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No.: ICC-01/04-01/07
Date: 18 October 2011

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 Request for Review of Transcripts of Germain Katanga's Evidence
(DRC-D02-P-0300)**

Source: Defence for Mr Germain Katanga

Document to be notified in accordance with regulation 31 of the

Regulations of the Court to:

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Section**

Other

1. The Defence of Mr. Katanga ("Defence") shares its concerns with regard to the accuracy of the record of Mr. Katanga's evidence since he began his testimony on 27 September 2011.
2. In reviewing the said transcripts, the Defence noted an important number of significant differences in the English as compared to the French transcripts, some of which are annexed hereto by way of example.¹ Some of these differences may have significant evidential and/or legal consequences that may, in turn, impact on the outcome of the trial for Mr. Katanga, including the following:

MR HOOPER: Yes, before we reach that point -- do excuse me, I just need to adjust my -- just a note of concern. Right at the end, almost at the very end of this morning's questioning, my friend put to the witness that he, that is Mr Katanga, had said, and this is how it reads in the English transcript: 'You told us that you had 500 men under your command, so those 500 combatants from Aveba who couldn't fight; is that your testimony? Remember, you said that you had 500 men under your command.' And he says: 'I mustn't deny what I said. If I said it, I said it. I mustn't deny, but very simply ...', and he goes on, '... in our part of the world ...' [...]

Secondly, to address this particular matter. Now, in the English transcription - and we appreciate that this is the first draft, as it were - the word is translated as 'command,' but I understand in the French -- can I have the page reference? In the French, and I'll just get the transcript reference, it will be page 43, line 9 through 12, which corresponds to the English page 42, lines 18, 19, et cetera, the word that Mr Macdonald used was 'responsabilité'. Now, certainly at no time - and we are talking here of the eve of the Bogoro attack - has Mr Katanga claimed that he had 'responsabilité' or 'control,' as I understand it, of 500 men.²

3. Whilst requests for corrections have been made by the Defence to the Registry according to the usual procedure when such requests are made, the Defence is of the view given the number of corrections, that a fresh review of the transcripts is necessary rather than merely correcting the mistakes that are presently evident. Indeed, since 27 September 2011, the Defence has compiled no less than 48 pages of notable discrepancies between the English and French transcripts.

¹ See Annexes 1-4, for which requests of correction have already been sent to the Registry. See also Annex 5, which is a new request of correction.

² Katanga, Germain (DRC-D02-P-0300), ICC-01/04-01/07-T-322-ENG ET WT (13/10/11), pp 35-38.

4. The Defence therefore requested that a complete review be done, but has been informed by the Registry that the Defence should merely continue to make *ad hoc* requests for such corrections as it deems necessary.³ Whilst there may be occasions on which the Defence is able to identify translation errors, ideally, it will generally be focusing on the substance of the witness's testimony, and cannot be expected to regularly audit the accuracy of the interpretation. It is therefore unrealistic to impose on the Defence the burden of regularly reviewing the different interpretations and transcripts, and bringing interpretation/translation errors to the attention of the Registry.

5. In light of the nature and number of the corrections that the Defence believes should be made, only some of which are included in the annexes, the importance of an defendant's evidence being accurately reflected in both English and in French, and the potential impact that the current differences may have on the outcome of Mr. Katanga's trial, the Defence respectfully requests that all transcripts of his evidence be systematically reviewed, to ensure their accuracy and consistency.

6. The Defence fully appreciates the time and resources required in undertaking such an exercise. It would not of course, make this request if it did not believe a full review to be of fundamental importance. Also, it recalls that this is the only request of this nature that it makes, and notes that a similar exercise was conducted in *Lubanga*, wherein the Chamber underlined the crucial impact on the trial that such transcript discrepancies could have:

It is self-evident that these discrepancies and difficulties (if they are widespread and significant) may well cause the Chamber very substantial problems at later stages in the case, should they be left unresolved: for instance, numerous competing and divergent versions of the facts, in English and in French, *have* the potential to place the Chamber in a position in which it is unable to reach key factual conclusions without very substantial delays.⁴

³ On 13 October 2011, the Defence asked by way of email the Court Officer, Ms Toumaj whether the Registry could review all the transcripts of Mr. Katanga's testimony, and in particular, to verify the consistency of the French and English versions. Ms Toumaj responded by email that day that, « *J'ai consulte mes superieurs par rapport a ta question sur la revision de tous les transcripts du temoignage de M. Katanga. Il est souhaitable que la Defense continue a transmettre au Greffe des tableaux contenant les passages a revoir.* »

⁴ *Prosecutor v. Lubanga*, ICC-01/04-01/06-1974-Conf, Decision on discrepancies between the English and the French Transcripts and related issues, dated 18 June 2009, para. 2.

7. All the more, the Chamber noted in same that the right to a fair trial includes access to a reliable record of the proceedings throughout the trial.⁵ However, it stressed in relying on Article 64(10), that it is for the Registrar – and not for the parties, to ensure a full and accurate record of all proceedings, including the transcripts. When wide-ranging and sustainable doubts or queries are raised as to the accuracy of translations or transcripts, it is for the Registry to review and revise the questioned material. Although the parties and the participants may notice discrepancies, they cannot be expected to act as custodians of the accuracy of the French and English transcripts; at best, they can only make a contribution, by identifying and reporting those apparent difficulties that they observe during, and following, hearings.⁶

8. The suggestion by the Registry in the current case that it falls to the Defence to identify the inconsistencies has in similar circumstances in *Lubanga*, in fact been rejected by the Lubanga Chamber. This tends to suggest as noted by that Chamber, that the responsibility rests on the parties and participants to identify – sentence by sentence and line by line no less, where inconsistencies are to be found.⁷ It is indeed unrealistic to impose such a burden on the Defence.

⁵ *Idem*. See also *Ibid*, para. 36 (“The Chamber has considered anxiously the projected costs of a complete review of the evidence given by the witnesses to date, but in the final analysis this work is essential, and the cost involved does not provide a sustainable reason for denying one of the essential prerequisites of a fair trial: a full and accurate record of the evidence”).

⁶ *Ibid*, para. 37.

⁷ *Ibid*, para. 38.

Relief Sought

9. The Defence respectfully requests, for the reasons set forth herein, that all transcripts of Mr. Katanga's evidence be reviewed, to ensure correspondence between the English and French transcripts.

Respectfully submitted,



David HOOPER, Q.C.
Lead Counsel for Germain Katanga

Dated this 18th day of October 2011

At The Hague, Netherlands