

ANNEX 1

Kinshasa, 30-06-2009

The President and Judges of Trial Chamber I
ICC
The Hague in Holland

Your Honour,

Re: “Instructions to the Court’s expert on names and other social conventions in the Democratic Republic of the Congo”

I am delighted to transmit to you the report on “names and other social conventions in the Democratic Republic of the Congo”, as agreed. In preparing this report, I adhered scrupulously to your instructions [illegible] no. ICC-01/04/06 of 5 June 2009.

As you instructed, my report focuses on the following points. Following a short introduction, insofar as is possible and, based on my related expertise, I have attempted to respond on a point-by-point basis to the questions posed on the following topics:

- A. Civil status and registration with relevant offices (a to i)
- B. Names (j to s)
- C. Family (t to y)
- D. Date of birth (z)

I trust that your Honour will find that the issue pertaining to the matter with which your Chamber is concerned has been addressed.

I remain at your disposal.

Yours sincerely,

[signed]

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Ordinary Professor at the
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An updated version of my curriculum vitae is attached.

[stamped]

Centre de Recherche sur les Mentalités

[Research Centre on Mentalities]

[illegible]

Official Court Translation

THE ISSUE OF NAMES USED TO IDENTIFY CITIZENS OF THE DEMOCRATIC REPUBLIC OF THE CONGO

Introduction: The importance of names in central Africa

A name denotes and specifies a persons' inner character and intimate reality. It encapsulates and represents a person's ontological structure by placing him or her within the dynamics which determine his or her dialectical relationship with the other being-forces in the universe. It situates the person vis-à-vis himself or herself. An individual discovers his or her individuality or personality through his or her name. A name puts an individual in a vertical and horizontal dialogic relationship with others: vertically, in relation to his or her ancestors and offspring or descendants; horizontally, in relation to his social peer group and the surrounding cosmic world. In a word, a name reveals the being-to-the-world of the *Muntu*. It is given at birth and reflects the place, circumstances, events or significant moments in the life of the family. The name sums up or rather condenses and expresses what the person is or has become, what he or she aspires to become or achieve. At the relationship level, it often represents the being, the person, whilst opening him or her up to himself or herself and to others or further still, energises and propels him or her towards a specific ideal.

It is therefore a major symbol of a person's life. It is a symbol because it is rooted in the enduring constellations of life, emotion and the cosmos. The name is also a symbol because it denotes the permanence of the being who bears it and which would tend to suggest that it (the symbol) never dies but only mutates. This is shared by all of the peoples of the Democratic Republic of the Congo.

A. Civil status and registration with relevant offices

The Court asks the following question at point (a): "[TRANSLATION] *What are the different methods of establishing civil status in the Democratic Republic of the Congo?*"

In the Democratic Republic of the Congo, civil status is established by declaration made by the person concerned at the civil status registry. For example, a declaration of birth to obtain a birth certificate, a declaration of death or a declaration of marriage.

Alternatively, it may be based on a court declaration where no declaration was made within the prescribed time limit, or result from a court declaration confirming a modification or change in one's civil status. (See

articles 64 to 66 of the *Code de la famille* [Family Code] of the Democratic Republic of the Congo)

At point (b), the Court asks: “[TRANSLATION] *When, where and how is registration effected in the civil status register in the Democratic Republic of the Congo?*”

This takes place when an applicant meets all the requisite criteria to obtain a civil status certificate. For example, the birth of a child must be followed by a declaration at the civil status registry in the area of residence of the child’s parents within a month of birth. Similarly, any death which occurs in the territory of the Democratic Republic of the Congo must be declared at the civil status registry with jurisdiction over the place in which the death occurred (see articles 116, 117, 132, 133 of the Family Code of the Democratic Republic of the Congo). The Family Code defines the jurisdiction of the various civil status registries.

Registration in the civil status register is effected by recording the certificate in the relevant civil status register. For example, all births, marriages and deaths are entered in the form of a certificate in the relevant register (articles 73 and 82 to 91 of the Family Code of the Democratic Republic of the Congo)

Whether access to civil status registers is easy, difficult or not depends on location – i.e. whether it is a town, *localité* or village – and on proximity to civil status registries. Also, it often depends on one’s interest in undertaking such action.

Moreover, the State does not monitor or enforce compliance with the obtention of mandatory certificates such as birth and death certificates.

“[TRANSLATION] *Is the civil status declaration process adversely affected by the armed conflict situation? Particularly in the Ituri region?*” point (c)

Yes! The consequences of the state of war, particularly in the east and north-east of the Democratic Republic of the Congo have had an immeasurable impact on people’s lives. The war-displaced have greater concerns than civil status matters. In Ituri, war atrocities have forced people to take refuge in the forest or to cross the borders of Uganda, Rwanda, Sudan

or the Central African Republic. Armed groups controlling entire regions are beyond central government control.

Question (d) is worded as follows: “[TRANSLATION] *Generally speaking, how are names entered in the civil status register or made official, particularly in Ituri?*”

Under article 59 of the Family Code of the Democratic Republic of the Congo, a child’s birth certificate bears the name given to him or her by his or her parents. In case of disagreement, the father’s choice prevails. The name is drawn from Congolese cultural heritage as I explain at point (j) pertaining to names. The meaning of a name must be consistent with public decency and must not be offensive, humiliating or provocative (article 58 of the Family Code of the Democratic Republic of the Congo). This provision applies to Ituri, an integral part of the Democratic Republic of the Congo.

At point (e), the Court asks me this further question: “[TRANSLATION] *Do families systematically use declarations of birth to register the names of their children with the relevant government offices? If not, what is the relevant practice?*”

As I have just indicated, children are registered by means of birth certificates under the names given to them by their parents at birth. However, if they are not declared, they keep their names.

The following question is asked at point (f): “[TRANSLATION] *How is the civil status of a child in the Democratic Republic of the Congo determined at the time of his or her enrolment in the school system?*”

Often, parents are simply asked to state the child’s name(s) and even first name(s) if the child is a minor. If the child is an adult, he or she personally states his or her identity. All of this should be viewed in the context of the Congolese school system’s advanced state of deterioration which makes any enrolment process difficult.

At point (g): “[TRANSLATION] *When a government official issues a document stating or purportedly confirming a person’s identity, does he or she verify the information provided? If so, what checks are generally made and what procedure is followed?*”

The law provides for such verification. For example, for a marriage certificate, the law requires that banns be published within 15 (fifteen) days to ascertain that there are no impediments to the celebration or registration of the marriage (articles 37 to 373 of the Family Code of the Democratic Republic of the Congo).

With respect to declarations of birth, the civil status registrar relies on the birth certificate issued by the maternity hospital where the child was born. The same applies to deaths: the civil status registrar refers to the certificate prepared by the doctor who established the person’s death.

As far as identity cards are concerned, they are, in principle, issued upon presentation of a birth certificate. In the absence of the latter, the official in charge of this relies on a very unreliable empirical method: asking neighbours, village chiefs or traditional chieftains. “Provisional cards” are often issued.

“[TRANSLATION] *To what extent can the name(s) indicated on a “person’s official” documents differ from the names he or she commonly uses, and what are the reasons for any such differences?*” This is point (h).

The Family Code of the Democratic Republic of the Congo enshrines the principle of the immutability of the name and protects it. Therefore, any change of name, alteration of its spelling and permutation of its constituent components as declared to the civil status registry are prohibited. Such action is only possible on the basis of a judicial decision issued on valid grounds. Similarly, the law punishes any misuse of a name by its author for the purpose of prejudicing the character and reputation of a third party through prejudicial confusion (articles 64 to 70 of the Family Code of the Democratic Republic of the Congo). A person whose official documents bear names that differ from those which he or she commonly uses and which are prejudicial to third parties is punishable under the afore-mentioned articles.

The adoption of names other than those which have been officially declared is often dictated by circumstances which are often linked to other factors: talent, wealth, trade, profession ...

To conclude this section, the Court has asked me: “[TRANSLATION] *How, and on what basis are names entered on voting cards by the officer completing them? Does this lead to mistakes in, or inconsistencies between, the voting cards and other “official” documents? In this context, do variations in the spelling of names (between documents) sometimes lead to differences in pronunciation, and do citizens of the DRC use a variety of names?*”

Experience has shown that the person responsible for completing voting cards relies on any document which may provide information about the applicant’s identity, such as an old “Zairean identity” card, a driver’s licence, an attestation of loss of documents or an employee identity card. The official could even obtain identifying information from neighbours or the quarter or village head.

This explains the confusion surrounding pronunciation-based spelling. Such confusion is exacerbated when several family names, post-names and first names are used for various reasons; for example by individuals with an extensive criminal record seeking to avoid being identified, or to obtain a passport or other important documents.

B. Names

At point (j) of its “Instructions to the Court’s expert on names ...” (see point 16), the Chamber asks me the following question: “[TRANSLATION] *How are names chosen in the DRC and particularly in Ituri? Do people sometimes have several post-names, second names, last names, middle names, first names or nicknames? If so, are they interchangeable?*”

In the Democratic Republic of the Congo, names generally reflect events, circumstances, places, homonymy, the memory of a clan ancestor ... The name may be given during gestation, at birth and even afterwards. The name given during gestation is the “*nom d’intérieur*” [womb name].

Examples:

1. The Balubas:

- *Makenga*: name given to a child born when the parents were experiencing difficulties.
- *Nkita bungi* (“*nkita*”: cemetery, “*bungi*”: several): name given to a child after several children in the family have died.
- *Mujinga*: child born with a nuchal cord.
- *Kambayi Bwatshia* (*Kambayi*): go and tell them; “*Bwatshia*”: the night will end. Name given to a messenger.

2. The Bakongos:

- *Landi*: name given to a child born after twins.
- *Makiese*: name given to a child who is supposed to bring good luck, happiness.
- *Soki Nkusu* (“*Soki*”: jealous “*Nkusu*”: a parrot which usually produces only one offspring. Names given to a child born into a family that has always been ridiculed because of infertility.

3. The Aluurs of Ituri

- *Upyo* and *Apyo*: male and female twins
- *Ukelo* and *Akelo*: *Ukelo* boy and *Akelo* boy or girl born after twins.
- *Nyolong*: name given to a child by parents who had remained infertile for a long time.
- *Umvor*: this is a lion.
- *Unyon Pewu*: *Unyon*: to crush, *Pewu*: yours: this name means that you cross swords with that person at your peril.

Even if President Mobutu had not launched his so-called authenticity policy, the Congolese have always had two or several names that are referred to as *noms* [last names] or *post-noms* [post-names]. There is always a birth name to which one or several other names are added depending on the circumstances.

These names are not readily interchanged. A person would not be named *Bwatshia Kambayi* for example ... but the other names are not dropped. They are always listed in order after the birth name. Some Congolese do not attach great importance to first names, however many there are. Nicknames often have amusing or humorous undertones. For

example, the name “*Gradi*” is used to encapsulate the expression “*Grâce à Dieu*” [Thanks to God], “*Popo*” = Paul.

The question at point (k) asks: “*Can the ethnic, tribal or geographical origin of an individual be established from his or her name?*”

Yes. In the Democratic Republic of the Congo, there are entire clans named after a chief. For example, the *Beena Kaasas*, who are Balubas, derive the name from their chief *kaasa*.

The *Beena Luluwas*, who are Balubas, take their name from their migration to, and settlement in, the area around the river Luluwa. In Ituri, this phenomenon is not observed: the Aluurs’ Nilor names come from the Luo language. The Hemas’ and Lendus’ names are not derived from ancestors.

At point (l), the Court would like to know: “[TRANSLATION] *The factors or circumstances which influence the choice of names given to a person in the Democratic Republic of the Congo and more specifically in Ituri and also “The role played by customs and ethnic, tribal and family tradition in this process. Can names have a particular significance?”*

In my reply to question (j), I stated that names are given depending on particular and special factors and circumstances. As for the influence that a name may have on choice, it must be said that in Ituri or elsewhere in the Democratic Republic of the Congo, this choice is rooted in the cultural identity of the ethnic, tribal or family group. Very often, a person bearing a name (which is a symbol) is encouraged to become or to act in accordance with the meaning and significance of that symbol. For example, in Swahili, someone called “*Mupenda*” = Love, a loved one, is supposed to be friendly, welcoming and cordial. In Lingala, “*Nyoki mobali*” is the “leopard, a real man, strong and brave”. For the Aluurs of Ituri, *Umvor* is the lion, a symbol of strength.

I should add that there are names that reflect the gradual increase in a person’s life force, his or her physical or mental prowess.

For example:

- An initiatory name into any trade, *Tshimankinda*: the famous one who knows how to set traps (Baluba)
- *Nfinda*: the depths of the forest (Bakongo)
- *Nzobaw*: their house, warm welcome (Mbala)
- *Yalyun*: war, strength, brave (Aluur of Ituri)

- The name adopted on being installed as a chief:
 - *Elombe*: the famous one, the best ... (Mongo)

- *Jadwong*: the great, the famous one (Aluur)

- Name given to a person initiated into an esoteric lodge
 - *Bakole*: the strong one, the elder, the custodian of the tradition (Baluba)
 - *Mukanda*: teacher of customs, prohibitions, the science of good and evil (Yaka, Baluba, Pende)
 - *Kuembie*: traditional mask, secret, vital form
 - *Bokulaka*: the wise one, the elder (Mongo)

Here, as mentioned above, it is apparent that names are important and have particular significance for the peoples of the Congo.

At point (m), the Chamber would like to know: “[TRANSLATION] *If there are family or other names that are shared among members of an extended family? Do children bear the post-names of their parents?*”

Yes. As stated above, this was a very frequent practice which still continues to be the case. In addition, children may bear their parents’ post-names.

The Chamber then asks the following question at point (n): “[TRANSLATION] *What are the various components of a name? Is it correct to apply the concepts of family name, post-names, first and second first names and nickname to the various components of a person’s name? When a person has a “first name”, does it consist of one single component or two components? Are the names given at birth permanent or are other names added afterwards?*”

The various components of a name are: birth name chosen according to circumstances, events ... as stated at point (j). The birth name is of course a major name, but it acquires its full meaning and significance when the family post-name is added to it.

For example: "*Mungul* (1) *Diaka* (2)": the pig! eaten 2 more

The first name is often given after baptism into any religious denomination. It may consist of one or two components (e.g. Jean Richard, Marie-Paul). Moreover, the names given at birth are almost inevitably permanent even if others are added to them.

At point (o), I have been asked to say whether based on my experience: "[TRANSLATION] *names are always used in the same order. For example, is it possible to use Lomu Dheba instead of Dheba Lomu? Is the spelling of names strictly adhered to?*"

For the purpose of clarity, it is absolutely essential and necessary to respect the order because the birth name is what I would call an intentional name which refers to someone specific. So in the *Lomu Dheba* example, *Lomu* (1) is how one must start to refer to the person. The spelling is often adhered to, but it often depends on how the name was initially transcribed. It can sometimes be fanciful depending on the situation. The pronunciation of u, w, ou, o, th, t, d, dh, tsh ... is not easily rendered in writing. For example, *Unyon-Pew*, *Onion peu*, *ounyone peo*, *wunion-pewu*.

At point (p): "[TRANSLATION] *Can a child choose a name other than the one given to him or her by his or her parents at birth? If names are not permanent, under what circumstances are new components added to, or removed from, an individual's original name? What are such changes based on? Do famous people or events play any role in this process?*"

Yes, a child who has become an adult, who has reached the age of majority, a full-grown man, may choose a name other than the one given to him at birth. This depends on events and/or circumstances surrounding his development. Similarly, someone may, depending on the situation, get rid of his name and take another one. Famous people (historic figures, wealthy people, political leaders, State officials ...) can

of course play a role in that process. Such choices are often motivated by a highly material interest.

At point (q), the Chamber asks me the following question: “[TRANSLATION] *Can a person choose to use different names depending on the prevailing family, social, professional or official context? Could these include names other than those received at birth?*”

Yes, a person may choose different names depending on these contexts. He or she adds them to his or her birth name. But he or she may equally change the name received at birth. However, this practice is not that commonplace.

“[TRANSLATION] *Do “respect names” constitute a recognised category, and, if so, are such names used in the Democratic Republic of the Congo, and in Ituri in particular, and are they used under specific circumstances?*”. This is point (r).

Yes, “respect names” exist in the nomenclatural lexicon of the Congo and they are used specifically on occasions such as various celebrations, festivities, praise-singing, funerals ... For example:

- *Lumangu*: the famous one (in Tshiluba); *Mulopo* (in Bandundu, Kasai and Katanga) means God up above; *Nyota* (for the Babowas) means star ...

Point (s), “[TRANSLATION] *Is it possible that children may be aware of only some of the names used or borne by their parents?*”

Yes, this is indeed possible. Here, “parents” include the father, mother, (1st degree) aunts, uncles ... (2nd degree), etc. The entire extended family must also be included.

This phenomenon is difficult for modern western [societies] to grasp. However, it will be readily understood by a *Muntu* African.

C. Family

With respect to the family, the Chamber wishes to know this: “[TRANSLATION] *How are family units defined in the DRC and in Ituri? What are the conventional bonds?*” Point (t)

The family unit is determined by kinship, friendship between relatives, social interaction, and community groupings ... Of all these societal and group relationships, it is kinship in the sense of nuclear family which is the overriding criterion in defining the family unit. This also applies to Ituri.

At point (u), your Chamber asks: “[TRANSLATION] *Polygamy is common in the Democratic Republic of the Congo and, in general terms, how do polygamous families live there?*”

In cities, traditionally recognised polygamous households can still be found here and there; this means that at a purely traditional level, the mere payment of a dowry “officialises” a man’s acquisition of several wives.

In villages, polygamy is often entered into easily and readily upon payment of a traditional dowry. It should be noted that polygamy is disappearing as a result of material hardship, religious beliefs, intellectualism and rationalism; frequently, relations between wives as well as those between them and their husband and between half-siblings are often characterised by conflict resulting from frustration, violence, jealousy, hatred ...

“[TRANSLATION] *What is the situation of children born out of wedlock or from a first or previous marriage?*” point (v).

This depends greatly on the father or mother’s awareness at a number of levels. However, most of the time in this set-up, the situation is one of conflict, frustration and violence. In such circumstances, several children become what are known in the Congo as “street children”, “child sorcerers”, the “*Shégués*” ... who can be exploited at will.

At point (w), the questions are: “[TRANSLATION] *Is Congolese society matrilineal or patrilineal? And “[TRANSLATION] Are half-siblings equally accepted, regardless of whether they are from the father’s or mother’s side?”*

In the Congo, there are matrilineal peoples, for example throughout Bas-Congo and in Bandundu Province, except the Bayakas who are patrilineal. Matrilineal groups are also found in Katanga and even in the east of the country.

Throughout Équateur, and Orientale Province, the population is patrilineal. In Kasai, patriarchy is generally predominant, although in some places the matriarchal system applies. However, in both cases, half-siblings are equally accepted regardless of whether they are from the father’s or the mother’s side. In some cases, as a result of poorly understood “westernisation”, a certain amount of distance is creeping into relationships.

At point (x), the question is as follows: “[TRANSLATION] *Are the words ‘brother’, ‘father’, ‘sister’, ‘mother’ understood or used in the Democratic Republic of the Congo to refer to relations other than blood ties between parents and their children, and between fathers and sisters?”*

When translated into French or English, there are important nuances which convey a certain exclusiveness centred around the nuclear family. However, in the Democratic Republic of the Congo, all those who feel kinship or who are related by blood in all respects are ‘brother’, ‘father’, ‘sister’ and ‘mother’, depending on their age and position within the extended family.

Essentially, I mean that the “Congolese family” is fundamentally different from the western-style nuclear family. The latter focuses on the narrow circle of father/mother and children, whereas the Congolese family could even correspond to the blood and cultural community and may encompass a wide ethno-cultural group which may itself constitute a clan. In Tshiluba for example, the members of such a cultural group based on blood relations, alliances and culture are called “*bana bamwe*” (children of the same community, of the same origin), “brother and sisters of the same origin” or simply “brothers/sisters”), “*bana nkasi*” in Kikongo.

To conclude this section at point (y), the Court asks me: “*Generally, how do children refer to their parents in the DRC?”*

Children refer to their parents as “my mother”, “mummy”, “mama”, “mamu”, “mawu”, “Baluba” (for the mother) and readily use the generic terms “daddy” “my daddy” “my father” for their fathers. Often, no distinction is made between the degrees of kinship amongst relatives. For example, the mother’s brother is the uncle (*noko*, *masneba* ...), the father’s older brother is also “my father” and *tata* too.

D. Date of birth

Here, point (z) encapsulates a single issue: “[TRANSLATION] *Is it common for citizens in the Democratic Republic of the Congo to know their real date of birth? And are birthdays celebrated?*”

In general, in “modern civilisation”, Congolese citizens know their exact date of birth and most of them celebrate their birthdays. Official documents are proof of this. However, in some places and parts of the Democratic Republic of the Congo, it is difficult to obtain documents bearing the date of birth. “Oral civilisation” therefore makes things difficult.

Your Honour, this is how I have responded to your “Instructions on names and other social conventions in the Democratic Republic of Congo” pursuant to regulation 44 of the *Regulations of the Court*. I have conscientiously prepared this report and am fully aware of the importance of its subject matter. You will undoubtedly be aware that I have done so to the best of my ability and have given due consideration to the purpose and the general context of the document forwarded to me by Trial Chamber I.

I would like to thank you for the trust you have placed in me.

Yours sincerely,

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An updated version of my curriculum vitae is attached.