refusal to provide them, since they exist.

⁸ ICC-01/05-01/08-307, para. 16.

⁹ See ICC-01/05-01/08-424, paragraph 473; see also paragraphs 243, 250, 261, 381, 392, 471 and 473, as well as footnotes 313, 314, 335, 336, 342, 343, 615 to 618, 643, 648, 654.

¹⁰ English transcript, p. 22 lines 12 to 15.

17. Or the assertion did not reflect the truth, in which case the Prosecution is nevertheless obliged to make this translation, since it had given an undertaking to do so before the Chamber concerning the statements on which it had relied during the confirmation hearing.

18. In any case, the refusal to provide this translation is unjustified, even if the Prosecution no longer considers WWW-0040 to be a prosecution witness within the meaning of rule 76(3).

19. To this end, the Defence refers additionally to articles 67(1)(e), 67(2) and rule 77.

Article 67(1)(e):

*... 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: [...] To examine, or have examined, the witnesses against him or her **and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her...***

Article 67(2):

In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

Rule 77:

The Prosecutor shall, subject to the restrictions on disclosure as provided for in the Statute and in rules 81 and 81, permit the defence to inspect any books, documents, photographs and other tangible objects in the possession or control of the Prosecutor, which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.

20. The Defence asserts, on the basis of these texts, that the disclosure of these statements to the Accused is obligatory for the preparation of his defence.

21. In effect, WWW-0040 is the person who [REDACTED]
[REDACTED]

22. His statements would appear to exonerate the Accused, particularly on the issue of chain of command and control of his troops.

23. [REDACTED]
[REDACTED]

24. His statements shed a totally new light on the nature of the trial which took place there and which the Prosecution calls a “charade” focused on the issue of the “failure to punish”.

25. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] whereas it is alleged that it was actually the Accused who took the decisions on such operations.

26. Since these three statements are potentially exonerating, they must be made available to the Accused in French in accordance with articles 67(1)(e) and 67(2) and rule 77, even if the Prosecution does not intend to present them as evidence against the Accused.

REQUEST FOR CONFIDENTIALITY

27. Since the present Application contains names of persons whom the Defence intends to summon, the latter (the Defence) asks the Distinguished Trial Chamber III to classify the Application as confidential, and it (the Defence) undertakes to provide a public version at a later date.

For all these reasons,

28. The Defence for the Accused Jean-Pierre Bemba Gombo requests that the Honourable Trial Chamber III order the Prosecution to provide the Accused with a French version of the aforementioned documents and statements, as well as, in the future, the Second Document Containing the Charges, in accordance with the Single Judge’s Decision, articles 67(1)(e) and 67(2), and rule 77.

[signed]

Aimé Kilolo Musamba
Associate Counsel

[signed]

Nkwebe Liriss
Lead Counsel

Dated this 15 July 2010

At The Hague, The Netherlands