

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/13

Date: 12 May 2014

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

IN THE CASE OF *THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIME KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU and NARCISSE ARIDO*

Public

Prosecution's Response to the Babala Defence's Request *«tendant à solliciter de la Chambre Préliminaire II le rappel au Procureur du respect du choix de la langue opéré par Monsieur Fidèle Babala Wandu dans la présente affaire»*

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. The Office of the Prosecutor (“Prosecution”) opposes the Babala Defence’s request to be notified of all procedural documents directly in French (“*de tous les autres actes de procédure directement en français*”) (“Request”).¹

2. While the Defence is entitled to a copy of the document containing the charges (“DCC”) in French, the law of the Court provides a suspect no such right with respect to all procedural documents. Instead, Babala has the right to the assistance of a competent interpreter throughout the proceedings. His statutory right to receive French translations of documents is limited to those required to inform him in detail of the nature, cause and content of the charges brought against him.

II. Applicable Law

3. Article 67(1)(a), (c) and (f) of the Rome Statute (“Statute”) specifies the right of an accused (i) “to be informed promptly and in detail of the nature and content of the charge, in a language which the accused fully understands and speaks”; (ii) “to be tried without undue delay”, and (ii) “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.”

4. Regulation 40(3) of the Regulations of the Court (“RoC”) provides: “The Registrar shall ensure translation into the other working language(s) of all decisions or orders taken by Chambers during proceedings.”

¹ As requested by the Defence: ICC-01/05-01/13-370, para. 28.

III. Submissions

5. Article 67 of the Statute differentiates between an accused's right to have, free of cost, the assistance of a competent interpreter throughout the proceedings and the right to translations of all documents into a language the accused fully understands and speaks.

6. Article 67(l)(f) of the Statute secures an accused's right to the assistance of a competent interpreter without limitation.

7. By contrast, Article 67(l)(a) of the Statute, entitles an accused to be informed promptly, in detail, and in a language which he fully understands and speaks, of the nature, cause and content of the charge. The Court's jurisprudence confirms that this provision does not require that an accused be served with all documents in a language he fully understands and speaks. Rather, Chambers have confirmed that Article 67(l)(a) concerns only documents essential for the defence's proper preparation to face the charges presented by the Prosecutor and forming the basis of the Chamber's determination of the charges.²

8. The Single Judge has already stated:

"the only translations the accused is entitled to obtain are "such translations as are necessary to meet the requirements of fairness". The translation of a given document is an accused's right only insofar as it can be shown that, without such into a language he or she fully understands and speaks, an accused (who is, as clarified by the Appeals Chamber, the exclusive "subject of

² ICC-01/04-01/06-268, pp. 5-7; ICC-01/04-01/07-127, paras. 40 and 41; ICC-01/04-01/07-304, p.4; ICC-01/04-01/07-477, pp. 3-5; ICC-01/04-01/07-538, p. 6; and ICC-01/05-01/08-307, paras. 11-13. This principle was also confirmed by other international tribunals: e.g. *The Prosecutor v. Delalic et al.* (Case No. IT-96-21), Trial Chamber Decision on the Defence Application for Forwarding the Documents in the Language of the Accused, 25 September 1996, para. 8; *The Prosecutor v. Naletilic and Martinovic* (Case No. IT-98-34-T), Trial Chamber Decision on Defence's Motion Concerning Translation of All Documents, 18 October 2001, p. 3.

understanding") would not be able to understand the nature, cause and content of the charge and thus to adequately defend himself or herself, thereby prejudicing the fairness of the proceedings."

9. The Single Judge therefore concluded:

"the accused shall not be served with all documents in a language he fully understands or 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

10. As stated by the Appeals Chamber, "there is no general requirement that filings of parties and participants submitted in English be translated into French, or vice versa".⁴ In a similar request in the *Gbagbo* case, the Appeals Chamber also confirmed the limited scope of Article 67(1)(a), noting that "none of the documents of which translations have been requested may be considered to be documents which would serve to inform Mr Gbagbo of the 'nature, cause and content of the charge' against him within the meaning of article 67(1)(a) of the Statute. Similarly, given the nature and context of the present appeal, the Appeals Chamber does not consider that the requested translations into the language that Mr Gbagbo fully understands and speaks 'are necessary to meet the requirements of fairness' within the meaning of article 67(1)(f) of the Statute."⁵

11. This approach, confirmed by the Single Judge, is also consistent with an accused's Article 67(1)(c) of the Statute right to be tried without undue delay. The translation of every document into French in this case, beyond what is necessary to guarantee Babala's right to be informed promptly and in detail of the nature, cause

³ ICC-01/05-01/13-177, para. 6 (emphasis omitted).

⁴ ICC-02/11-01/11-489 OA5, para.10.

⁵ ICC-02/11-01/11-489 OA5, para.12.

and content of the charges, may seriously jeopardise the expeditiousness of the proceedings due to the substantial amount of time necessary to do so.⁶

12. Babala will be provided with a French version of the DCC. In addition, the Prosecution does not oppose his being provided with the permanent assistance of a French-English interpreter to facilitate his understanding of English filed documents, including the Chamber's decisions and orders pending the completion of official written translations, pursuant to Regulation 40(3) of the RoC.

13. Beyond this, the Prosecution opposes the Request.

IV. Requested Relief

14. For the foregoing reasons, the Prosecution requests that the Single Judge reject the Defence's request to be notified of all procedural documents directly in French.



Fatou Bensouda, Prosecutor

Dated this 12th Day of May 2014
At The Hague, The Netherlands

⁶ ICC-01/05-01/13-177, paras. 10 and 11. See also ICC-01/05-01/08-307, para. 15.