



Original: **English**

No.: ICC-01/04-01/07
Date: **28 February 2014**

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**

Public

Defence Request regarding the Translation and Notification of the Article 74 Decision

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

Ms Fatouma Bensouda, Prosecutor
Mr Eric Macdonald, Senior Trial Lawyer

**Counsel for the Defence for Germain
Katanga**

Mr David Hooper Q.C.
Mr Andreas O'Shea

Legal Representatives of Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

REGISTRY

Registrar

Mr Herman von Hebel

1. The defence for Germain Katanga (“Defence”) requests the Trial Chamber to order that the Article 74 Decision, whatever form it may take, be ‘officially notified’ only when both a French and English translation is provided to the defence.
2. The Trial Chamber is entitled to issue such a decision in light of Regulation 31(2) of the Regulations of the Court, according to which:

Unless otherwise provided in the Statute, Rules, these Regulations or ordered by the Chamber, a participant is deemed notified, informed of or to have had communicated to him or her, a document, decision or order on the day it is effectively sent from the Court by the Registry.¹

3. As to the French translation of any part of the judgement that is in English, then a French translation will necessarily need to be served on Mr Katanga. Indeed, Article 67 (1) of the Rome Statute stresses that:

In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

(a) 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;

[...]

(f) 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 or documents presented to the Court are not in a language which the accused fully understands and speaks;

Rule 144 (2)(b) of the Rules of Procedure and Evidence explicitly states that copies of the decisions of the Trial Chamber concerning criminal responsibility of the accused, sentence and reparations shall be provided as soon as possible to ‘[t]he accused, in a language he or she fully understands or speaks, if necessary to meet the requirements of fairness under article 67, paragraph 1(f).’

4. As to an English translation of any portion of the judgement that is in French, it is respectfully submitted that a translation is necessary as it is only fair and in the interests of justice that an accused’s lead counsel is provided with such a significant document, addressing complex issues expressed in a heightened vocabulary, in a language that he understands. As the Court is well aware, Lead Counsel can best be described as ‘struggling’ in the French language. Under the

¹ Italic added.

new legal aid regime, the defence is not provided with co-counsel post judgement. Translations will be made as a matter of course and the defence merely asks that 'official notification' be deemed to have taken place only when such translations are received.

5. In the *Lubanga* case, the Chamber issued an order by which it indicated that, in the event of a conviction, the Accused and the Prosecutor would be notified of the Article 74 Decision when the French translation was officially notified from the Court by the Registry; in the event of an acquittal, the Prosecutor would be notified of the Article 74 Decision when the English version was notified.² In that case the court judgement was in English and, of course, both the accused and most of the defence team were francophone.
6. In the current case, the Trial Chamber has previously ordered that a decision be 'officially notified' only when an English translation was provided.³
7. The defence respectfully requests that such accommodation is also extended to it at this stage and that the Chamber order that notification of the decision be deemed to take place at the time that the authoritative translations into French and into English have been served on the defence.

Respectfully submitted,



David Hooper Q.C.

Dated this 28 February 2014

The Hague

² ICC-01/04-01/06-2834, Decision on the translation of the Article 74 Decision and related procedural issues, 15 December 2011, para. 26.

³ By email dated 20 May 2013, it granted the defence request that the time allocated to the defence to respond to the *Décision relative à la transmission d'éléments juridiques et factuels complémentaires (norme 55-2 et 3 du Règlement de la Cour)*, ICC-01/04-01/07-3371, be extended so as to be ten days from the day that an English (draft) translation is provided to the defence. See ICC-01/04-01/07-3432-Conf-Anx3.