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No.: ICC-01/04-01/07

Date: 26 April 2010

TRIAL CHAMBER II

Before: Judge Bruno Cotte , Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Public

**Defence Observations on the *Rapport de l'expert en langue ngiti concernant
l'audience du 4 mars 2010***

Source: Defence for Mr Germain Katanga

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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**Unrepresented Applicants for
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Amicus Curiae

REGISTRY

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Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 4th March 2010, in the course of the testimony of witness 161, an issue arose as to the extent that the witness understood the Ngiti language. Witness 161, at the invitation of the Defence, uttered words that he said were in the Ngiti language¹. The Trial chamber ordered, at the Defence request, that the relevant part of the audio record of that evidence be sent for translation². The Registry submitted the resulting document '*Evaluation of Ngiti sentences by a witness*' ('the Evaluation') in a confidential annex attached to its subsequent report³. The Defence hereby responds to the Prosecution's oral request that the Evaluation be admitted in evidence and provided an EVD number.
2. At the present time the Defence is not in a position to agree that the Evaluation be admitted in evidence with an EVD number. The Defence has no objection to it being given an MFI number.
3. The reasons for the objection are;
4. The Expert's finding in the Evaluation is that 'the witness does indeed speak these short sentences in Ngiti' and in a supplementary email that 'the few sentences spoken are definitely in the Ngiti language'. While the Defence accepts that the witness did indeed speak some parts in the Ngiti language, it does not presently accept some of the Expert's findings and would not wish the report and supplementary email to go in as evidence without the opportunity to explore the matter further with the Expert.⁴ The witness's capacity to understand Ngiti, particularly in respect of the larger portion of speech he claimed to have heard and understood, remains an issue.
5. The Defence are currently led to understand from its own sources that the words spoken by the witness do not fully reflect the words that would have been uttered in the Ngiti language, had they been spoken by a fluent speaker. If that is so, then it reflects on the extent that the witness spoke or understood Ngiti. The Defence appreciates that the witness said that he did not speak Ngiti but only understood some as his relatives were Ngiti. Nevertheless, the extent of his understanding is relevant to

¹ ICC-01/04-01/07-T-112-CONF-ENG ET 04-03-2010

² ICC-01/04-01/07-T-114-CONF-ENG ET 09-03-2010, pages 8-9

³ ICC-01/04-01/07-2021, 'Enregistrement au dossier du rapport de l'expert en langue ngiti concernant l'audience du 4 mars 2010', 6 April 2010, and 'Annexe confidentielle'.

⁴ See for instance ICC-01/04-01/07-T-122-CONF-ENG ET, pages 2-3, where the Chamber held that information items given in Court by the Registry (on the measures taken by VWU) were not elements of evidence; that the Registry limited itself to replying to a request made by the Chamber, and that it was not the job of the Registry, neutral organ of the Court, to provide items of evidence; and that the Chamber did not intend to give an EVD number to the items of information in question since those items were found in the transcript of the hearing.

his capacity to understand the much larger portions of Ngiti speech alluded to in his testimony and so remains a matter of contention.

6. The Defence does not have access at present to someone who can advise authoritatively on the translation and is reluctant to expend limited resources doing so. It appears that the language employed by witness 161 is inaccurate in some details. So, for example, a key word is 'nyUdU' which is translated by the witness as 'to kill', but doubts exist, as the Expert explains, as to the word used by the witness and, if it was indeed 'nyUdu', its actual meaning. The Defence understands that the word may mean 'to pound' – as in 'to pound maize' but may also have found its way into the local form of Swahili known as *Kingwana* - to mean 'to kick', 'to knock'. It is to be noted from the 'brief follow up' in the email dated March 27th and attached to the Report that the linguistic expert makes plain her difficulties in making a translation. Indeed, the Defence understands that very little has been written in the Ngiti language⁵ and consequently it may be that the material available to the expert is very limited.
7. The expert makes reference to 'a large dictionary of the central dialect'. The Defence does not have access to this book. Reference is made in the Evaluation to there being northern, central and southern Ngiti dialects which puzzles the Defence as the Ngiti's area is very small and self contained and not really allowing such a distinction.
8. There are other observations that the Defence would wish to bring to the attention of the Court before the Evaluation can be put in evidence.
9. The Defence would welcome an opportunity to discuss the matter directly with the ICC Linguistic Expert, if available, in order to address its concerns and hopefully resolve the matter.
10. An alternative course would be to permit the Prosecution to call the expert, or for the Chamber itself to call the expert to give testimony, so as to allow the Defence the opportunity to raise these matters and obtain an evidential response.

⁵ For example, the Defence have been told that only the gospels of Matthew and Mark of the New Testament have been translated.

Respectfully submitted,



David HOOPER Q.C.

Dated this 26 April 2010

At The Hague