

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/07
Date: 21 December 2007

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

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

**PUBLIC DOCUMENT
URGENT**

Decision on the Defence Request Concerning Languages

The Office of the Prosecutor
Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Éric MacDonald, Trial Lawyer

Counsel for the Defence
Mr David Hooper
Ms Caroline Buisman

I, Sylvia Steiner, judge at the International Criminal Court (“the Court”),

NOTING the Warrant of Arrest for Germain Katanga, issued by Pre-Trial Chamber I (“the Chamber”) on 2 July 2007;¹

NOTING the public hearing held by the Chamber on 22 October 2007 on the occasion of the first appearance of Germain Katanga following his arrest and surrender to the Court;²

NOTING the “Information to the Chamber on the execution of the Request for the arrest and surrender of Germain Katanga”³ (“the Registry Information of Arrest and Surrender”), filed by the Registry on 22 October 2007;

NOTING the “Addendum to the Information to the Chamber on the execution of the Request for the arrest and surrender of Germain Katanga (ICC-01/04-01/07-40-Conf-Exp)”⁴, filed by the Registry on 26 October 2007;

NOTING the “Order for a Report of Additional Information on the Detention and Surrender of the Detainee Germain Katanga”⁵ (“the Order”), issued by the Chamber on 26 October 2007;

NOTING the request entitled “*Requête aux fins de prorogation de délai pour le dépôt du rapport concernant des renseignements supplémentaires sur la détention et le transfert de*

¹ ICC-01/04-01/07-1.

² ICC-01/04-01/07-26.

³ ICC-01/04-01/07-40-Conf (reclassified as public at the hearing held on 14 December 2007); ICC-01/04-01/07-40-Conf-Anx.1, 4 and 7, and ICC-01/04-01/07-40-Conf-Anx.2, 3, 5, 6, 8 and 9 (reclassified as public at the hearing held on 14 December 2007).

⁴ ICC-01/04-01/07-44-Conf and ICC-01/04-01/07-44-Conf-Anx, both reclassified as public at the hearing held on 14 December 2007.

⁵ ICC-01/04-01/07-45.

Germain Katanga”,⁶ filed on 1 November 2007, by which the Registry requested additional time to comply with the Order;

NOTING the “Second Addendum to the information to the Chamber on the execution of the Request for the arrest and surrender of Germain Katanga (ICC-01/04-01/07-40-Conf-Exp)”,⁷ filed by the Registry on 2 November 2007;

NOTING the “Decision on the Request for an Extension of Time”,⁸ issued by the Chamber on 3 November 2007, in which the Chamber granted the extension of the time limit for the Registry to file a report on the languages read, spoken or understood by Germain Katanga until 9 November 2007;

NOTING the report entitled “*Rapport du Greffe relatif aux renseignements supplémentaires concernant les langues parlées, écrites et comprises par Germain Katanga*”⁹ (“the Report of the Registry”), filed on 9 November 2007;

NOTING the “Decision on Time Limit for the Submission of Observations on the “*Rapport du Greffe relatif aux renseignements supplémentaires concernant les langues parlées, écrites et comprises par Germain Katanga*”,¹⁰ issued by the Chamber on 13 November 2007, by which the Prosecution and the Defence were given until 23 November 2007 to submit observations on the Report of the Registry;

NOTING the “*Observations de la Défense de Germain Katanga sur le ‘Rapport du Greffe relatif aux renseignements supplémentaires concernant les langues parlées, écrites et*

⁶ ICC-01/04-01/07-46.

⁷ ICC-01/04-01/07-47-Conf-Exp and ICC-01/04-01/07-47-Conf-Exp-Anx1.

⁸ ICC-01/04-01/07-48.

⁹ ICC-01/04-01/07-62 and ICC-01/04-01/07-62-Conf-Anx1, both reclassified as public at the hearing held on 14 December 2007; and ICC-01/04-01/07-62-Conf-Anx2 which remains classified as confidential.

¹⁰ ICC-01/04-01/07-76

comprises par Germain Katanga”¹¹ (“the Defence Observations”), filed on 23 November 2007, in which the Duty Counsel for the Defence, pursuant to articles 50(3) and 67(1)(a) and (f) of the *Rome Statute* (“the Statute”), and in light of the fact that the Report of the Registry does not furnish sufficient evidence to establish that Germain Katanga fully speaks and understands French, requested the Chamber, *inter alia*, to: (a) take into consideration his limited ability to understand and speak French; (b) order that documents in French transmitted to him as part of the proceedings be accompanied by a translation into Lingala; (c) grant him the right to be assisted by a Lingala interpreter and translator during the proceedings; (d) order that judicial documents be transmitted to him in hard copy until he receives basic computer training and is provided with a computer and a printer; and (e) order all other necessary measures to allow him to follow and participate in his trial in Lingala, which is the language he understands, writes and speaks best;

NOTING the “Prosecution’s Observations on the *’Rapport du Greffe relatif aux renseignements supplémentaires concernant les langues parlées, écrites et comprises par Germain Katanga*”¹² (“the Prosecution Observations”), filed on 23 November 2007, in which the Prosecution furnished further information in support of the conclusion of the Report of the Registry that Germain Katanga fully understands, reads and speaks French, and that his understanding of the French language satisfies the standard set by articles 67(1)(a) and (f) of the Statute and is sufficient for him to follow the proceedings before the Court;

NOTING the hearing held on 14 December 2007¹³ (“the 14 December 2007 Hearing”) with the Prosecution, the Defence and representatives of the Registry;

¹¹ ICC-01/04-01/07-78.

¹² ICC-01/04-01/07-81 and ICC-01/04-01/07-Conf-Anx.A. Pages 1 to 3 of AnxA was reclassified as public at the hearing held on 14 December 2007; pages 4 to 8 remain classified as confidential.

¹³ ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime].

NOTING articles 21, 50, 54, 60, 61, 67(1)(a) and (f) of the Statute, rules 76, 77 and 121 of the *Rules of Procedure and Evidence* ("the Rules") and regulation 40(3) of the *Regulations of the Court* ("the Regulations");

I. Introduction

1. Under article 60(1) of the Statute, the Chamber has a duty to satisfy itself that the person surrendered to the Court and appearing for the first time before the Chamber has been informed of his or her rights under the Statute.

2. Furthermore, according to rule 121(1) of the Rules, in proceedings regarding the confirmation hearing, subject to the provisions of articles 60 and 61 of the Statute, a person appearing before the Chamber shall enjoy the rights set forth in article 67 of the Statute. In fact, paragraph article 67(1)(a) enshrines the right "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". In addition, article 67(1)(f) of the Statute provides for the right "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."

3. The Single Judge is mindful that, as Duty Counsel for the Defence states in the Defence Observations,¹⁴ the rights to be promptly informed of the nature, cause and content of the charges and to have adequate time and facilities to be in a position to mount an effective defence against such charges, which include the rights provided for in articles 67(1)(a) and (f) of the Statute, have been recognized by human rights courts and international criminal tribunals.

¹⁴ ICC-01/04-01/07-78, pages 3-6.

4. The Single Judge fully acknowledges the jurisprudence of these courts and tribunals and will not elaborate further on precedents, since she has already recognized such fundamental rights in the case of the Prosecutor v Thomas Lubanga Dyilo.¹⁵

5. In the view of the Single Judge, the main question in the instant case is to determine whether the competency of the arrested person in French, which is one of the working languages of the Court, is sufficient to meet the standards set by articles 67(1)(a) and (f) of the Statute. In this regard, the Single Judge notes that the European Court of Human Rights ("the ECHR") held in *Hermi v. Italy*, as relied upon by Duty Counsel in the Defence Observations, that "in the context of application of paragraph 3(e), the issue of the defendant's linguistic knowledge is vital and that it must also examine the nature of the offence with which the defendant is charged and any communications addressed to him by the domestic authorities, in order to assess whether they are sufficiently complex to require a detailed knowledge of the language used in court [...]"¹⁶

6. In performing her analysis, the Single Judge is mindful that the ECHR indicated in *Brozicek v. Italy*, made clear that interpretation into the language requested by an arrested person should be granted unless there is evidence showing that the person understands the actual language of the proceedings.¹⁷

¹⁵ See "Decision on the Requests of the Defence of 3 and 4 July 2006", issued by the Single Judge on , ICC-01/04-01/06-268, pages 5-6. See also ECHR, *Hermi v. Italy*, judgment (2006); *Kamasinski v. Austria*, judgment (1989); *Luedicke, Belkacem and Koç v. Germany*, judgment (1978); IACHR "El Derecho a la Información sobre la Asistencia Consular en el Marco de las Garantías del Debido Proceso Legal" advisory opinion (1999); and IACHR "Informe sobre la situación de los Derechos Humanos de un sector de la población Nicaragüense de Origen Mismo" (1999). See as well See also *inter alia* ICTY, *Prosecutor v. Mladen Naletilic and Vinko Martinovic*, Case No. IT-98-34-T "Decision on Defence's Motion concerning Translation of all Documents", 18 October 2001, Trial Chamber I - Section and Oral Order of 13 November 2001, the Trial Chamber clarified its Decision of 18 October 2001; ICTY, *Prosecutor v. Delalic et al.*, "Decision on Defence Application for forwarding the Documents in the Language of the Accused", Trial Chamber, Decision of 25 September 1996.

¹⁶ *Hermi v. Italy*, judgment, par. 71.

¹⁷ *Brozicek v. Italy*, judgment (1989).

II. Observations and documents filed by the Registry

7. The Single Judge notes that the Registry Information of Arrest and Surrender¹⁸ states that Germain Katanga expressed himself in French, and refused the interpretation offered to him by Court staff upon his arrival at the detention centre.¹⁹ Based on this document, the Presiding Judge of the Chamber asked Germain Katanga at his initial appearance to confirm that he fully understands and speaks French. Germain Katanga replied that he “speak[s] Lingala best”.²⁰

8. The Single Judge also notes that in the Registry Information of Arrest and Surrender, five documents state that Germain Katanga understands, writes and speaks French. The first document is a list of observations written in French and signed by Germain Katanga in the presence of his counsel.²¹

9. The second document is a *Procès Verbal d’Audition* of a hearing held before the *Avocat Général* of the High Military Court in the presence of Germain Katanga, and which bears the latter’s signature. The Single Judge observes that in this document it is stated that Germain Katanga answered all questions in French, which was the language of his choice,²² and that his rights were read to him in French in the presence of counsel of his choice.²³

10. The third document is a report on the arrest process signed by the *Avocat Général* of the High Military Court. The Single Judge notes that in the section entitled “*Langue(s) que la personne arrêtée parle et comprend parfaitement*”, it is indicated

¹⁸ ICC-01/04-01/07-40-Conf-Anx.6. This annex was reclassified as public at the hearing held on 14 December 2007.

¹⁹ ICC-01/04-01/07-40-Conf-Anx.7.

²⁰ ICC-01/04-01/07-T-5-ENG[22Oct2007Edited], page 3, line 8.

²¹ ICC-01/04-01/07-40-Conf-Anx3.3. This annex was reclassified as public at the hearing held on 14 December 2007. This was confirmed by the Defence at the 14 December 2007 hearing (ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 39, lines 18-22).

²² ICC-01/04-01/07-40-Anx3.5. This annex was reclassified as public at the hearing held on 14 December 2007: “Qui répond comme suit à nos questions posées en français, langue de son choix.”

²³ ICC-01/04-01/07-62-Conf-Anx1, page 2. This annex was reclassified as public at the held on 14 December 2007.

*“français, Swahili”*²⁴ and to the question *“La personne est-elle assistée par un interprète, si nécessaire ?”*, the answer is *“pas nécessaire”*.²⁵

11. The fourth document is another form signed by the Congolese authorities and the Court’s Director of Court Services. The Single Judge further notes that to the questions *“Est-ce que la personne arrêtée a reçu l’assistance d’un interprète ? ”* and *“Dans la négative, quelle en est la raison ?”* the answers provided are respectively *“pas nécessaire”* and *“parle le français”*.²⁶

12. The fifth document is a “Report on the arrival of the arrested person in the Host State”, signed by staff members of the Court’s Division of Court Services, and given to Germain Katanga upon his arrival in the Netherlands. The Single Judge observes that to the question “Were all the procedural steps described in Regulations 186 of the RoR carried out?”, the following answer was given: “[w]hen handing the folder over to M. Katanga, the Registry duty Officer asked him to confirm whether he would be able to read and understand the documents in French, which M. Katanga confirmed.”²⁷

13. The Single Judge also notes that on 20 October 2007, Germain Katanga signed an *accusé de réception* in French acknowledging that he had received a number of official documents.²⁸

14. Furthermore, the Single Judge observes that the Registry filed as Annex 2²⁹ to the Report of the Registry a letter sent by the Congolese Ministry of Primary, Secondary and Vocational Education, in which it is stated that Germain Katanga (therein referred to as Mr Katanga Simba) completed his *Pédagogie* studies, that he sat

²⁴ ICC-01/04/01/07-40-Anx3.7, page 1. This annex was reclassified as public at the hearing held on 14 December 2007 hearing.

²⁵ Idem, page 2.

²⁶ ICC-01/04/01/07-40-Anx6, page 2. This annex was reclassified as public at the hearing held on 14 December 2007.

²⁷ ICC-01/04/01/07-40-Conf-Anx7, pages 3-4.

²⁸ ICC-01/04/01/07-44-Anx. This document was reclassified as public at the hearing held on 14 December 2007.

²⁹ ICC-01/04-01/07-62. This document was reclassified as public at the hearing held on 14 December hearing. However, its Anx.2 remains classified as Confidential.

and passed the State examination, that his *Pédagogie* studies were in French, and that the State examination taken upon the completion of such studies was also in French.³⁰

15. Furthermore, at the 14 December 2007 hearing, the representatives of the Registry provided the following information to the Chamber:

- (i) Germain Katanga had nine interviews with the Head of the Defence Support Section, and, “[d]uring the first three visits to Mr. Katanga during which it was explained to him how he could change counsel, the business was conducted in French without the assistance of an interpreter, because during these three visits Mr. Katanga did not express any reservations with regard to linguistic communication”.³¹ It was only after sending a letter in Lingala indicating that he had chosen Mr Hooper as Defence Counsel that “he indicated that he could not communicate with us if he was not assisted by an interpreter.”³²
- (ii) The Congolese authorities who surrendered Mr Katanga to the Court’s officials in Kinshasa assured them that “there was no need for an interpreter because Mr. Katanga spoke French.”³³
- (iii) Germain Katanga spoke French during the medical examination performed in Kinshasa before his transfer to the seat of the Court.³⁴
- (iv) “[B]oth the doctor and the Head of the detention section speak English, so an interpreter was provided to work from French to English for Mr. Katanga.”³⁵

³⁰ This was confirmed by the Defence at the 14 December 2007 hearing (ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 30, lines 1-7.

³¹ ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 7, lines 17-21.

³² ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 7, lines 24,25.

³³ ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 43, lines 21,22.

³⁴ ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 43, lines 22,23.

³⁵ ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 44, lines 15-18.

- (v) The *Pédagogie* certificate obtained by Germain Katanga is a “perfectly secondary school certificate”, and is “equivalent to a “baccalaureate” in France”.³⁶

III. Observations and documents filed by the Prosecution

16. In its observations, the Prosecution submits that the wording of article 67 of the Statute does not mean 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.”³⁷ The Prosecution contends that “[r]ather, 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’.”³⁸

17. The Prosecution also alleges that the requirement “fully understands and speaks” “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 significance of legal terms, rulings, suggesting courses of action and filing motions with the Court.”³⁹

18. Finally, the Prosecution submits that the drafting history of article 67(1) of the Statute indicates that the arrested person should act in good faith when expressing his or her wish to be informed of the nature, cause and content of the charges against him or her. The Prosecution concurs with the conclusion of the Report of the Registry, i.e. that Germain Katanga fully understands and speaks French.⁴⁰

19. As evidence for its conclusion, the Prosecution annexed to its observations a handwritten request for interim release in French from Germain Katanga to the

³⁶ ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 30, lines 10, 11.

³⁷ ICC-01/04-01/07-81, para. 1.

³⁸ ICC-01/04-01/07-81, para. 1.

³⁹ ICC-01/04-01/07-81, para. 7.

⁴⁰ ICC-01/04-01/07-81, para. 8.

Congolese judicial authorities. According to the Prosecution, this document shows that Germain Katanga is proficient in French.⁴¹

20. The Prosecution also annexed to its observations a *Procès Verbal d'Audition* pertaining to national criminal proceedings instituted against Germain Katanga in the Democratic Republic of the Congo ("the DRC"). According to this document, all questions were put to Germain Katanga in French and he answered them "*en français, langue de son choix*".⁴²

21. Finally, at the 14 December 2007 hearing, the Prosecution submitted that "the language of Mr. Katanga is Kingwana, which is the Swahili spoken in Ituri".⁴³ According to the Prosecution, there is sufficient information to confirm "that Mr. Katanga understands French, and he can read the documents provided to him,"⁴⁴ and, if necessary, "he can also be assisted by a Congolese-Swahili interpreter, as was the case of Mr. Thomas Lubanga."⁴⁵

IV. Defence Observations

22. In the Defence Observations, Duty Counsel for the Defence submitted that the language in which an arrested person follows the proceedings must be perfectly understood and spoken by him or her.⁴⁶ In support of this assertion, Duty Counsel refers to the *travaux préparatoires* of the Statute where it was proposed that an arrested person be granted the right to be informed of the charges "in the language of his choice" under article 67(1)(a) of the Statute. In the view of Duty Counsel, this underscores the drafters' desire to ensure full participation of the arrested person in the proceedings.⁴⁷

⁴¹ ICC-01/04-01/07-81, para. 10 and ICC-01/04-01/07-81-Conf-AnxA, pages 1-3. These pages of AnxA were reclassified as public at the hearing held on 14 December 2007.

⁴² ICC-01/04-01/07-841-Conf-AnxA, p 4-8. These pages of AnxA remain classified as Confidential.

⁴³ ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 32, line 25, page 33 line 1.

⁴⁴ ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 31, lines 24-25 and p. 32, lines 1-3.

⁴⁵ ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 32, lines 1-3

⁴⁶ ICC-01/04-01/07-78, para. 13.

⁴⁷ ICC-01/04-01/07-78, para. 14.

23. Duty Counsel for the Defence notes that the intent of the Report of the Registry was to show that Germain Katanga knows, reads, understands and speaks French well.⁴⁸ Nevertheless, he submits that Germain Katanga's competency in French is inadequate to defend himself against those serious charges brought against him.⁴⁹ Duty Counsel for the Defence further argues that while the Report of the Registry would suggest that Germain Katanga knows, reads, understands and speaks French well,⁵⁰ the latter's competency in French is inadequate to defend himself from the serious charges brought against him.⁵¹

24. In this regard, Duty Counsel for the Defence argues that the fact that the record of the hearing of Germain Katanga before the *Avocat Général* of the High Military Court is in French is not indicative of Germain Katanga's knowledge of French.⁵² According to Duty Counsel for the Defence, the hearing was brief, the questions put to Germain Katanga were simple and short, as were his answers. Such a hearing, he contends, is not comparable to the long hearings involving complex issues which will take place before the Court.⁵³

25. Duty Counsel for the Defence also contends that nothing in the *Procès Verbal d'Audition* shows that Germain Katanga was informed that he could have chosen to have the proceedings held in a language other than French or that he had the right to be assisted by an interpreter.

26. Moreover, Duty Counsel for the Defence states that no document relating to the domestic proceedings against Germain Katanga in the DRC establishes that the latter fully understands and speaks French.

27. Concerning the languages in which Germain Katanga studied, Duty Counsel for the Defence argues that due to the multifaceted and multidimensional crisis

⁴⁸ ICC-01/04-01/07-78, para. 23.

⁴⁹ ICC-01/04-01/07-78, para. 23.

⁵⁰ ICC-01/04-01/07-78, para. 23.

⁵¹ ICC-01/04-01/07-78, para. 23.

⁵² ICC-01/04-01/07-78, para. 26.

⁵³ ICC-01/04-01/07-78, para. 27.

which has affected the DRC for several decades, the standard of teaching has deteriorated to such an extent that it cannot be said with any certainty that a person who has completed secondary school can fully understand and speak French.⁵⁴

28. Finally, Duty Counsel for the Defence alleges that, although Germain Katanga made the effort to speak French during his initial contact with the Court's Defence Support Section, he soon realised the difficulties he was experiencing and the enormous efforts required for him to compensate for his deficiency.⁵⁵ Duty Counsel further submits that at his first meeting with the Office of Public Counsel for the Defence ("the OPCD") on 20 October 2007, Germain Katanga told the Head of the OPCD, who was his Duty Counsel at the time, that "he feels more comfortable with Lingala". At the subsequent meeting of 23 October 2007, a member of the OPCD acted as a Lingala interpreter.⁵⁶

29. At the 14 December 2007 hearing, Counsel for the Defence, Mr Hooper, re-emphasized the arguments made by Duty Counsel in the Defence Observations. He stated that "there's no doubt that Mr. Katanga does speak French to a reasonable standard, and indeed that's our language of communication with him".⁵⁷ He also explained that Kingwana – a local subdialect of Swahili – is Mr Katanga's mother tongue, that Lingala is Mr Katanga's second language, and that French is his third language.⁵⁸ As Defence Counsel argued, for Mr Katanga, the difference between the proceedings being held in French and the proceedings being held in Kingwana or Lingala, is that if they were held in French, he would have "to keep thinking" to understand them, whereas if they were held in Kingwana or Lingala, he would be able to understand them without thinking.⁵⁹

V. Conclusions

⁵⁴ ICC-01/04-01/07-78, para. 32.

⁵⁵ ICC-01/04-01/07-78, para. 33.

⁵⁶ ICC-01/04-01/07-78, para. 35.

⁵⁷ ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 18, lines 4-6.

⁵⁸ ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 18, lines 11-15.

⁵⁹ ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 18, lines 25, page line 1.

30. At the outset, the Single Judge notes that articles 67(1)(a) and (f) of the Statute do not grant Germain Katanga the right to choose the language in which he must be informed of the charges against him and in which translation of documents and interpretation must be provided.⁶⁰ On the contrary, a proposal to this effect was defeated during the lengthy negotiations which led to the adoption of the Statute,⁶¹ and the standard that was adopted was that of a language that the arrested person or the accused “fully understands and speaks” so as to guarantee the requirements of fairness.⁶²

31. The Single Judge observes that Duty Counsel for the Defence acknowledged that Germain Katanga’s competency in French was good in terms of both his passive (reading and listening) and active (speaking) knowledge of French.⁶³ Counsel for Defence also confirmed this at the 14 December 2007 hearing when he acknowledged that “there’s no doubt that Mr. Katanga does speak French to a reasonable standard, and indeed that’s our language of communication with him”.⁶⁴

32. A number of documents were submitted to the Chamber and discussed at the 14 December 2007 hearing on Germain Katanga’s competency in French. Having analysed them, the Single Judge finds that Germain Katanga’s competency in French meets the standards of articles 67(1)(a) and (f) of the Statute.

33. First, not only did Mr Katanga obtain his secondary school diploma (*Section Pédagogie*) in French, he passed the State examination in French.

34. Second, Germain Katanga was the subject of criminal proceedings in the DRC which were held in French, and, in the course of the proceedings, he filed a lengthy request for interim release written in French to a good standard.

⁶⁰ ICC-01/04-01/07-81, pages 2-5

⁶¹ Report of the Working Group on Procedural Matters, A/Conf. 183/C.I./WGPM/L. 2/Add. 6 (11 July 1998) in ICC-01/04-01/07-81, page 6.

⁶² See Friman, H., “Rights of Persons Suspected or Accused of a Crime”, in Lee, Roy, S. (ed), “The International Criminal Court: The Making of the Rome Statue”, Kluwer Law International, The Hague, The Netherlands, 1999, pages 252-253.

⁶³ ICC-01/04-01/07-78, para. 23.

⁶⁴ ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 18, lines 4-6.

35. Third, all proceedings concerning the execution of the cooperation request for the arrest and surrender of Germain Katanga to the Court were held in French, and at no time did he raise any concerns about his language of communication with the Congolese authorities or with Court officials. Quite the contrary, in addition to writing his observations in French, Mr Katanga confirmed to the Duty Officer at the detention centre that he could read and understand all of the documents he had received in French.

36. Finally, at the detention centre, Germain Katanga was given a list of 15 French/Lingala speaking counsel from which he eventually chose a Defence Counsel with whom he communicates in French,⁶⁵ despite the fact that his second Duty Counsel spoke not only French, but also Lingala.

37. Having found that Germain Katanga's competency in French meets the standards of articles 67(1)(a) and (f) of the Statute, the Single Judge will now consider the scope of the interpretation and translation into French that the Court must provide to him under the above-mentioned provisions.

38. At the outset, the Single Judge notes that, because French is one of the Court's working languages, simultaneous interpretation into French is provided at all hearings held in the presence of the Defence for the purpose of the confirmation hearing in the case of *The Prosecutor v. Germain Katanga*.

39. In relation to the documents that should be provided to Germain Katanga in French, the Single Judge finds that rule 76(3) of the Rules is the only provision which expressly imposes upon the Prosecution a statutory obligation to provide the Defence with a translation into French of evidentiary materials. In this regard, the Single Judge recalls (i) that the Defence has already been provided with a French version of the authorised redacted versions of the interview notes and statements of witnesses 3, 7, 8, 12, 13 and 14; (ii) that the Defence has only been provided with an

⁶⁵ ICC-01/04-01/07-T-11-ENG[14Dec2007 Realtime], page 17, lines 10-13.

English version of the authorised redacted version of the statement of Witness 1; and (iii) that the interview notes and statements of all other witnesses on which the Prosecution intends to rely at the confirmation hearing and that must be disclosed pursuant to rule 76 of the Rules, shall only be disclosed subsequent to a decision by the Single Judge on the pending Prosecution requests for redactions or the additional requests for redactions made by the Prosecution by 14 January 2008.

40. Furthermore, the Single Judge recalls that in the “Decision on the Requests of the Defence of 3 and 4 July 2006”,⁶⁶ in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (“the Decision on Language Issues”), the Single Judge held that:

[...] the right set out in article 67 (1) (a) of the Statute grants Thomas Lubanga Dyilo the right to be informed in details of the nature, cause and content of the charges against him as opposed to granting him a general right to receive all documents from the Prosecution in a language he fully understands and speaks; that the Chamber is of the view that the detailed description of the charges together with a list of evidence (“the Charging Document and List of Evidence”) provided for in rule 121 (3) of the Rules will adequately inform Thomas Lubanga Dyilo of the nature, cause and content of the charges against him; and that the rights of Thomas Lubanga Dyilo under article 67 (1) (a) of the Statute would be duly guaranteed by the filing by the Prosecution in the record of the case against [the suspect] of a French version of the Charging Document and List of Evidence and, as the case may be, of the Amended Charging Document and List of Evidence within the time limits provided for in rule 121 (3), (4) and (5) of the Rules.⁶⁷

41. In the same decision, the Single Judge also held that:

“using the words “as are necessary to meet the requirements of fairness”, article 67 (1) (f) of the Statute does not grant Thomas Lubanga Dyilo the right to have all procedural documents and all evidentiary materials disclosed by the Prosecution translated into a language that Thomas Lubanga Dyilo fully understands and speaks; and that this interpretation is fully consistent with the case law of the ECHR on this matter.”⁶⁸

42. Nevertheless, the Single Judge is mindful that filings made to date in the record of the present case by the Prosecution and Counsel for the Defence, and most of the decisions issued by the Chamber or the Single Judge have been in English, and

⁶⁶ ICC-01/04-01/06-268.

⁶⁷ ICC-01/04-01/06-268, pages 5-6.

⁶⁸ ICC-01/04-01/06-268, page 6.

that, at the 14 December 2007 hearing, both the Prosecution and Counsel for the Defence addressed the Chamber in English, and the judges of the Chamber addressed the parties in English.

43. Under the circumstances, the Single Judge considers that Germain Katanga would greatly benefit from the measures taken in the Decision on the Language Issues, that is to say the permanent assistance of a French interpreter in order to facilitate his adequate knowledge of the evidentiary materials and procedural documents filed by the Prosecution as well as his proper understanding of the decisions and orders of the Chamber pending their official written translations under regulation 40(3) of the Regulations.

FOR THESE REASONS,

DECIDE to reject the requests made by the Duty Counsel for the Defence in the Defence Observations.

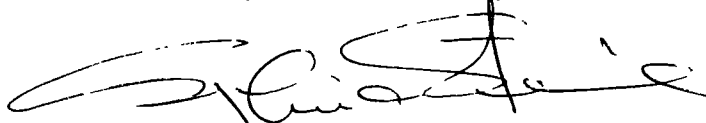
DECIDE that Germain Katanga shall be provided with a French version of the authorised redacted version of the statement of Witness 1 no later than 4 January 2008, 16:00;

DECIDE that, no later than 29 January 2008, Germain Katanga shall be provided with a translation into French of all additional statements that the Prosecution will have to disclose to the Defence pursuant to Rule 76 of the Rules further to a ruling of the Single Judge on the pending or additional Prosecution requests for redactions within the time limits to be set by the Single Judge in these rulings;

ORDER the Prosecution to file a French version of the Charging Document and List of Evidence and, as the case may be, of the Amended Charging Document and List of Evidence within the time limits provided for in rules 121(3), (4) and (5) of the Rules.

ORDER the Registrar to make permanently available to Germain Katanga, and free of any cost, a French interpreter to assist him for the purpose of the confirmation hearing with documents of the case which are only available in English.

Done in both English and French, the English version being authoritative.


Judge Sylvia Steiner
Single Judge

Dated this Friday 21 December 2007

At The Hague, The Netherlands