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No.: ICC-01/04-01/07
Date: 23 November 2007

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

Registrar: Mr. Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA***

Public Document with Confidential Annex A

Prosecution's Observations on the "Rapport du Greffe relatif aux renseignements supplémentaires concernant les langues parlées, écrites et comprises par Germain Katanga"

The Office of the Prosecutor

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At Mr. Germain Katanga's initial appearance he indicated to the Court that he "sometimes" has difficulties expressing himself in and understanding French.¹ In response to the question of whether he understood and spoke Swahili, he responded that the language spoken in Congo is "Kingwana".² He also stated that his preferred language of expression was Lingala.³ On 26 October 2007 the Trial Chamber issued an "Order for a Report of Additional Information on the Detention and Surrender of the Detainee Germain Katanga" ("Order").⁴ In the Order, the Trial Chamber requested that the Registrar file, in the record of the case, a report on any additional relevant information concerning languages read, spoken or understood by Germain Katanga. The Order also provided that the Prosecution and Defence are entitled to submit observations on the Report once it is filed.⁵ Granted an extension for the filing of the report⁶, the Registrar submitted his report titled "Rapport du Greffe relatif aux renseignements supplémentaires concernant les langues parlées, écrites et comprises par Germain Katanga" ("Registrar's Report") on 9 November 2007.⁷ The Pre-Trial Chamber requested that the Prosecution and Defence file their observations on the Registrar's Report by 23 November 2007.⁸ Accordingly, the Prosecution hereby files its observations.

Article 67 of the Statute does not grant the accused an automatic right to choose the language he wishes to be informed of the nature of the charges levelled against him

1. Article 67 of the Statute provides that "the accused shall be entitled [...]: (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."⁹ Such

¹ ICC-01-04-01-T-5-ENG [22OCT2007Edited], p. 3, lines 16-25.

² ICC-01-04-01-T-5-ENG [22OCT2007Edited], p. 4, lines 1-4.

³ ICC-01-04-01-T-5-ENG [22OCT2007Edited], p. 3, lines 6-8.

⁴ ICC-01/04-01/07-45.

⁵ ICC-01/04-01/07-45, pp. 3-4.

⁶ ICC-01/04-01/07-48.

⁷ ICC-01/04-01/07-62.

⁸ ICC-01/04-01/07-76, p. 4.

⁹ See Article 67 of the Statute.

provision, however, does not mention that the accused has an automatic right to choose any language he wishes to express himself in and have the proceedings translated into, when notified of the charges at the initial appearance or in any further proceedings before the Court. Rather, it implies that the notification does not have to be communicated in the accused's native language but in a language which the "accused fully understands and speaks".

2. Pursuant to Article 21 of the Statute, rulings on the matter from international bodies and national jurisdictions are relevant to show that a defendant's preferred language of expression does not automatically grant him or her the right to the assistance of an interpreter during legal proceedings. A case brought before the Human Rights Committee by a French defendant based, in part, on a violation of Article 14 of the International Covenant for Civil and Political Rights ("Covenant")¹⁰ is most illustrative of this point. The Defendant had, during the course of the proceedings before French courts, requested that both he, and the witnesses he intended to call, testify exclusively in Breton even though they all were proficient in French. His request was denied and he and the witnesses refused to testify. He was convicted. Before the Human Rights Committee he alleged, *inter alia*, that the

¹⁰ Article 14 of the International Covenant on Civil and Political Rights provides:

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976 (available at: <http://www.ohchr.org/english/law/ccpr.html> (last accessed on 23 November 2007)).

French State had violated Article 14 of the Covenant. In dismissing his claim, the Committee determined that:

The notion of a fair trial in article 14, paragraph 1, juncto paragraph 3(f), does not imply that the accused be afforded the possibility to express himself in the language which he normally speaks or speaks with a maximum of ease. If the court is certain [...] that the accused is sufficiently proficient in the court's language, it is not required to ascertain whether it would be preferable for the accused to express himself in a language other than the court's language.¹¹

3. Domestic practice also appears to reject the existence of a defendant's absolute right to choose a preferred language. For instance, and only to provide a few examples, in the United States, defendants do not have an automatic right to an interpreter under the Court Interpreters Act. A defendant is only statutorily entitled to the appointment of an interpreter if the district court determines that the defendant (1) speaks only or primarily a language other than the English language and (2) this fact inhibits the defendant's comprehension of the proceedings or communication with counsel.¹²
4. In the United Kingdom, a defendant's request to express himself in Welsh during court proceedings was denied on the basis that he was proficient in English. In denying an order of certiorari the divisional court stressed that "the right [...] for a party or a witness to use the Welsh language arose only

¹¹ *Dominique Guesdon v. France*, Communication No. 219/1986, U.N. Doc. CCPR/C/39/D/219/1986 (1990), at 10.3 (available at <http://www1.umn.edu/humanrts/undocs/session39/219-1986.html> (last accessed on 22 November 2007)).

¹² See *U.S. v. Johnson*, 248 F.3d 655, at 661; see also *Gonzalez v. U.S.*, 33 Fed.3d 1047 (Where the Court found that defendant's English language skills were not so deficient as to inhibit his comprehension of guilty plea hearing, so that he was not entitled to an interpreter under the Court Interpreters Act. This was supported by evidence that the defendant's answers to the district court's questions were consistently responsive, if brief and somewhat inarticulate, that defendant only occasionally consulted his attorney, and that the defendant never indicated that he was experiencing major difficulty, despite opportunities afforded him to do so); see also *U.S. v. Birdinground*, 107 Fed.Appx. 806 (2004) (Where the Court found that the comprehension by a defendant, who was a member of the Crow tribe, of proceedings in which he entered a guilty plea to receiving a bribe was not inhibited by any language problem that required an interpreter; reading of defendant's colloquy with judge at his change of plea and his lengthy statement under oath to agents from the United States Attorney's office revealed that the defendant understood and spoke English).

where the party or witness would be in fact under a disadvantage, or genuinely thought so, if he were required to use the English language [...]”.¹³

5. Similarly, in France a defendant does not have a right to choose the language of the proceedings, a judge has the discretion to appreciate if the defendant is sufficiently proficient in French to take part in the proceedings or if he needs the assistance of an interpreter.¹⁴
6. Last, the Spanish Constitutional Court found that the refusal of the prison authorities to provide an inmate with a Castilian interpreter during disciplinary proceedings, because he wished to express himself in Basque (“Euskera”), was not contrary to the Constitution because, *inter alia*, the prisoner could speak Castilian, as evidenced by the fact that he filed written arguments in Castilian.¹⁵

An accused’s knowledge of a language for the purposes of the proceedings does not entail understanding of legal terms and procedures

7. The Article 67(1) provision “fully understands and speaks” sets a lay person’s level of language proficiency as one which enables the accused to understand the nature of the charges levelled against him. As the Registrar’s Report suggests such provision does not entail a full understanding of legal terms and procedures; such information must be understood by counsel who guides the suspect through legal proceedings by explaining the meaning and

¹³ *R. v. Merthyr Tydfil Justices, Ex parte Jenkins*, [1967] 2 Q.B. 21.

¹⁴ See Article 407 du Code de procédure pénale [2008] and Cass crim., 30 juin 1981 : Bull 225 (which provides that « les juges apprécient souverainement si un prévenu a une connaissance suffisante de la langue française pour être entendu sans être assisté par un interprète ») ; see also Article 272 du Code de procédure pénale and Cass. Crim., 4 janvier 1980 : Bull 5.

¹⁵ See Spanish Constitutional Court, Sentence no. 2/1987, 21 January 1987, para. 6.

significance of legal terms, rulings, suggesting courses of action and filing motions with the Court.¹⁶

A suspect must act in good faith when expressing the wish to be informed of the nature, cause and content of the charges against him

8. The drafting history of Article 67 (1) of the Statute indicates that regarding the meaning of an accused's right to be promptly informed [...] in a language that the accused fully understands and speaks, the drafters' intent was that "it is understood that this expression means the language for which the accused, in *good faith*, has clearly expressed his or her preference".¹⁷
9. In light of the conclusions reached in the Registrar's Report and the material in the possession of the Prosecution as appended in Annex A of this submission, the Prosecution is of the view that Mr. Katanga fully understands, speaks and reads French.¹⁸ The documents provided by the Registry reveal, among other things, that Mr. Katanga holds an "Examen d'Etat". This examination is conducted entirely in French and is held upon completion of secondary education, which is also taught in French.
10. The Prosecution further submits additional documents which indicate that Germain Katanga is proficient in French. The documents appended to this submission are a letter drafted in French authored by Mr. Katanga and a *procès-verbal d'audition* reflecting that, during his hearing held in Kinshasa, Mr. Katanga elected to express himself in French ("*langue de son choix*"). The

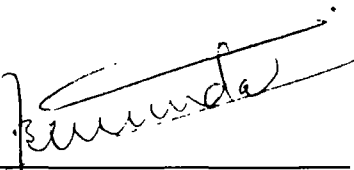
¹⁶ See Registrar's Report, p. 6.

¹⁷ See Report of the Working Group on Procedural Matters, A/Conf. 183/C.1/WGPM/L. 2/Add. 6 (11 July 1998). (Emphasis added). See also on this issue *R v. Petrovic*, 41 C.R. (3d) 275 at 284. (In which the Court found that to remove the constitutionally-protected right to an interpreter under s. 14 of the Canadian Charter of Rights and Freedoms there must be a cogent and compelling evidence for a trial judge to conclude that the request for an interpreter is not made in good faith but for an oblique motive).

¹⁸ Mr. Katanga also appears to be fluent in Swahili as evidenced by an excerpt of a video in the possession of the Prosecution.

Prosecution concludes that Mr. Katanga is capable of fully understanding, and speaking French. Therefore, Mr. Katanga's request to have the proceedings before the Court in Lingala, should be denied.

11. For the foregoing reasons the Prosecution supports the Registrar's conclusions that Mr. Katanga fully understands, reads and speaks French and that his comprehension of the French language is sufficient for the purposes of following the proceedings before the Court.



Luis Moreno Ocampo
Prosecutor

Dated this 23rd day of November 2007

At The Hague, The Netherlands

LIST OF AUTHORITIES

G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (available at <http://www.ohchr.org/english/law/ccpr.html> (last accessed 23 November 2007)).

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United States, *United States v. Wilton Johnson*, United States Court of Appeals, Seventh Circuit, 248 F.3d 655, 23 April 2001.

United States, *Miguel Angel Gonzalez v. United States*, United States Court of Appeals, Ninth Circuit, 33 Fed.3d 1047, 11 August 1994.

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Canada, *R. v. Merthyr Tydfil Justices, Ex parte Jenkins*, [1967] 2 Q.B. 21, 9 November 1966.

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France, Cass crim., 30 juin 1981 : Bull 225.

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Canada, *R. v. Petrovic*, Ontario Supreme Court, Court of Appeal, 41 C.R. (3d) 275, 20 June 1984.