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**PRE-TRIAL CHAMBER I**

**Before : Judge Sylvia Steiner, Single Judge**

**Registrar : Mr Bruno Cathala**

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

**Public Document**

**Defence Application for Leave to Appeal the Decision on the Defence Request  
Concerning Languages**

**The Office of the Prosecutor**

Mr Luis Moreno-Ocampo, Prosecutor  
Ms Fatou Bensouda, Deputy Prosecutor  
Mr Eric MacDonald, Trial Lawyer  
Mrs Florence Darques-Lane, Legal Adviser

**Defence Counsel**

Mr David Hooper  
Ms Caroline Buisman

## Introduction

1. The Defence for Mr. Germain Katanga (« the Defence ») requests leave to appeal the Single Judge's *Decision on the Defence Request Concerning Languages*, issued on 21 December 2007.<sup>1</sup> It is submitted that Mr. Katanga does not **fully/parfaitement** understand and speak French. The Defence is, therefore, of the firm view that, to respect the fundamental statutory rights of the Accused, set out in Article 67 of the Rome Statute, Mr. Katanga must, at the very least, be entitled to a Lingala interpreter, a language he **fully/parfaitement** understands and speaks. It is on this fundamental language issue that the Defence seeks leave to appeal.

## Procedural Background

2. On 9 November 2007, the Registrar filed a *Rapport du Greffe relatif aux renseignements supplémentaires concernant les langues parlées, écrites et comprises par Germain Katanga*<sup>2</sup> in which he informed the Pre-Trial Chamber that, in his assessment, Mr. Katanga can speak, write, understand, and read French. The Registrar further warned the Pre-Trial Chamber that, were it to order the Registrar to provide for translation or interpretation in Lingala or Kingwala, such an order would not only have financial and technical implications but would also cause delay to the proceedings.
3. On 13 November 2007, the Registrar appointed a duty counsel who was tasked to file a submission regarding the language that should be used in the proceedings.<sup>3</sup> On 19 November 2007, Duty Counsel filed *Observations de la Défense de Germain Katanga sur le "Rapport du Greffe relative aux renseignements supplémentaires concernant tes langues parlées, écrites et comprises par Germain Katanga"*.<sup>4</sup> These *Observations* indicated that Lingala is Mr. Katanga's preferred language in which he feels much more comfortable than in French.

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<sup>1</sup> ICC-01/04-01/07-127 21-12-2007 7/18 SL PT, Public Document.

<sup>2</sup> ICC-01/04-01/07-62 09-11-2007 2/7 JT PT, Public Document with Confidential Annexes.

<sup>3</sup> Décision portant désignation de Maître Jean Pierre Fofé en qualité de conseil de permanence de Mr Germain Katanga, ICC-01/04-01/07-75 13-11-2007 2/4 EO PT. The Registrar appointed duty counsel despite the fact that Mr. Katanga had already indicated his choice of counsel, Mr. David Hooper.

<sup>4</sup> ICC-01/04-01/07-78 23-11-2007 3/12 EO PT, Public Document.

4. On 23 November 2007, the Prosecution filed its *Observations on the "Rapport du Greffe relatif aux renseignements supplémentaires concernant les langues parlées, écrites et comprises par Germain Katanga"*.<sup>5</sup> In its *Observations*, the Prosecution maintained that Article 67 of the Rome Statute does not grant the accused an automatic right to choose the language in which he wishes to be informed of the nature of the charges levelled against him. The Prosecution also expressed the view that Mr. Katanga fully understands, speaks and reads French. The Prosecution, therefore, supported the Registrar's conclusion that Mr. Katanga's comprehension of the French language is sufficient for the purposes of following the proceedings before the Court.
5. During a Status-Conference on 14 December 2007, the Registrar, Defence and Prosecution made further oral submissions in support of their written submissions regarding the language that should be used in Mr. Katanga's criminal proceedings.
6. On 21 December 2007, the Single Judge of Pre-Trial Chamber I rendered her Decision and found that Mr. Katanga's competency in French meets the standards of Articles 67(l)(a) and (f) of the Rome Statute.<sup>6</sup>

### **Threshold Criteria for Leave to Appeal**

7. The Defence files this *Application for Leave to Appeal the Decision on the Defence Request Concerning Languages* pursuant to Article 82(1)(d) of the Rome Statute, Rule 155 of the Rules of Procedure and Evidence, and regulation 65 of the Regulations of the Court.
8. Pre-Trial Chambers I and II have repeatedly stated that leave to appeal pursuant to Article 82(1)(d) will be granted only if the party submitting the application has identified at least one issue of appeal that has been addressed in the impugned Decision and which meets the following two cumulative criteria:
  - a. it must be an issue that would significantly affect (i) both the fair and expeditious conduct of the proceedings; or (ii) the outcome of the trial; and
  - b. it must be an issue for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.<sup>7</sup>

<sup>5</sup> ICC-01/04-01/07-81 23-11-2007 2/8 JT PT, Public Document with Confidential Annex A.

<sup>6</sup> Decision on the Defence Request Concerning Languages, ICC-01/04-01/07-127 21-12-2007 7/18 SL PT, Public Document.

9. It is respectfully submitted that these criteria are met in the present situation for the reasons discussed in this Application.

### **Issue of Appeal**

10. The Defence raises one appealable issue:

- (i) The Pre-Trial Single Judge incorrectly found that Mr. Katanga's competency in French meets the standards of articles 67(l)(a) and (f) of the Statute.

11. This issue would significantly affect the fair and expeditious conduct of the proceedings for which an immediate resolution by the Appeals Chamber may materially advance the proceedings.

### **Fair Conduct of the Proceedings**

12. Articles 67(1)(a) and (f) of the Rome Statute (Rights of the Accused) provides:

1. 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 or documents presented to the Court are not in a language which the accused **fully** understands and speaks. [Emphasis added]

13. The Defence accepts that the question is not so much whether the accused prefers another language, but indeed whether the accused **fully** understands and speaks the language in which the proceedings against him are being conducted. In other words, Article 67 of the Rome Statute does not provide the accused with an automatic right to choose his preferred language, but does provide him the right to be informed of the charges against him in a language he **fully** understands and speaks.

14. The issue to be resolved here is whether Mr. Katanga **fully** understands and speaks French. The Defence submits that the various documents indicating that he followed proceedings in French do not lead to the conclusion that Mr. Katanga understands and

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<sup>7</sup> Decision on the Prosecution Request for Leave to Appeal the First Decision on Redactions, 14 December 2007, ICC-01/04-01/07-108 14-12-2007 3/7 EO PT, Public Document; Decision on the Defence Motion for Leave to Appeal the First Decision on Redactions, 19 December 2007, ICC-01/04-01/07-116 19-12-2007 4/7 SL PT, Public Document.

speaks French **fully**. His level of French may be adequate, even good, but such level does not amount to full comprehension.

15. The French term that is used as the equivalence of **fully** is **parfaitement**.<sup>8</sup> This term suggests that, in order to respect the fundamental minimum statutory rights of the accused, his understanding of the language used in the proceedings against him must be nothing less than perfect. This, it is respectfully submitted, is a very high standard indeed. Having followed secondary education in French does by no means guarantee a level of perfection in French.

16. The Defence concedes that Mr. Katanga's competency of French is of a reasonable level, which is evidenced by the fact that Mr. Katanga has conducted various proceedings in French and attended some secondary school in French. The Defence is, therefore, willing to abandon Mr. Katanga's request for translation of documents. This will be a significant saving of time and resources. However, the Defence insists that it is of fundamental importance that Mr. Katanga be assisted by an interpreter at least during the hearings at trial.

17. Mr. Katanga can take as much time as he needs to read documents in French in order to seek to **fully** understand them. Where he does not **fully** understand the contents of such documents, he can call upon the assistance of counsel and discuss them at length. During the hearings, however, Mr. Katanga is not in a position to take any such step in order to increase his level of comprehension of the language. During the hearings, there is no time to remedy any gap in comprehension. As any court interpreter can confirm, the hearings are fast and Mr. Katanga's full concentration on the listening devices will be required to have any understanding at all of what is being discussed.

18. The ICC judges fully appreciate the importance of upholding the highest standards of fairness. In that light, it is assumed that nobody will dispute the fundamental

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<sup>8</sup> Articles 67(1)(a) and (f) in the French version of the Rome Statute provide :

1. Lors de l'examen des charges portées contre lui, l'accusé a droit à ce que sa cause soit entendue publiquement, compte tenu des dispositions du présent Statut, équitablement et de façon impartiale. Il a droit, en pleine égalité, au moins aux garanties suivantes :

a) Être informé dans le plus court délai et de façon détaillée de la nature, de la cause et de la teneur des charges dans une langue qu'il comprend et parle **parfaitement**;

f) Se faire assister gratuitement d'un interprète compétent et bénéficier des traductions nécessaires pour satisfaire aux exigences de l'équité, si la langue employée dans toute procédure suivie devant la Cour ou dans tout document présenté à la Cour n'est pas une langue qu'il comprend et parle **parfaitement**. [Emphasis added]

importance of the right of an accused to hear the evidence against him and to defend himself in a language he **fully/parfaitement** understands and speaks. Depriving an accused of this right has far reaching consequences and causes a great level of unnecessary stress.

19. In the present case, the importance of this right in the abstract has not been denied, but the Single Judge of Pre-Trial Chamber I determined that Mr. Katanga's rights pursuant to Articles 67(1)(a) and (f) are not violated if the proceedings against him are conducted in French. But what if the assessment that Mr. Katanga fully understands and speaks French is incorrect? In that case, Mr. Katanga will not be able to comprehend fully the grave charges against him. Such lack of full comprehension of the charges against him would severely hamper Mr. Katanga's ability to mount a defence against those charges. Consequently, the fairness of the entire proceedings would be wholly undermined.

20. The Defence concedes that, given Mr. Katanga's reasonable level of French, his case is not straightforward but may be perceived as a borderline case. However, it is a well-established principle that, in case of doubt, the benefit of such doubt must go to the accused.<sup>9</sup>

21. On these grounds, it is clear that the issue at stake affects the fair conduct of the proceedings.

### **Expeditious Conduct of the Proceedings**

22. In his report and at the Status-Conference of 14 December 2007, the Registrar emphasised the costs of Lingala translation and interpretation and the delay that would be caused by it. The Defence submits that these factors should not be given much, if any, weight in the present situation. First, the statutory rights of the accused cannot be compromised in light of budgetary or time restraints.<sup>10</sup> Second, given that the Defence is merely asking for Lingala interpretation during the hearings, the costs will be reduced and, most importantly, no delay will be caused by granting this request. Until trial commences, the Registrar has ample time to find suitable Lingala interpreters and

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<sup>9</sup> The Latin term for the principle according to which doubt must be interpreted in favour of the Accused is *in dubio pro reo*, a principle particularly well-known in civil law traditions.

<sup>10</sup> This clearly follows from the chapeau of Article 67 of the Rome Statute, which states that fairness and impartiality are the *sine qua non* of proceedings at the ICC. Accordingly, any budgetary or time constraint must be interpreted in that light.

put other necessary measures in place. The Defence restates that in order not to unnecessarily delay the case it is not requesting translation of documents, nor asking that the necessary interpreting facility for Lingala be in place until, in the event of confirmation, the trial itself.

23. Rather than causing delay at the trial, the Defence submits that allowing Mr. Katanga to follow the hearings in Lingala rather than French would expedite the proceedings. Failing to grant Mr. Katanga this right he is fully entitled to may result in endless litigation and oral arguments concerning the level of Mr. Katanga's understanding of the proceedings during trial. This can easily be avoided by settling this issue now and granting Mr. Katanga's request to follow the proceedings in Lingala, a language he fully understands, and a right he is fully entitled to under the Rome Statute. Therefore, it is clear that the issue at stake affects the expeditious conduct of the proceedings.

#### **An Immediate Resolution may materially advance the Proceedings**

24. An immediate resolution in the instant matter may clearly materially advance the proceedings. In case Mr. Katanga is entitled to have Lingala interpretation during the hearings, the Registrar should, as soon as possible, begin to take the necessary steps to implement a system of Lingala interpretation in order to avoid any delays. The implementation of such a system, even if costly and time consuming at this moment, would greatly contribute to the institution building of the International Criminal Court (« ICC »). Currently, the ICC has two accused persons in its custody, both of whom are Lingala speakers, this being a widely-spoken language in the Democratic Republic of the Congo. Many witnesses who will testify for or against them will be Lingala speakers. It is clearly within reasonable expectations that more arrests of Lingala speakers will follow. It is likewise reasonably to be expected that more requests for Lingala interpretation will follow. That there is, therefore, a need for a Lingala interpretation system within the ICC is clear. Given these reasonable expectations, it is strongly recommended that the Appeals Chamber be asked to determine the reasonableness of Mr. Katanga's request and so set a guideline for potential future requests. If the Appeals Chamber agrees that Mr. Katanga must be provided the opportunity to follow the proceedings in Lingala, an immediate resolution would be necessary to timely make the necessary arrangements.

**Conclusion**

25. On these grounds, the Defence prays the Single Judge of Pre-Trial Chamber I to grant leave to appeal the *Decision on the Defence Request Concerning Languages* pursuant to Article 82(1)(d) of the Rome Statute, Rule 155 of the Rules of Procedure and Evidence, and regulation 65 of the Regulations of the Court.

Respectfully submitted,



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Mr David Hooper, Defence Counsel

This 27<sup>th</sup> day of December 2007

At London, United Kingdom