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Date: **7 May 2008**

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR**

v. Germain Katanga and Mathieu Ngudjolo Chui

Public Document

**Defence Request Seeking the Automatic Written Translation into French of All
Procedural Documents and Decisions of the Chambers which are Notified to
Mathieu Ngudjolo in a Language Other than French**

Source: Defence Team for Mathieu Ngudjolo

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

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I. PROCEDURAL BACKGROUND

1. On 6 July 2007, Pre-Trial Chamber I of the International Criminal Court issued a warrant of arrest for Mr Mathieu Ngudjolo.¹
2. On 7 February 2008, Pre-Trial Chamber I rendered a decision to unseal the warrant of arrest issued for Mr Mathieu Ngudjolo.²
3. On 7 February 2008, the Pre-Trial Chamber scheduled Mr Mathieu Ngudjolo's first appearance for 11 February 2008.³
4. On 12 February 2008, the Defence for Mr Mathieu Ngudjolo filed an application to extend the time limits so as to enable it to file all of the case materials to support the challenge to admissibility submitted at the pre-trial hearing on 11 February 2008.⁴
5. On 18 February 2008, the Defence for Mr Mathieu Ngudjolo submitted to Pre-Trial Chamber I its observations on the issue of the joinder of the cases against Mr Mathieu Ngudjolo and Mr Germain Katanga, pursuant to the oral request of Pre-Trial Chamber I at the hearing of 12 February 2008.⁵

¹ "Warrant of Arrest for Mathieu Ngudjolo Chui", Pre-Trial Chamber I, 6 July 2007, ICC-01/04-01/07-1-tENG.

² *Decision to Unseal the Warrant of Arrest Against Mathieu Ngudjolo Chui*, Pre-Trial Chamber I, 7 February 2008, ICC-01/04-02/07-10.

³ *Decision Scheduling the First Appearance of Mathieu Ngudjolo Chui and Authorising Photographs at the Hearing of 11 February 2008*, Pre-Trial Chamber I, 7 February 2008, ICC-01/04-02/07-14-tENG.

⁴ "Requête en vue d'obtenir la prorogation des délais permettant à la Défense de déposer l'ensemble du dossier pouvant justifier l'exception d'irrecevabilité de la procédure", Pre-Trial Chamber I, 12 February 2008, ICC-01/04-02/07-20.

⁵ "Observations de la Défense concernant la question de la jonction de procédures entre l'affaire Mathieu Ngudjolo et l'affaire Germain Katanga, en application de la requête orale présentée par la Chambre Préliminaire I lors de l'audience du 12 février 2008", Pre-Trial Chamber I, 18 February 2008, ICC-01/04-02/07-29.

6. On 25 February 2008, the appointment of Mr Jean-Pierre Kilenda Kakengi Basila as permanent Counsel was registered.⁶
7. On 10 March 2008, the Pre-Trial Chamber rendered a decision ordering the joinder of the *Katanga* and *Ngudjolo* cases on the ground of their alleged joint criminal participation in the acts described in their respective warrants of arrest.⁷
8. On that same day, the Pre-Trial Chamber rendered a decision establishing a timetable for the new joint case.⁸
9. On 17 March 2008, the Defence filed an application to the Pre-Trial Chamber for leave to appeal against the decision of 10 March 2008 to join the cases of Germain Katanga and Mathieu Ngudjolo.⁹
10. On 9 April 2008, the Pre-Trial Chamber partially granted said application for leave to appeal, namely on the first issue based on the Defence argument that the Chamber erred in its interpretation of article 64(5) of the Statute and rule 136 of the Rules of Procedure and Evidence, in violation of the principle of legality.¹⁰

⁶ "Enregistrement de la désignation de maître Jean Pierre Kilenda Kakengi Basila par M. Mathieu Ngudjolo Chui comme conseil et de la déclaration d'acceptation du mandat par le conseil", Pre-Trial Chamber I, 25 February 2008, ICC-01/04-02/07-42.

⁷ *Decision on the Joinder of the Cases against Germain KATANGA and Mathieu NGUDJOLO CHUI*, Pre-Trial Chamber I, 10 March 2008, ICC-01-04-01-07-257.

⁸ *Decision Establishing a Calendar in the Case against Germain Katanga and Mathieu Ngudjolo Chui*, Pre-Trial Chamber I, 10 March 2008, ICC-01-04-01-07-259.

⁹ "Application for Leave to Appeal against the Decision on Joinder rendered on 10 March 2008 in the Germain KATANGA and Mathieu NGUDJOLO Cases", Pre-Trial Chamber I, 17 March 2008, ICC-01/04-01/07-328-tENG.

¹⁰ *Decision on Application for Leave Appeal by the Defence of Mathieu Ngudjolo Chui against the Decision on Joinder*, Pre-Trial Chamber I, 9 April 2008, ICC-01/04-01/07-384.

11. On 21 April 2008, the Defence filed its appeal.¹¹
12. On account of its working conditions and the large number of filings it has been required to submit since the pre-trial hearing on 11 February 2008, the Defence submitted an application dated 18 April 2008 seeking the postponement of the confirmation hearing, which had been scheduled for 21 May 2008 at the pre-trial hearing of 11 February 2008.¹²
13. On 21 April 2008, the three judges of the Pre-Trial Chamber held a public hearing expressly to discuss the merits of the said application seeking the postponement of the confirmation hearing.
14. On 25 April 2008, the Pre-Trial Chamber decided to postpone the confirmation hearing to 27 June 2008.¹³

II. AS TO THE LAW

A. The legal bases underpinning the present application

15. Under article 55(c) of the Rome Statute (“Statute”) on the rights of persons during an investigation, a person being questioned in a language that he or she does not fully understand or speak shall have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of the fairness of the proceedings.

¹¹ “Appeal Against the Decision on Joinder rendered on 10 March 2008 by the Pre-Trial Chamber in the Germain Katanga and Mathieu Ngudjolo Cases”, Appeals Chamber, 21 April 2008, ICC-01/04-01/07-421-tENG.

¹² “Requête de la Défense de Mathieu Ngudjolo en vue de solliciter le report de la date de l’audience de confirmation des charges actuellement fixée par la Chambre Préliminaire au 21 mai 2008”, Pre-Trial Chamber I, 18 April 2008, ICC-01/04-01/07-410.

¹³ *Decision Establishing a Calendar according to the date of the Confirmation hearing: 27 June 2008*, Pre-Trial Chamber I, 29 April 2008, ICC-01/04-01/07-459; see p. 4: “NOTING the ‘Decision on the Defence Request for Postponement of the Confirmation Hearing’ (ICC-01/04-01/07-446) issued by the Chamber on 25 April 2008, in which the Chamber decided to schedule the confirmation hearing on 27 June 2008”.

16. The suspect's right to be accurately informed is thus guaranteed under the Statute. Moreover, article 61(3)(a) and (b) of the Statute provide that the person shall receive written notification of the charges on which the Prosecutor intends to bring the person to trial, and shall be informed of the evidence on which the Prosecutor intends to rely at the hearing.
17. Pursuant to article 67(a) of the Statute on the rights of the accused, the accused must be informed promptly and in detail of the nature, cause and content of the charges in a language he or she fully understands and speaks.
18. Article 14(3)(a) of the International Covenant on Civil and Political Rights also guarantees the suspect the same right to be informed in detail in a language he understands of the nature and cause of the charges against him. This same right is confirmed in Article 6(3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
19. To date, and ever since the pre-trial hearing of 11 February 2008, the Defence considers that the client's right to the language of his choice for the proceedings against him has been to some extent neglected.

B. Mr Mathieu Ngudjolo has chosen French for the documents in the proceedings against him before the International Criminal Court

20. Mathieu Ngudjolo has chosen to express himself in French for the purposes of his case. At the pre-trial hearing on 11 February 2008, he even asked the Chamber if he could receive the services of an interpreter proficient in Lingala. The Chamber pointed out that he had in fact said that he speaks French and understands the language well. Mathieu Ngudjolo does not understand English at all. He neither speaks nor writes that language.

21. Therefore, it becomes very difficult to comprehend that the majority of the decisions and documents notified to Mathieu Ngudjolo are in English, a

language he did not choose for his case before the International Criminal Court. And when decisions and other procedural documents are finally translated for him, it is with considerable delay. A few examples will suffice to demonstrate this. Such was the case for the *Decision Establishing a Calendar in the Case against Germain KATANGA and Mathieu NGUDJOLO CHUI*: the original is dated 10 March 2008, yet it was not translated until 24 April 2008.¹⁴ This was also the case for the *Decision concerning the Notification of a decision to Mathieu Ngudjolo Chui* dated 18 March 2008, which was translated into French on 24 April 2008.¹⁵ The *Decision revoking the prohibition of contact and communication between Germain Katanga and Mathieu Ngudjolo Chui* dated 13 March 2008, translated into French on 24 April 2008 and registered on 25 April 2008, should also be noted here.¹⁶ We would also mention the *Decision on the "Demande en vue d'obtenir la reclassification d'un document"* dated 8 April 2008, translated by CITS on 29 April 2008 and registered on 29 April 2008,¹⁷ and also the Decision scheduling an ex parte hearing, dated 14 April 2008 and translated on 29 April 2008.¹⁸

22. Although late, these translations do demonstrate the Pre-Trial Chamber's concern to ensure that all of the parties fully understand the procedural documents produced in this case and, *ipso facto*, they respect the right to the language chosen by the parties for the purposes of the proceedings.

C. The use of the English language in the decisions and documents notified to Mathieu Ngudjolo is inconsistent with the rights of the Defence

23. Mathieu Ngudjolo has chosen French as the language of the proceedings. There is no evidence of his having changed this choice as it is irreversible.

¹⁴ ICC-01/04-01/07-259-tFRA 24-04-2008 1/16 VW PT.

¹⁵ ICC-01/04-01/07-329-tFRA 25-04-2008 1/3 VW PT.

¹⁶ ICC-01-04-01-07-322-tFRA 25-04-2008 1/14 VW PT.

¹⁷ ICC-01/04-01/07-378-tFRA 29-04-2008 1/4 VW PT.

¹⁸ ICC-01/04-01/07-395-tFRA 29-04-2008 1/4 VW PT.

Meanwhile, the Chamber notifies documents to him in English. Similarly, the Prosecutor files a great many documents in English – a language Mathieu Ngudjolo did not choose for his case simply because he cannot speak or write it at all.

24. The reasons set out below justify the provision of a translator for Mathieu Ngudjolo or, at the very least, that all of the procedural documents produced in the case and decisions be notified to him in French as soon as they are rendered.

1. The ineffectiveness in practice of the decision of 27 February 2008 rendered by the Pre-Trial Chamber with a view to granting Mathieu Ngudjolo the services of an interpreter and the unsatisfactory arrangements for application of the decision as proposed by the Court services

25. On 27 February 2008, the Chamber rendered a decision by which it decided to appoint an interpreter to assist Mathieu Ngudjolo.¹⁹ Since this appointment, Mathieu Ngudjolo has received several documents written in English, with which that interpreter was unable to help him at all.²⁰

26. Concerned to be informed as to how the decision of 27 February 2008 was to be implemented in practice, on 16 April 2008 the Defence received the following response from the Court Management Service: “[TRANSLATION] [...] Please note that whenever Mr Ngudjolo would like a document to be notified to him, he can request it from the staff of the detention centre, who will forward the request to the Court’s interpretation section. The interpretation section will then arrange a time for the interpreter to visit the detention centre to meet with Mr Ngudjolo and provide him with the interpretation services

¹⁹ *Decision on the Defence Request concerning time limits*, Pre-Trial Chamber I, 27 February 2008, ICC-01/04-02/07-45, transferred to case file ICC-01/04-01/07-304 (13 March 2008).

²⁰ See the documents cited as examples in paragraph 21 of the present request.

required. Please also note that the request must be placed at least 24 hours before the interpreter is due to leave for the detention centre [...].”

27. As thus interpreted, this decision is impracticable. The Defence justifiably considers such provisions to be inconsistent with the interests of its client, in that they do not respect his rights or the fairness of the proceedings. Firstly, it is not for Mr Ngudjolo to have to ask that a document be transmitted to him. Every document in the proceedings that concerns Mr Ngudjolo must necessarily be disclosed to him. He should not have to request this. Secondly, the decision of 27 February 2008 granted him the services of an interpreter. As the Defence understands it, every document in a language unknown to Mr Ngudjolo must be translated immediately and automatically. Finally, the Defence objects to the arrangement whereby the interpreter meets with Mr Ngudjolo alone to explain the decisions to him orally. The Defence submits that it is inappropriate for legal issues arising from such documents to be discussed without Counsel being present.

28. The Defence recalls once more that, pursuant to article 67(f) of the Statute, the accused has 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 the language used for all of the proceedings before the Court or for any document presented to the Court is not a language which the accused fully understands and speaks.

29. The Defence contends that the documents which must be notified to or served on its client must, if they are in English, be accompanied by a real-time, written translation into French, which he has chosen as the language for the purposes of his case because he does not understand English, which is not his mother tongue. He can neither read nor write

English. The translation of these documents cannot be deferred, as is often the case.

2. The need for permanent Counsel to receive henceforth a French translation of the various procedural documents and decisions in the case in order to ensure the effective and efficient representation of his client

30. Counsel for Mathieu Ngudjolo has a passable knowledge of English. He notes, moreover, that not all Counsel who address the Court are always proficient in both of the working languages of the Court, which are French and English, pursuant to article 50(2) of the Statute. The working language of his colleague Mr David Hooper, who is representing Germain Katanga, is English. However, the Pre-Trial Chamber took all of the necessary measures to ensure that he could communicate properly with his client: “[TRANSLATION] Noting the *Decision rescheduling the Status Conference* issued by the Chamber on 6 December 2007 in which it was decided that the agenda of the Status Conference would be: 1) the update of the composition of the Defence’s team, 2) access to databases and IT training given to the Defence team, 3) further information regarding the language(s) understood and spoken by Germain Katanga and 4) communication issues between the Defence Team and Germain Katanga”.²¹

31. The Defence notes that both the Office of the Prosecutor and the Chambers have always had a translation service available to them. Indeed, the Office of the Prosecutor has a Language Services Unit.²² There is no provision in the Statute requiring Counsel to be bilingual. The Defence would recall that it has previously stated that: “[TRANSLATION] the mother tongue of Counsel for

²¹ *Decision re-scheduling the status conference of 12 December 2007*, Pre-Trial Chamber I, 11 December 2007, ICC-01/04-01/07-96.

²² See Annex 2 of the “Document Containing the Charges pursuant to article 61(3)(a) of the Statute”, 21 April 2008, ICC-01/04-01/07-422.

Mathieu Ngudjolo is French and, on applying for admission to the List of Counsel, he indicated that his level of English was passable.”²³

32. There are two immediate grounds which lend further support to the merit of the present application, namely the inequality of arms vis-à-vis the Prosecutor and the importance of receiving documents henceforth in Counsel’s working language.

3. The inequality of arms vis-à-vis the Prosecutor

33. Unlike the Prosecutor, the Defence does not have a Language Services Unit, nor does it receive translations of procedural documents automatically. It is therefore at a substantial disadvantage vis-à-vis the Prosecution.

34. A legal commentator recalls that: “[TRANSLATION] In the Delcourt judgement of 17 January 1970 (A. 11, para. 28), the European Court states that ‘equality of arms’ is the founding principle of a fair trial, which is the primary element of the right to justice (‘Everyone is entitled to a fair hearing’)”.²⁴

35. To describe the scope of the principle of equality of arms, the same commentary explains that: “[TRANSLATION] within the meaning of European law, equality of arms ‘implies that each party must be afforded a reasonable opportunity to present his case... under conditions which do not place him in a position of substantial disadvantage vis-à-vis his opponent’ (*Dombo Beheer B.V. v. The Netherlands*, 27 Oct. 1993, A. 274, & 33)”. Equality of arms is relevant only to the litigants and denotes: “[TRANSLATION] ‘a fair balance between the parties’ (ibid.), as confirmed by the European Court when it expressly denied that the principle of equality of arms applies between a

²³ “*Requête*”, Pre-Trial Chamber I, 21 February 2008, ICC-01/04-02/07-293.

²⁴ Sudre, F., “*Droit européen et international des droits de l’homme*”, 8th edition, revised and updated, Paris, Presses Universitaires de France, 2006, p. 368 No. 213.

party and an independent court, which ‘could not be regarded as an opponent of either of the parties’ (*Nideröst-Hubert v. Switzerland*, 18 Feb. 1997, ECHR, No. 28)”. As to its application, “[TRANSLATION] the principle of ‘equality of arms’ may be used to rectify any disparities in the disclosure of documents to the parties (for example, a police report which was transmitted only to the prosecutor and not to the defence, *Kuopila v. Finland*, 27 Apr. 2000). (A) It means that the parties are able to collect evidence on an even footing [...] (B) Moreover, it presupposes that the parties have the same means available to them in order to present their arguments [...]”.²⁵

36. Another legal commentator, more specifically with reference to the adversarial principle and equality of arms, notes that: “[TRANSLATION] in a number of recent judgments, the Court considered that the right to a ‘fair trial’ implies, inter alia, that proceedings be adversarial, with equality of arms [...]”.²⁶

37. However, it is not the intention of the Defence to demand material and financial resources equal to those of the Prosecutor in the present case. The Defence’s sole concern is to receive all procedural documents and decisions concerning its client directly and automatically in its working language, in order to enable it to analyse them swiftly, to assess whether it is appropriate to appeal them and to carry out the appropriate administrative and judicial follow-up. As observed by Mr Adama Dieng, Registrar of the

²⁵ *Idem*, pp. 368-369 No. 213-1.

²⁶ Dutertre, G., “*Extraits clés de jurisprudence Cour européenne des Droits de l’Homme*”, Strasbourg, Editions du Conseil de l’Europe, 2003, p. 194 : “[TRANSLATION] [...] In the *F.R. v. Switzerland* judgment on certain evidentiary materials not having been disclosed to the applicant (28 June 2001, Application No. 37292/97, paragraph 36), the Court recalls: ‘[...] the concept of fair trial also implies in principle the right of the parties to a trial to have knowledge of and comment on all evidence adduced or observations filed (see the *Lobo Machado v. Portugal* and *Vermeulen v. Belgium* judgments of 20 February 1996, Reports 1996-I, p. 206, § 31, and p. 234, § 33, respectively)’.

[...] What is particularly at stake here is litigants’ confidence in the workings of justice, which is based on, inter alia, the knowledge that they have had the opportunity to express their views on every document in the file (see the *Nideröst-Huber* judgment cited above, page 108, paragraph 29 (*Nideröst-Huber v. Switzerland* judgment of 18 December 1997, Compendium 1997-I, page 108, paragraph 27)”.

International Criminal Tribunal for Rwanda and Assistant Secretary-General of the United Nations: “[TRANSLATION] It must be noted that the established case law of both the ICTR and the ICTY has consistently shown that equality of arms does not require the tribunal to provide the Defence with the same means as the Prosecutor. As early as 1999, the Trial Chamber in the *Kayishema* case noted that the notion of equality of the parties should not be confused with equality of means and resources. The Appeals Chamber of the ICTR has upheld this position.”²⁷

4. The Defence request for the disclosure of documents in its working language

38. The Chamber recently permitted ad hoc Counsel in the situation in the Democratic Republic of the Congo to receive a French translation of the documents notified in a working language of the Court, in this case English, in which Counsel was not at all proficient:

NOTING the “Requête aux fins de prorogation du délai de réponse”, filed in the record of the situation in the DRC on 13 June 2006, whereby ad hoc Counsel for the Defence argues that “[TRANSLATION] it is impossible for him to assess the merits of the Prosecution’s observations or to address them in the response to the victims’ application” because he does not speak English and that “Counsel must address submissions made both by victims and the Prosecution” [...]

CONSIDERING that the ad hoc Counsel for the Defence’s working language is French,

CONSIDERING that the general interests of the Defence must be protected effectively at the investigation stage of a situation [...]

ORDERS the Registrar to take all necessary measures to provide ad hoc Counsel for the Defence with a French translation of any document filed in English in the proceedings concerning applications for participation a/0001/06 to a/0003/06, and that time-limits for ad hoc Counsel for the

²⁷ Adama Dieng, “Le droit de la défense et la justice pénale internationale”, at the International Conference hosted by the Kigali Bar Association and the Belgian Lawyers Without Borders Association on “The Rights of the Defence and Legal Aid”, Kigali, on 28 August 2007, No. 24 p. 7 available on the internet.

Defence to file observations on these documents will only run from the notification of said document in French.²⁸

39. Furthermore, the case law of the ad hoc International Criminal Tribunals is clearly set and firmly established on the subject of the translation of documents for Counsel.

40. Such was the case when the International Criminal Tribunal for the former Yugoslavia, in the *Celebici* case, instructed the Registrar to translate the documents into the language read and understood by Counsel for the Defence so that the lack thereof would not place Counsel at a substantial disadvantage:

11. Counsel for the accused has advised the International Tribunal that she reads and understands French. The accused is, therefore, not disadvantaged by this requirement. Motions may be filed by the Defence in French and will be translated into English, where necessary, by the Registry. Similarly, the Prosecution may continue to file its motions in English and the Registry shall translate them into French. For the avoidance of doubt, the effective date of filing of all such motions shall be the date of filing in the original language but all time-limits for responses and other replies shall run from the date of filing of the translation.²⁹

41. This was also the case at the International Criminal Tribunal for Rwanda, which confirmed Counsel's right to receive translations into his own language, despite the fact that the documents had been disclosed in a working language. Moreover, he was granted an extension.³⁰ The same Tribunal likewise acknowledged the need for translations into the two working languages of the Tribunal in the *Akayesu* case, for both the proper

²⁸ *Decision on Ad hoc Counsel for the Defence's Request for Extension of Time to Respond*, 16 June 2006, ICC-01/04-156-tENG.

²⁹ *Prosecutor v. Mucic et al., Decision on Defence Application for Forwarding the Documents in the Language of the Accused*, Trial Chamber, 25 September 1996, Case IT-96-21, <http://www.icty.org/x/cases/mucic/tdec/en/60925PN2.htm>.

³⁰ *The Prosecutor v. Casimir Bizimungu, Decision On Extremely Urgent Motion To Compel The Production Of All Of The Supporting Material In English And To Suspend The Beginning Of The Time Within Which Preliminary Motion Are To Be Filed Until All Of The English Translations Are Produced*, 11 May 2000, Case ICTR-99-50-I.

administration of justice and the respect of the principle of equality of arms between the parties.³¹ This same rule was upheld in the *Muhimana* case.³²

42. Permanent Counsel submits that his working language is French. His knowledge of English is passable. He is best able to respond to procedural documents only when they are filed in his language. The fact that all of these documents are drafted in English delays his diligent efforts on behalf of his client, since his team, already inundated by a tide of drafting and analysis work, must spend a significant amount of time deciphering the documents received in English.
43. The right of Counsel for Mathieu Ngudjolo to address the Chamber in French, the language whereby he was admitted to the List of Counsel, is “set in stone”, as it were. It cannot be varied by the Court authorities.
44. Account should be taken of the fact that the Defence for Mathieu Ngudjolo has always submitted its filings in French, which is the working language of permanent Counsel. The Defence has not lost sight of the fact that English and French are both working languages of the Court, and that, in law, knowledge of one of these languages is sufficient to address the Court. Rule 22(1) of the Rules of Procedure and Evidence simply requires Counsel for the Defence to have excellent knowledge of and be fluent in at least one of the working languages of the Court.

³¹ See *The Prosecutor v. Akayesu*, “Order for Translation of Appellant’s Briefs”, Appeals Chamber, 29 March 2001, ICTR-96-4; see <http://69.94.11.53/default.htm>.

³² *The Prosecutor v. Mika Muhimana*, “Décision Relative à la Requête de la Défense aux fins de traduction des documents de l’Accusation et des actes de procédure en Kinyarwanda, langue de l’accusé et en français, langue de son Conseil”, 6 November 2001, ICTR-95-1B; see <http://69.94.11.53/default.htm>.

5. The need henceforth to formally establish the recent practice of automatically translating procedural documents and all decisions of the Chambers into both of the working languages of the Court in order to enable the Defence to carry out its duties as Counsel in a diligent manner

45. The Defence notes that recently certain documents have been notified to it in both of the working languages of the Court, including, *inter alia*, the filing entitled “Document Containing the Charges Pursuant to Article 61(3)(a) of the Statute”,³³ which the Office of the Prosecutor translated into French on 21 April 2008. This kind of practice ensures that the content of the various procedural documents is immediately clear to the Defence, prompting it to respond swiftly not only to its client (in terms of its legal advice to him), but also to the various organs of the Court in order to take the necessary administrative and judicial action. By apprising himself of such documents in his working language, Counsel for the Defence is better able to comply with the duty to act with due diligence which also governs the practice of his profession. The Defence must make certain that it has the ability to handle the matters submitted to it in a diligent manner. However, this obligation to act with due diligence can be seriously compromised when procedural documents and decisions are indeed produced in one of the working languages of the Court, but not in the language of Counsel, as this causes him to waste an excessive amount of time examining the said documents and decisions and initiating the appropriate procedures for the matter at hand.

46. As regards a lawyer’s duty of diligence, point 2 of the preamble of the Code of Professional Conduct for Counsel Before the International Criminal Court states that “[t]he role of Counsel as specialist advocates in the administration of justice requires them to act honestly and in the best interests of the Client”. Article six of the same Code provides that “Counsel must represent a Client

³³ See Annexes 1 and 2 of the confidential version of the document containing the charges (ICC-01/04-01/07-422, 21 April 2008) and of the public version of the document containing the charges (ICC-01/04-01/07-436, 24 April 2008).

diligently in order to protect the Client's best interests. Counsel must carry through to conclusion all matters undertaken for a Client within the scope of his or her legal representation until such representation is terminated or terminates".

47. In order to fulfil this duty of diligence, Counsel, having reviewed and understood the various procedural documents notified to or served on his client, must be in a proper position to give his client swift and relevant legal advice and to take any action within his mandate apt to safeguard the client's interests.

48. The Defence notes that the international criminal courts have always been mindful during status conferences of Counsel's commitment to their duty of diligence. The International Criminal Tribunal for Rwanda held in the *Rutaganira* case:

[TRANSLATION] Article 65 bis A of the Rules provides that a status conference may be convened by a Trial Chamber or a Judge thereof. Its purpose is to organise exchanges between the parties so as to ensure expeditious trial proceedings. It is the Chamber's view, given the circumstances here, that the Defence application should be granted. The parties are hereby invited to a status conference on 17 September 2004 so that an overview may be obtained of the level of progress in the preparation of the case.³⁴

49. Similarly, a study has revealed that: "[TRANSLATION] There is no provision for status conferences in the Rome Statute; however, they are mentioned in the RPE, in an approach akin to the statutes of the ICTs, in other words, in order to 'organise exchanges between the parties so as to ensure the expeditious preparation for trial'. Rule 132 of the RPE of the International Criminal Court grants the Trial Chamber the power to hold such conferences in order to set the date of the trial or to facilitate the fair and expeditious conduct of the

³⁴ ICTR, *The Prosecutor v. Vincent Rutaganira*, "Décision relative à la requête aux fins de fixation de la date d'ouverture du procès ou, alternativement, de la convocation d'une Conférence de mise en état, et de sa mise en liberté provisoire", Trial Chamber III, 3 September 2004, Case ICTR-95-1C-DP; see <http://69.94.11.53/index.htm>.

proceedings. Rule 121(2) of the RPE grants the Pre-Trial Chamber this same power in its assigned role to take 'the necessary decisions regarding disclosure between the Prosecutor and the person in respect of whom a warrant of arrest or a summons to appear has been issued'. Thus, the Pre-Trial Chamber must hold status conferences either on its own motion or at the request of the Prosecutor or the person concerned for the 'disclosure to take place under satisfactory conditions'."³⁵

50. Being thus committed to the duty of diligence that binds all of the parties in order to ensure that individuals brought for trial before it are tried within a reasonable period of time, the Pre-Trial Chamber must ensure that the course of the proceedings is free from obstacles that could needlessly delay the outcome of the trial or defer it indefinitely. The working language of the parties is a tool enabling them to present their case. It must not become a bottleneck in the proceedings.

FOR THESE REASONS,

51. The Defence, with the very greatest respect, asks your Chamber to admit this request and to find it entirely well-founded, both in fact and in law, and to rule as follows:

As principal request

- To grant the Defence the right automatically and without delay to receive translations into French for its client, who neither reads nor writes English, of all of the procedural documents and all of the decisions rendered in English in the case against Mathieu Ngudjolo.

³⁵ Poitevin, A., "Cour Pénale Internationale: les enquêtes et la latitude du Procureur", in *Droits fondamentaux*, No. 4, January-December 2004, <http://www.droits-fondamentaux.org>.

In the alternative

- To decide that the time limits for appeal can run only from the date on which the Defence receives the official French translations of all of the decisions and documents notified in the present case.

And justice shall be done.

[signed]

Mr Jean-Pierre Kilenda Kakengi Basila
Permanent Counsel for the Defence for Mr Mathieu Ngudjolo

Dated this 7 May 2008
At Brussels, Belgium