

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/07
Date: 21 January 2008

TRIAL CHAMBER II

Before: Judge Bruno Cotte , Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Fumiko Saiga

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR
*v. Germain Katanga and Mathieu Ngudjolo Chui***

**Public Document
URGENT**

**Report of the Registrar on the Provision of Lingala Interpretation for
Germain Katanga at the Trial Stage**

Source: The Registrar

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (“the Court”)

NOTING the “Rapport du Greffe relative aux renseignements supplémentaires concernant les langues parlées, écrites et comprises par Germain Katanga” submitted on 9 November 2007 ;¹

NOTING the « Observations de la Défense de Germain Katanga sur le « Rapport du Greffe relatif aux renseignements supplémentaires concernant les langues parlées, écrites et comprises par Germain Katanga » dated 23 November 2007 ;²

NOTING the « Prosecution’s Observations on the « Rapport du Greffe relatif aux renseignements supplémentaires concernant les langues parlées, écrites et comprises par Germain Katanga » dated 23 November 2007 ;³

NOTING the “Decision on the Defense Request Concerning Languages” rendered by Pre-Trial Chamber I on 21 December 2007;⁴

NOTING the “Defence Application for Leave to Appeal the Decision on the Defence Request Concerning Languages” dated 27 December 2007;⁵

NOTING the “Prosecution’s Response to the Defence Application for Leave to Appeal the Decision on the Defence request Concerning Languages” dated 8 January 2008;⁶

¹ ICC-01/04-01/07-62

² ICC-01/04-01/07-78

³ ICC-01/04-01/07-81

⁴ ICC-01/04-01/07-127

⁵ ICC-01/04-01/07-130

⁶ ICC-01/04-01/07-137

NOTING the “Decision on the Defence Application for leave to Appeal the Decision on the Defence Request Concerning languages” rendered by Pre-Trial Chamber I on 18 January 2008;⁷

NOTING the “Defence Document in Support of Appeal Against “Decision on the Defence request Concerning Languages” dated 1 February 2008;⁸

NOTING the “Prosecution’s Response to the Defence Document in support of Appeal Against “Decision on the Defence request Concerning Languages” dated 14 February 2008;⁹

NOTING the “Judgment on the appeal of Mr. Germain Katanga against the decision of Pre-Trial Chamber I entitled “Decision on the Defence Request Concerning Languages” (“Judgment”) dated 27 May 2008¹⁰;

NOTING the “Decision implementing the Appeals Chamber Judgment concerning languages” rendered on 2 June 2008 “(the Decision)”¹¹;

NOTING the hearing of 28 November 2008¹²;

NOTING « l’Ordonnance enjoignant aux participants et au Greffe de déposer des documents complémentaires » dated 10 December 2008¹³ ;

⁷ ICC-01/04-01/07-149

⁸ ICC-01/04-01/07-175

⁹ ICC-01/04-01/07-194

¹⁰ ICC-01/04-01/07-522

¹¹ ICC-01/04-01/07-539

¹² ICC-01/04-01/07-T-53-ENG, 28 November 2008

¹³ ICC-01/04-01/07-788

NOTING Articles 50, 64 and 67 of the Rome Statute, regulations 24 *bis* and 39 (3) of the Regulations of the Court, Regulation 61 of the Regulations of the Registry;

CONSIDERING that during the hearing of 28 November 2008, the Registrar submitted that “it seems indispensable for this Chamber to issue a new decision as to whether Mr. Katanga should receive interpretation in Lingala for the hearings”¹⁴;

CONSIDERING that the Chamber ordered the Registrar to file submissions justifying the revision of the Decision and to submit all useful documents if necessary;¹⁵

SUBMITS the following observations:

Preliminary remarks

1. In its Judgement dated 27 May 2008, the Appeals Chamber did not rule on whether Mr. Katanga’s level of French met the requirements of Article 67 (1) (a) and (f) and remitted the appreciation to the Pre-Trial Chamber.

2. The Appeals Chamber however clarified that “an accused fully understands and speaks a language when he or she is completely fluent in the language in ordinary non-technical conversation; it is not required that he or she has an understanding as if he or she were trained as a lawyer or judicial officer. If there is any doubt as to whether the person fully understands and speaks the language of the Court, the language being requested by the person should be accommodated”.

¹⁴ ICC-01/04-01/07-T-53-ENG ET WT, p. 37, line 23-25

¹⁵ ICC-01/04-01/07-788, page13

3. The Single Judge indicated that the factual determination regarding the level of French of Mr. Katanga to the level required by the Appeals Chamber would “require [...] to undertake a number of procedural steps, which would most likely result in a further postponement of the confirmation hearing”. The Single Judge stressed that it was indeed important for both persons subject to the arrest warrant to have “the confirmation hearing held within a reasonable period of time after their surrender to the Court”.
4. As a result, it was decided that Mr. Katanga would continue benefiting from liaison interpretation into lingala during the pre-trial phase and especially during the confirmation of charges hearing.
5. As the Appeals Chamber did not make any determination on the level of understanding of French by Mr. Katanga. Taking into account that the Single Judge granted the request for Lingala interpretation without making such determination but rather with the aim to protect the right to a speedy proceedings of the accused, the Registrar is of the view that such decision should be revisited by the Trial Chamber at this new stage of the proceedings.

Legal determination for the revision of the Decision:

6. Pursuant to article 61(11) of the Rome Statute, once the charges have been confirmed, the Presidency shall constitute a Trial Chamber which [...] shall be responsible for the conduct of subsequent proceedings. As the charges in the case of the Prosecutor v. Germain Katanga have been confirmed, Trial Chamber II was assigned to deal with the case;

7. Pursuant to article 64(3)(b) of the Rome Statute the *Trial Chamber assigned to deal with the case shall [...] determine the language or languages to be used at trial*. It is therefore the view of the Registrar that it belongs to the Trial Chamber to make a decision on the use of any language to be used at the trial stage of the proceedings;

Factual determination

9. The Registrar and the Defence agreed on a minimum common position in that it is assumed that “Mr Katanga speaks and understands French to a reasonable standard”¹⁶ and also that “Mr. Katanga may well understand a part, or even most part, of the proceedings against him”¹⁷. The Defence however concluded that “there is a real risk that Mr. Katanga will miss some fundamental important elements of the evidence against him”¹⁸. The Registrar does not agree with this position.
10. In addition to the information provided by the Registrar in her filing dated 9 November 2009¹⁹, and by the Office of the Prosecutor in its filings dated 23 November 2007, 8 January 2008 and 14 February 2008²⁰, the Registrar wishes to submit additional observations to assist the Trial Chamber in its determination.

- Observations on the standard of article 67

11. According to article 67(1)(f) of the Rome statute, the accused is entitled to receive the assistance of a qualified interpreter [...] if any of the proceedings

¹⁶ ICC-01/04-01/07-175, para 47.

¹⁷ ICC-01/04-01/07-175, para 35.

¹⁸ *Idem*

¹⁹ ICC-01/04-01/07-62

²⁰ ICC-01/04-01/07-81, ICC-01/04-01/07-137, ICC-01/04-01/07-194.

are not in a language [...] which the accused fully understands and speaks. However, there is a no blanket approach towards fully understanding a language and fully speaking that same language. For example one can understand a language but does not necessarily speak the said language.

12. A language which one fully understands and speaks normally applies to one's "native language/mother tongue" or "langue maternelle". The terms are linked with either the person who is/was responsible for the education of the children or refer to the language spoken within the region of the birthplace. Implicitly, it also refers to the language which is spoken/understood best by the person concerned ("language of reference"). With regard to the Democratic Republic of the Congo, the term native language/mother tongue or "langue maternelle" is difficult to apply since there is no real sole language of reference and it is common practice that children are raised by different persons, sometimes living in different areas of the country. Hence, people are exposed to different languages and/or dialects.

13. The same example applies to mixed families (i.e. husband and wife speak a different language) where multiple languages are spoken to the children. Speaking different languages to the children does not imply that these children fully understand and speak every language they hear. Therefore, if a "language of reference" is to be identified for Mr. Katanga it should rather be a combination of Swahili, Kingwana and Lingala than one single language. Mr. Katanga was born and raised in the Eastern part of the Democratic Republic of the Congo (Bunia region) where Swahili and Kingwana (a local dialect based on Swahili) are widely spoken²¹. Furthermore, he was enlisted in

²¹ See ICC-01/04-01/07-175, Para 27 the Defence submits that "his preferred language is Lingala because this is the language he spoke in the Army as well as in prison in Kinshasa where he spent the last two years before being transferred to the Hague".

the army were Lingala is widely spoken. Taking into consideration the above, it seems quite difficult to identify one "language of reference".

14. Regardless of the above and based on the documents in her possession, the Registrar has no doubt that French is the language which Mr. Katanga fully understands and speaks.

- Observations on Lingala interpretation

15. Pursuant to the judgement of the Appeals Chamber, a person fully speaks and understands a language when he or she is completely fluent in the language in a non- technical conversation.

16. Before the International Criminal Court, the debates take place before professional judges and can be considered technical for a person who has no training in law. This is applicable for the most part to all persons in any language who have not had legal training. For any court proceedings, the assistance of defence counsel to his or her client is crucial. This is also true of Mr. Katanga²².

17. The defence has quoted a linguistic expert to support the view that "the language spoken in the Court room is not identical to the language ordinary citizens speak in a day-to-day life"²³. The question is therefore whether the level of understanding of a language by a person can be assessed by taking as a point of reference the ability for this person to understand proceedings.

²² Counsel is both legally trained and have an excellent knowledge and is fluent in one of the working languages

²³ ICC-01/04-01/07-175, 1 February 2008, Page 10, para 36

18. It could be argued that an interpretation in Lingala will not assist a person who already has a reasonable control of the French language to understand the proceedings more thoroughly. Also, it must be stressed that the witnesses called to testify will either speak in Lingala or in a level of French which will be non-technical and therefore accessible to Mr. Katanga. Besides, several witnesses will testify in Lingala.

19. In this regard, it is questionable whether Mr. Katanga has so far benefited from liaison interpretation. He has been provided with this mode of interpretation as defined in Regulation 61 (d) of the Regulations of the Registry as such:

“Liaison interpretation where the interpreters interpret aloud, usually in and out of two or more languages, interpreting a few sentences at a time, for a very limited number of listeners”

20. It can be questioned further whether the provision of this interpretation to Mr. Katanga gives as full a restitution of what the initial speaker says as simultaneous interpretation does. Liaison interpretation is not ideally used in court proceedings. On the other hand, Lingala has never been used in international criminal proceedings and there is much terminological work to be done. This work has to be carried out against the backdrop of different schools of thought on, for instance should numbers in Lingala be spoken in Lingala or in French?

21. Furthermore, it is reasonable to assume that a number of legal terms developed and used in Lingala would not be understood by some speakers of

Lingala. As long as there is insistence on continuation of provision of interpretation in Lingala, the terminological work will continue but as such it can be argued it will still be beyond the understanding of an ordinary person without legal training²⁴. One may consider the arguments developed above when assessing whether the liaison interpretation provided so far gives him a better understanding of the proceedings than a proceedings in French.

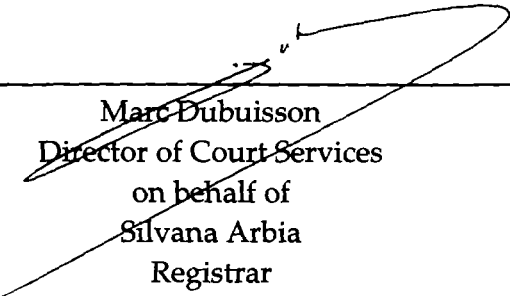
Concluding remarks

22. The Registrar submits that the materials previously submitted are still relevant to assist the Chamber in making its assessment.

23. The Registrar also draws to the attention of the Chamber that the decision taken will have tremendous consequences regarding future proceedings and it is important that clear criteria are adopted to assess whether a person is fluent in a language in non technical conversations. The Single Judge has referred to procedural steps which can be undertaken to make such assessment without providing such steps. The Registry remains available for any procedural steps the Chamber would ask the Registry to conduct.

²⁴ This work has been carried out for the most part for Acholi and for Swahili. Many new terms had to be adopted through work of terminology and legal experts.

SUBMITS respectfully to the Chamber that interpretation in French would fulfil the requirements of Article 67(1) (a) and (f) of the Rome Statute.



Marc Dubuisson
Director of Court Services
on behalf of
Silvana Arbia
Registrar

Dated this 21 January 2009

At The Hague, The Netherlands