

1 International Criminal Court

2 Appeals Chamber

3 Situation Democratic Republic of the Congo - ICC-01/04-01/07

4 Judgement - Open Session

5 Tuesday, 27 May 2008

6 The hearing starts at 3.33 p.m.

7 COURT USHER: All rise. The International Criminal Court is now
8 in session. Please be seated.

9 JUDGE KIRSCH: Would the Court Officer please call the case.

10 COURT OFFICER: The Appeals Chamber, composed of Presiding Judge
11 Philippe Kirsch and Presiding Erkki Kourula, Judge Georghios Pikis,
12 Judge Navi Pillay, and Judge Sang-Hyun Song sitting today in the
13 situation in the Democratic Republic of the Congo, case of the Prosecutor
14 against Germain Katanga and Mathieu Ngudjolo Chui, ICC-01/04-01/07.

15 JUDGE KIRSCH: Would counsel for the Prosecution please introduce
16 himself and his team.

17 MR. GUARIGLIA: Good afternoon, your Honours. It's Fabricio
18 Guariglia, senior counsel appearing together with Mr. Reinhold
19 Gallmetzer, appeals counsel, and Mr. Ben Batros, associate appeals
20 counsel.

21 JUDGE KIRSCH: Thank you. I note that Mr. Mathieu Ngudjolo Chui
22 is present. I also note that Mr. Germain Katanga is present.

23 Would counsel for Mr. Ngudjolo Chui please introduce himself and
24 his team.

25 MR. KILENDA (interpretation): Thank you, Your Honour. We have a

1 small technical difficulty.

2 To my right Ms. Maryse Alie, a barrister at the Brussels Bar. To
3 my left my case manager Ms. Aurelie Roche, and I am Mr. Jean-Pierre
4 Kilenda, barrister at the Brussels Bar.

5 JUDGE KIRSCH (interpretation): Thank you. (In English). Would
6 a representative of the Defence for Mr. Katanga please introduce herself
7 and her team.

8 MS. BUISMAN: Good afternoon, your Honour. We are here with
9 Sophie Menegon, and she is the case manager in our team, and myself
10 Caroline Buisman, the legal assistant. Unfortunately the lead counsel,
11 David Hooper, is absent today. Thank you very much.

12 JUDGE KIRSCH: Thank you.

13 Today the Appeals Chamber delivers judgement in two separate
14 appeals. The first is the appeal of Mr. Ngudjolo Chui concerning the
15 disclosure of evidence prior to the hearing to confirm the charges. The
16 appeal is against the decision of Pre-Trial Chamber I of the 21st of
17 December, 2007, entitled decision on the Prosecution request for
18 authorisation to redact statements of witnesses 4 and 9.

19 The judgement is by majority with Judge Pikis dissenting.

20 I will give a brief summary of the judgement, although I
21 emphasise that the judgement itself is authoritative. Judge Pikis will
22 give a summary of his dissenting opinion at the end of my summary of the
23 judgement. In giving the summary, I will first outline the relevant
24 procedural history before arriving at the determination of the Appeals
25 Chamber.

1 The decision of the Pre-Trial Chamber was triggered by requests
2 of the Prosecutor to redact certain information from the statements of
3 two Prosecution witnesses, Witnesses 4 and 9, before disclosing those
4 statements to Mr. Katanga and Mr. Ngudjolo Chui in preparation for the
5 hearing to confirm the charges against them. Of relevance to this appeal
6 are the Prosecutor's requests for a specific category of redactions.
7 That category concerns requests pursuant to Rule 81(4) of the Rules of
8 Procedure and Evidence to redact the names, identifying information, and
9 whereabouts of three alleged victims of sexual offences mentioned within
10 the statement of Prosecution Witness 9.

11 These three alleged victims are unconnected to the case against
12 Mr. Katanga and Mr. Ngudjolo Chui in that they are not connected to the
13 crimes committed during and in the aftermath of the alleged attack on
14 Bogoro on the 24th of February, 2003, to which the warrants of arrest and
15 charges against Mr. Katanga and Mr. Ngudjolo Chui are restricted.

16 The decision of the Pre-Trial Chamber granted the requests of the
17 Prosecutor. It held that the three alleged victims of sexual offences
18 who were unconnected to the charges and who were mentioned within the
19 statement of Witness 9 could be considered as victims within the meaning
20 of Rule 81(4) for the sole purpose of their protection by way of
21 redaction of their names, identifying information, and whereabouts.
22 Mr. Ngudjolo Chui then applied for leave to appeal the decision of the
23 Pre-Trial Chamber. One issue was certified for appeal against the
24 decision of the Pre-Trial Chamber on application by the appellant. That
25 was, and I quote: "Whether the Single Judge erred in law in finding that

1 alleged victims of sexual offences not connected to the charges in the
2 relevant case can be considered victims for the purpose of redactions
3 pursuant to Rule 81(4) of the Rules."

4 On appeal the appellant argued that the definition of victims did
5 not include alleged victims unrelated to the relevant case, that the
6 redactions were unnecessary, that the redactions were inconsistent with
7 the rights of the Defence, and that the obligation of confidentiality
8 upon Defence counsel was sufficient to protect such persons.

9 The appellant requested the Appeals Chamber, pursuant to Article
10 82(3) of the Statute and Rule 156(5) of the Rules to declare that the
11 appeal have suspensive effects on the ongoing proceedings and reverse the
12 decision of the Pre-Trial Chamber and order the unredacted disclosure of
13 the statements of witnesses 4 and 9.

14 The Prosecutor argued that the interpretation of the Pre-Trial
15 Chamber of Rule 81(4) was consistent with the spirit and legal framework
16 of the Court and the application for suspensive effect should be
17 rejected. The Appeals Chamber is dealing with both the application for
18 suspensive effect and the merits of the appeal in this judgement.

19 For reasons that I shortly explain, the appeal is dismissed.

20 Being aware of that outcome, the Appeals Chamber does not deem it
21 necessary to determine the application for suspensive effect in the
22 circumstances of the current case.

23 I turn now to the merits of the appeal.

24 The Appeals Chamber has had previous occasion to consider -- to
25 consider the legal regime relating to disclosure prior to the hearing to

1 confirm the charges. In its judgement of the 13th of May, 2008, the
2 Appeals Chamber found that certain provisions of the Statute and the
3 Rules are aimed at ensuring that persons are not put at risk through the
4 activity of the Court and those provisions are not limited to the
5 protection of witnesses and victims and members of their families only.

6 In that judgement, the Appeals Chamber examined various
7 provisions of the Statute and the Rules and found that there was an
8 overarching concern to ensure that persons are not unjustifiably exposed
9 to risk through the activities of the court. The Appeals Chamber found
10 that Rule 81(4) of the Rules should be read to include the words "persons
11 at risk on account of the activities of the Court."

12 The Chamber found that such a reading reflected the intention of
13 the States that adopted the Statute and the Rules to protect that
14 category of persons as expressed in Article 54(3)(f) of the Statute and
15 in the other parts of the Statute and the Rules. As such, the Appeals
16 Chamber found that the non-disclosure of information for the protection
17 of persons at risk on account of the activities of the Court was
18 permissible in principle pursuant to Rule 81(4) of the Rules.

19 The Appeals Chamber also found that whether any such
20 non-disclosure should be authorised on the facts of an individual case
21 will require a careful assessment by the Pre-Trial Chamber on a
22 case-by-case basis with specific regard to the rights of the suspect.

23 The situation before the Appeals Chamber in the instant appeal
24 falls squarely within the parameters of those findings of the Appeals
25 Chamber in its judgement of the 13th of May, 2008. The alleged victims

1 of sexual offences unrelated to the charges against Mr. Germain Katanga
2 and the appellant in this case may be regarded as potentially falling
3 within the category of persons at risk on account of the activities of
4 the court. As such, their names, identifying information and whereabouts
5 may be redacted in appropriate circumstances pursuant to Rule 81(4) of
6 the Rules for the purposes of the hearing to confirm the charges against
7 Mr. Germain Katanga and the appellant.

8 Given those findings, the Appeals Chamber deems it unnecessary to
9 consider whether the Pre-Trial Chamber erred in its interpretation that
10 alleged victims of sexual offences unconnected to the charges against
11 Mr. Germain Katanga and the appellant fall within the definition of
12 victims for the purpose of protection pursuant to Rule 81(4).

13 The Appeals Chamber has had previous occasion to set out those
14 factors to be addressed by a Pre-Trial Chamber when considering a request
15 for non-disclosure pursuant to Rule 81(4), which include specific regard
16 to the rights of the suspect. In the present case the Pre-Trial Chamber
17 examined each of the individual requests for redaction. The approach of
18 the Pre-Trial Chamber appearance prima facie to be consistent with
19 previous guidance given by the Appeals Chamber.

20 To conclude, the appeal is dismissed. The Appeals Chamber finds
21 that the Prosecutor may apply to the Pre-Trial Chamber for a ruling as to
22 whether information concerning alleged victims of sexual offences who are
23 not connected to the charges in the relevant case and to whom reference
24 is made in the statements of Prosecution witnesses must be disclosed to
25 the Defence. Such a request may be made to protect such alleged victims

1 as persons at risk on account of the activities of the Court pursuant to
2 Rule 81(4) of the Rules. Whether any such application for non-disclosure
3 should be authorised requires a careful assessment by the Pre-Trial
4 Chamber on a case-by-case basis with specific regard to the rights of the
5 suspect. The decision of the Pre-Trial Chamber is confirmed.

6 Judge Pikis will now summarise his dissenting opinion on this
7 judgement.

8 Judge Pikis.

9 JUDGE PIKIS: The result is known and certainly I shall not tax
10 your patience by detailed reference to the judgement of the Court that
11 forms the only authoritative text of what it lays down. The issue they
12 had, the Pre-Trial Chamber, its jurisdiction being exercised by the
13 Single Judge had to confront was the following: Whether persons other
14 than the class of persons specified in Rule 81(4), in particular victims,
15 could be the subject of protection under the provisions of the
16 aforementioned Rule of the Rules of Procedure and Evidence.

17 The Court did assess the provisions of Rule 81(4) as laying down
18 in principle that this course was not possible. Persons other than
19 victims related to the crime under investigation or the subject of
20 Prosecution do not have that status for the purposes of the proceedings
21 of the court. Notwithstanding the acknowledgement of this principle, the
22 Single Judge did decide that it is permissible on an exceptional basis to
23 treat other categories of victims or other persons as falling within the
24 purview of Rule 81(4).

25 Now, on the face of it such a proposition cannot readily define

1 justification in law. The case that the principle as extracted from the
2 provisions of the law cannot readily be reconciled to either exceptions
3 that are not embodied in the law. The Single Judge held that this is
4 possible on a systematic and teleological interpretation of the relevant
5 provisions of Rule 81(4). Now, teleological or also synonymously known
6 as a purposive construction of the law provides authority or power or
7 makes it possible to interpret the existing provisions of the law in a
8 manner advancing the objects and purposes of the law, or to suppress the
9 mischief against a particular section or provision of the law is
10 directed. By no streak of the imagination does it permit rewriting the
11 law, adding exceptions to it, or refashioning it. Teleological
12 interpretation is the one interpreting provisions of the law as they had
13 been interpreted in the past in order to provide consistency in the
14 interpretation of the law.

15 Here I would have ended my dissented opinion holding that the
16 Judge transgressed the limits of the law bearing on the matter
17 necessitating or warranting, in my opinion, a reversal of the judge of
18 the sub judice decision. The appellant submitted that the decision is
19 wrong on a number of counts. Those were identified earlier on in the
20 summary given by the President. The Prosecutor makes a response denying
21 the validity of each and every ground, intimating at the same time to the
22 Court that similar issues were sub judice before the Appeals Chamber in
23 the case of the Prosecutor versus Katanga, although they did not have the
24 decision itself. Meantime, the decision was given, as already indicated,
25 on the 13th of May.

1 In accordance with Rule 21(2) of the Statute, principles and
2 rules of law as interpreted in previous decisions are considered a source
3 of law and may be acted upon, but no obligation is imposed upon the Court
4 binding them to do so. Therefore, I feel it necessary and I do examine
5 in my dissenting opinion the substratum and the reasons founding that
6 decision of the Appeals Chamber, previous decision of the Appeals
7 Chamber, upon which the present appeal is decided.

8 The question in that appeal was whether persons other than those
9 included in Rule 81(4), that is the three categories of persons,
10 witnesses, victims, or members of the family, could be the subject of
11 protection and therefore their names -- disclosure of their names from
12 witness statements might be withheld.

13 The Appeals Chamber, as the majority decision, I had dissented in
14 that decision, but the decision of the Court is the decision of the
15 majority of the Appeals Chamber, determined that Rule 81(4) should be
16 read subject to an addition, that is that persons at risk from the
17 activities of the Court could also be the subject of protection. In
18 effect, a new class of persons was added in the context of Rule 81(4),
19 necessitating in a proper case or justifying in a proper case protection.

20 To my mind and for the reasons that I explain in greater detail
21 in my dissenting opinion, no rule of law, no principle of law or rule of
22 construction could justify such an addition to the law. The remit of the
23 court does not extend to remaking the law. There is no such authority
24 and nothing can justify it. The law must be applied as laid down by the
25 legislator.

1 I analyse in my decision the provisions of Rule 81, a rule
2 designed to articulate procedurally the exceptions to the duty of the
3 Prosecutor to disclose duties imposed by the Statute, a duty necessary
4 under the Statute in order to acquaint the person investigated or the
5 accused with the case he or she will be facing at the trial and therefore
6 prepare their defence. Rule 81(4) refers only to victims, witnesses, and
7 members of their family, the terms to be read subject to Article 68, the
8 provision of the law authorising such exceptions.

9 To my mind, and this is my conclusion for reasons explained
10 somewhat extensively in my judgement, that the decision of the Appeals
11 Chamber in the aforesaid appeal of 13th May does not illuminate the
12 principles of the law applicable. It puts a gloss upon them that they
13 cannot bear. Consequently, I shall not and I do not act upon them.
14 Sequentially, I would answer the question raised by the Single Judge by
15 deciding that she erred in allowing redaction from the statement of
16 witnesses of the names of persons who did not qualify as victims under
17 Rule 81, and on that account I would have -- I would reverse the
18 decision.

19 Thank you, Mr. President.

20 JUDGE KIRSCH: Thank you. That brings the delivery in relation
21 to the first appeal to a close.

22 Judge Kourula will proceed to deliver judgement in the second
23 appeal in relation to which he is the Presiding Judge.

24 Judge Kourula.

25 JUDGE KOURULA: Thank you, President Kirsch.

1 Good afternoon. I note that the same participants are present in
2 court as have introduced themselves at the start of this hearing prior to
3 delivery of the judgement by Judge Kirsch in OA5. The Appeals Chamber
4 will now deliver its judgement on the appeal of Mr. Germain Katanga
5 against the decision of Pre-Trial Chamber I, entitled Decision on The
6 Defence Requests Concerning Languages. This judgement is rendered with a
7 partial dissent by Judge Pikis. He will read out or summarise his
8 dissent at the end of the judgement.

9 I will now give a brief summary of the judgement. I also
10 emphasise that the judgement itself is authoritative. First I will
11 briefly outline the relevant procedural history before arriving at the
12 determination of the Appeals Chamber.

13 After Mr. Katanga's initial appearance before the Pre-Trial
14 Chamber on 22nd October, 2007, during which he advised the Pre-Trial
15 Chamber that he, inter alia, spoke Lingala best, the Pre-Trial Chamber
16 ordered the Registrar to provide any additional information concerning
17 languages read, spoken, or understood by Mr. Katanga. The Registrar
18 reported thereon, and the Prosecutor and Mr. Katanga were given the
19 opportunity to submit observations, which they did. The hearing was held
20 before the Pre-Trial Chamber in December 2007.

21 On 21 December 2007, Judge Steiner acting as the Single Judge of
22 the Pre-Trial Chamber I rendered the decision on the Defence request
23 concerning languages in which the Chamber found, inter alia, that
24 Mr. Katanga's competency in French met the standards set by Article
25 67(1)(a) and (f) of the Statute and rejected the requests by Mr. Katanga

1 for translation and interpretation. Mr. Katanga applied for leave to
2 appeal the decision and the Pre-Trial Chamber granted leave in January
3 2008. Mr. Katanga, the appellant, filed his document in support in
4 January, and in February the Prosecutor responded.

5 Before proceeding with the merits of the appeal, the Appeals
6 Chamber will first briefly address two preliminary procedural issues with
7 further details to be found in the judgement. First as to the limit for
8 filing the document in support of the appeal. The Appeals Chamber notes
9 that it was filed a few minutes out of time, but it will nevertheless
10 accept the filing for the reasons set out in the judgement.

11 Secondly, as to the reasons for the decision by the Appeals
12 Chamber of 16th of April, 2008, as far as these reasons are concerned, on
13 4th April, 2008, the Prosecutor submitted the Prosecution request for
14 leave to present additional authority regarding Defence appeal against
15 decision on the Defence request concerning languages.

16 The Appeals Chamber issued a decision allowing the Prosecutor to
17 file without any accompanying argument the supplementary list of
18 authorities through the Prosecution's response stating that reasons for
19 the decision would be provided in this judgement.

20 On 18th April this year, the Prosecutor filed a supplementary
21 list of authorities and the additional authority referred to therein
22 being a recent ICTY Appeals Chamber decision.

23 In the Appeals Chamber's judgement over 13 May 2008, very recent
24 judgement, it was -- it is stated that the Appeals Chamber considers that
25 a Chamber may act pursuant to Regulation 28 of the Regulations of the

1 Court upon request or upon its own motion.

2 In the current appeal, albeit it was not referred to by the
3 Prosecutor, the Appeals Chamber considered that the Prosecutor's request
4 as falling under Regulation 28 of the Regulations of the Court in the
5 circumstances of this case the Appeals Chamber allowed the submission of
6 the supplementary list of authorities and thereby details of a recent
7 decision, as I said, by the Appeals Chamber of the ICTY without any
8 accompanying argument on the basis that that may be of assistance to the
9 Appeals Chamber in deciding on this appeal.

10 I turn to the merits of the appeal.

11 19th of January the Pre-Trial Chamber granted the appellant
12 application for leave to appeal, and I quote: "In relation to the issue
13 of whether the impugned decision incorrectly found that Mr. Katanga's
14 competency in French meets the standards of Article 67(1)(a) and (f) of
15 the Statute."

16 The Pre-Trial Chamber that decision considered the issue for
17 which leave to appeal was sought and I quote, "appeared to refer to two
18 interlinked matters. First, the content of the standard embraced in
19 Article 67(1)(a) and (f) of the Statute in relation to the level of
20 competency in French required of Germain Katanga, and second, the
21 assessment by the Single Judge of the evidence presented by the
22 Prosecution, the Defence, and the Registry, which led to the Single Judge
23 to conclude that such a standard was met by Germain Katanga."

24 The appellant divides his arguments into two grounds, the first
25 related to the erroneous legal standard and the second to an erroneous

1 factual assessment.

2 It is noted that the appellant has modified his request in the
3 course of the proceedings before the Pre-Trial Chamber. Since the
4 appellant seems to have abandoned his request for translation in his
5 application for leave to appeal, the Appeals Chamber will proceed on the
6 basis that his request is limited to interpretation. Indeed, although he
7 raises the issue of translation again in his document in support of the
8 appeal, he does so on the basis that he reserves the right to request
9 certain translations.

10 As far as the appellant's first ground of appeal erroneous legal
11 standard is concerned, his arguments include those related to an
12 interpretation of the English and French versions of the provisions and
13 he refers to a higher standard in the ICC Statute as compared to those in
14 national jurisdictions and, for example, the European Convention on Human
15 Rights and the International Covenant on Civil and Political Rights.

16 The Prosecutor submits inter alia that in -- and I quote, "In
17 interpreting Article 67(1)(a) and (f) the central question is not whether
18 an accused meets a rigid and absolute threshold of a language's ability,
19 that a level of perfection, but whether in the circumstances of the case
20 the accused -- accused's language capabilities are sufficient to secure
21 his or her right to a fair trial.

22 As to the determination of the Appeals Chamber, the issue which
23 the Appeals Chamber was called upon to decide in the first ground of
24 appeal was whether the Pre-Trial Chamber erred in its interpretation of
25 the standard under Article 67(1)(a) and (f) of the Statute. I will

1 briefly highlight the findings of the Appeals Chamber on this ground of
2 appeal.

3 Having considered the findings made by the Pre-Trial Chamber, the
4 Appeals Chamber does not find that the Pre-Trial Chamber committed any
5 error in referring to fairness when interpreting Article 67 of the
6 Statute. However, it finds that the Pre-Trial Chamber did not
7 comprehensively consider the importance of the fact that the "fully" is
8 included in the text and the Article's legislative history. The key
9 question in this ground of appeal is how to interpret the phrase "fully
10 understands and speaks" as it appears in both Article 67(1)(a) and
11 Article 67(1)(f) of the Statute in relation to the request for
12 interpretation.

13 In addition to applying Article 21, paragraph (3) of the Statute,
14 Article 67(1)(a) and (f) are to be applied in light of the Vienna
15 Convention on Treaties in particular Article 31, paragraph (1).

16 The language in paragraphs (1)(a) and 1(f) similar in that the
17 phrase fully understands and speaks is repeated. On its face it's clear
18 that the standard is not low.

19 Having looked at the definitions in English and French of the
20 word "fully" the Appeals Chamber does not consider it necessary to enter
21 further -- further into any possible differences between the two words.
22 Suffice it to say that the meaning of this provision is based on this
23 dictionary definitions provides that the standard must be required under
24 Article 67 would be high, very high.

25 The fact that this standard is high is also emphasised through

1 consultations further afield that for example the European convention on
2 human rights, covenant on civil and political rights, the ICTY and ICTR.

3 Looking at Article 67 as compared to such provisions, the Appeals
4 Chamber notes the addition of the word "fully" to both paragraphs (a) --
5 paragraphs 1(a) and 1(f) the cumulative requirement to fully understand
6 and speak in both paragraphs and the addition of the requirement to fully
7 understand and speak in paragraph 1(a). There seems to have been an
8 intention to grant the accused before the Court rights of a higher degree
9 than in other courts referred to. There must be a difference between an
10 entitlement to a language one understands or speaks and a language one
11 fully understands and speaks. The fact that this standard is high is
12 confirmed and further clarified by the preparatory work of the Statute.

13 Two occurrences of significance to the Appeals Chamber took
14 place. First having gone from a draft confined to a language an accused
15 understands or understands and speaks, proposals to have a language of
16 his or her choice or his or her own language were considered. The final
17 provision adopted was a language an accused fully understands and speaks.
18 This suggests that the intent was to raise the standard of understanding
19 to higher than plain understanding as appears in the conventions referred
20 to earlier.

21 Second, a footnote attached to subparagraph 1(a) stating that "it
22 is understood that this expression means the language for which the
23 accused, in good faith, has clearly expressed his or her preference,"
24 confirms that it was understood that the expression means the language
25 for which the accused has clearly expressed his or her preference in good

1 faith as indicated. That is, the intent was to allow for the language
2 preferred as long as the request for that language is in good faith.

3 The ICC has certain working languages, English and French in the
4 first place, with the possibility for others as referred in the Statute
5 and Rules. Whether one speaks of Article 67(1)(a) or (f) for the Statute
6 it seems that the starting point it will be -- as far as the languages
7 are concerned it will be a working language of the court; that is,
8 proceedings will in principle be offered in English or French. An
9 accused may state, however, that she or he wishes to use another language
10 presumably on the basis that he or she does not fully understand or speak
11 a working language of the Court.

12 The subject of understanding is exclusively the accused. Thus
13 the Chamber must give credence to the accused's claim that he or she
14 can't fully understand the language of the Court.

15 The matter does not, however, end there. What if the accused
16 fully understands or speaks the language of the Court. The Chamber may
17 have reasons as to why it does not find it appropriate to grant a request
18 to have interpretation into another language. The Chamber may consider
19 that the accused is acting in bad faith, is malingering, or is abusing
20 his or her right to interpretation under Article 67. If the Chamber
21 believes that the accused fully understands and speaks the language of
22 the Court, the Chamber must assess on the facts on a case-by-case basis
23 whether this is so.

24 Given the addition of the word "fully" and the drafting history
25 the standard must be high as stated. Therefore, the language requested

1 should be granted as long as it is absolutely clear on the record that
2 the person fully understands and speaks one of the working languages of
3 the Court and is abusing his or her right under Article 67 of the
4 Statute. An accused fully understands and speaks a language when he or
5 she is completely fluent in the language in ordinary, non-technical
6 conversation. It's not required that he or she has an understanding as
7 if he or she were trained as a lawyer or judicial officer. If there is
8 any doubt as to whether a person fully understands and speaks the
9 language of the court, the language being requested by the person should
10 be accommodated. Ultimately, the Chamber in question is responsible for
11 ensuring the fair trial of the accused.

12 In conclusion, the Appeals Chamber considers that the standard
13 applicable under the Statute is high, higher, for example, than that
14 applicable under the European Convention on Human Rights and the Covenant
15 on Civil and Political Rights. Given effect, this higher standard must
16 mean that the accused's request for interpretation into a language other
17 than the Court's language must be granted as long as he or she is not
18 abusing his or her rights under Article 67 of the Statute.

19 With regard to this ground of appeal, the Appeals Chamber
20 considers that the Pre-Trial Chamber erred in its interpretation of the
21 standard to be applied under Article 67(1)(a) and (f) of the Statute as
22 relevant under this appeal, a standard which the Appeals Chamber
23 interprets to be higher than that put forward by the Pre-Trial Chamber.

24 Turning very briefly to the second ground of appeal. The
25 appellant submitted, inter alia, that the Pre-Trial Chamber's "factual

1 analysis was erroneous because it attached too much weight to the
2 evidence allegedly suggesting that Mr. Katanga's level of French meets
3 the requirements of Article 67(1)(a) and (f) and too little weight to the
4 submissions made on behalf of Mr. Katanga, suggesting that his level of
5 French is nothing higher than reasonable."

6 The Appeals Chamber has stated that the Pre-Trial Chamber erred
7 in its interpretation of the standard to it be applied under Article
8 67(1)(a) and (f) of the Statute as relevant to this appeal. In this case
9 the Appeals Chamber determines that the matter should be remitted to the
10 Pre-Trial Chamber which has daily control of the case and full awareness
11 of the complete factual background for a new determination of the request
12 that formed the subject matter of the appeal based on the correct
13 interpretation as set out by the Appeals Chamber in this judgement. For
14 this reason, the Appeals Chamber shall not consider the second ground of
15 appeal.

16 As to the relief, so as stated earlier, the Appeals Chamber
17 determines that the impugned decision should be reversed to the extent
18 that the Pre-Trial Chamber erred in its interpretation of the standard to
19 be applied under Article 67(1)(a) and (f) of the Statute as relevant to
20 the appeal -- to this appeal, and the matter is remitted, Judge Pikis
21 dissenting, to the Trial Chamber for a new determination of the
22 appellant's request.

23 Judge Pikis will now summarise his dissenting opinion on this
24 judgement.

25 Judge Pikis.

1 JUDGE PIKIS: My opinion is so brief that it would be an
2 impossible task to summarise it. I shall read it.

3 I am at one with our judgement on the language issue and the
4 reasons behind it. Therefore, I associate myself with the reversal of
5 the decision of the Pre-Trial Chamber respecting the issues set down for
6 determination by the Appeals Chamber and endorse paragraph 1 of the
7 determinative part of the judgement.

8 I disagree with the second paragraph inasmuch as we should
9 determine the issue ourselves and not remit the case back to the
10 Pre-Trial Chamber to address anew the request of the appellant for
11 interpretation in the language he "fully understands and speaks," namely
12 Lingala. All relevant material on the subject is before the Appeals
13 Chamber. Deciding the issue ourselves would be consistent with the
14 finality attached to the appellate process by Rule 158(1) of the Rules of
15 Procedure and Evidence empowering the Court to confirm, reverse, or
16 amended the sub judice decision, a provision importing power to allow the
17 appeal by substituting the decision that ought to have been given for the
18 one given, varying the sub judice decision as deemed necessary by the
19 Appeals Chamber or confirming it by dismissing the appeal.

20 JUDGE KOURULA: Thank you very much. This now brings the session
21 to a close. Thank you very much.

22 COURT USHER: All rise.

23 The hearing ends at 4.25 p.m.

24

25