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No: ICC-01/04-01/07  
Date: 18 January 2008

**PRE-TRIAL CHAMBER I**

**Before: Judge Sylvia Steiner, Single Judge**

**Registrar: Mr Bruno Cathala**

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
*THE PROSECUTOR v. GERMAIN KATANGA***

**Public Document  
URGENT**

**Decision on the Defence Application for Leave to Appeal the Decision on the  
Defence Request Concerning Languages**

**The Office of the Prosecutor**  
Mr Luis Moreno Ocampo, Prosecutor  
Ms Fatou Bensouda, Deputy Prosecutor  
Mr Éric MacDonald, Trial Lawyer  
Ms Florence Darques-Lane, Legal Adviser

**Counsel for the Defence**  
Mr David Hooper, Counsel  
Mr Goran Sluiter, Assistant Counsel  
Ms Caroline Buisman, Assistant  
Counsel

I, **Sylvia Steiner**, judge at the International Criminal Court (“the Court”),

**NOTING** the “*Observations de la Défense de Germain Katanga sur le ‘Rapport du Greffe relatif aux renseignements supplémentaires concernant les langues parlées, écrites et comprises par Germain Katanga’*”<sup>1</sup> (“the Defence Observations”), filed on 23 November 2007, in which, pursuant to articles 50(3) and 67(1)(a) and (f) of the *Rome Statute* (“the Statute”), and in light of the fact that the Report of the Registry does not furnish sufficient evidence to establish that Germain Katanga fully understands and speaks French, Duty Counsel for the Defence requested the Chamber, *inter alia*, to: (a) take into consideration Germain Katanga’s limited ability to understand and speak French; (b) order that documents in French transmitted to him as part of the proceedings be accompanied by a translation into Lingala; (c) grant him the right to be assisted by a Lingala interpreter and translator during the proceedings; and (e) order all other necessary measures to allow him to follow and participate in his trial in Lingala, which is the language he understands, writes and speaks best;

**NOTING** the “Decision on the Defence Request Concerning Languages” (“the Decision”),<sup>2</sup> filed on 21 December 2007, in which the Single Judge rejected the requests made by Duty Counsel for the Defence in the Defence Observations and found that Germain Katanga’s competency in French meets the standards of article 67(1)(a) and (f) of the Statute;<sup>3</sup>

**NOTING** the “Defence Application for Leave to Appeal the Decision on the Defence Request Concerning Language” (“the Defence Application”),<sup>4</sup> filed on 27 December 2007;

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<sup>1</sup> ICC-01/04-01/07-78.

<sup>2</sup> ICC-01/04-01/07-127.

<sup>3</sup> *Ibid.* paras 30-43.

<sup>4</sup> ICC-01/04-01/07-130.

**NOTING** the “Prosecution’s Response to the Defence Application for Leave to Appeal the Decision on the Defence Request Concerning Languages”, filed by the Prosecution on 8 January 2008;<sup>5</sup>

**NOTING** the hearing held on 14 December 2007 before Pre-Trial Chamber I, during which the requests made in the Defence Observations were discussed at length;<sup>6</sup>

**NOTING** articles 21, 50, 54, 60, 61, 67(1)(a) and (f) and 82(1)(d) of the *Rome Statute* (“the Statute”), rules 76, 77, 121 and 155 of the *Rules of Procedure and Evidence* (“the Rules”), and regulations 40(3) and 65 of the *Regulations of the Court* (“the Regulations”);

**CONSIDERING** that, as Pre-Trial Chambers I and II have repeatedly stated,<sup>7</sup> for the Chamber to grant leave to appeal under article 82(1)(d) of the Statute, the issue identified by the appellant must: (i) have been dealt with in the relevant decision; and (ii) meet the following two cumulative criteria:

- a. it must be an issue that would significantly affect (i) both the fair and expeditious conduct of the proceedings; or (ii) the outcome of the trial; and
- b. it must be an issue for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

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<sup>5</sup> ICC-01/04-01/07-137.

<sup>6</sup> ICC-01/04-01/07-T-11-ENG.

<sup>7</sup> See, *inter alia*, “Decision on the Prosecution Motion for Reconsideration and, in the alternative, Leave to Appeal”, issued by Pre-Trial Chamber I on 23 June 2006 (ICC-01/04-01/06-165-Conf-Exp); “Decision on Defence Motion for Leave to Appeal”, issued by Pre-Trial Chamber I on 18 August 2006 (ICC-01/04-01/06-338); “Decision on Second Defence Motion for Leave to Appeal”, issued by Pre-Trial Chamber I on 28 September 2006 (ICC-01/04-01/06-489); “Decision on the Prosecution Request for Leave to Appeal the First Decision on Redactions”, issued by Pre-Trial Chamber I on 14 December 2007 (ICC-01/04-01/07-108) and “Decision on the Prosecutor’s Application for Leave to Appeal in Part Pre-Trial Chamber II’s Decision on the Prosecutor’s Applications for Warrants of Arrest Under Article 58”, issued by Pre-Trial Chamber II on 19 August 2005 (ICC-02/04-01/05-20-US-Exp; unsealed pursuant to Decision ICC-02/04-01/05-52 issued on 13 October 2005), in particular para. 20.

**CONSIDERING** that, according to the “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”,<sup>8</sup> issued by the Appeals Chamber on 13 July 2006 (“the Appeals Chamber Judgment”):

- (i) “[o]nly an issue may form the subject-matter of an appealable decision”;<sup>9</sup>
- (ii) “[a]n issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination”;<sup>10</sup>
- (iii) “[n]ot every issue may constitute the subject of an appeal”,<sup>11</sup> but “it must be one apt to ‘significantly affect’, i.e. in a material way, either a) ‘the fair and expeditious conduct of the proceedings’ or b) ‘the outcome of the trial’”;<sup>12</sup> and
- (iv) “[i]dentification of an issue having the attributes adumbrated above does not automatically qualify it as the subject of an appeal” insofar as “the issue must be one ‘for which in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings’”;<sup>13</sup>

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<sup>8</sup> ICC-01/04-168.

<sup>9</sup> Appeals Chamber Judgment, para. 9.

<sup>10</sup> Appeals Chamber Judgment, para. 9.

<sup>11</sup> Appeals Chamber Judgment, para. 9.

<sup>12</sup> Appeals Chamber Judgment, para. 10.

<sup>13</sup> Appeals Chamber Judgment, para. 14.

**CONSIDERING** that the Defence is seeking leave to appeal in relation to the issue of whether the Decision “incorrectly found that Mr. Katanga’s competency in French meets the standards of articles 7(1)(a) and (f) of the Statute;”<sup>14</sup>

**CONSIDERING** that such an issue appears to refer to two interlinked matters: (i) the content of the standard embraced in article 67(1)(a) and (f) of the Statute in relation to the level of competency in French required of Germain Katanga; and (ii) the assessment by the Single Judge of the evidence presented by the Prosecution, the Defence and the Registry which led the Single Judge to conclude that such a standard was met by Germain Katanga;

**CONSIDERING** that the issue raised by the Defence is an issue arising out of the Decision;

**CONSIDERING** that sub-paragraphs (1)(a) and (1)(f) of article 67 of the Statute are intended to ensure that Germain Katanga is in a position to effectively participate in mounting his defence; and that the Single Judge agrees with the Defence<sup>15</sup> and the Prosecution<sup>16</sup> that this is a core component of Germain Katanga’s rights pursuant to article 67(1) of the Statute and, consequently, of the fair conduct of the proceedings;

**CONSIDERING**, therefore, that the issue raised by the Defence would significantly affect the fair conduct of the proceedings;

**CONSIDERING** further that the Registry, in its written and oral observations, has emphasized the delay that Lingala translation and interpretation would cause in the

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<sup>14</sup> ICC-01/04-01/07-130, para. 10.

<sup>15</sup> ICC-01/04-01/07-130, paras. 19 and 20.

<sup>16</sup> ICC-01/04-01/07-137, para. 12.

proceedings;<sup>17</sup> that, depending on the approach taken in relation to the issue raised by the Defence, a number of material arrangements to make Lingala translation and interpretation possible may need to be put in place by the Registry before the proceedings relating to the confirmation hearing in the case can be completed; and that, therefore, the issue raised by the Defence would significantly affect the expeditious conduct of the proceedings;

**CONSIDERING** that an immediate resolution of the issue raised by the Defence would give legal certainty and would permit at this early stage of the proceedings in the case any necessary arrangements to be made with regard to translation and interpretation into Lingala to ensure full respect of Germain Katanga's rights under sub-paragraphs 1(a) and 1(f) of article 67 of the Statute; that, therefore, the Single Judge agrees with the Defence<sup>18</sup> and the Prosecution<sup>19</sup> that an immediate resolution of the issue raised by the Defence may materially advance the proceedings in the case of *The Prosecutor v. Germain Katanga*; and that, given that the confirmation hearing in the case is scheduled to commence on 28 February 2008, there is a need for an urgent ruling by the Appeals Chamber on the issue for which leave to appeal is sought in this decision;

**CONSIDERING** further that the Defence: (i) acknowledges that Germain Katanga's competency in French is of a reasonable level;<sup>20</sup> (ii) is, therefore, willing to abandon Germain Katanga's request for translation of documents "in order not to unnecessarily delay the case";<sup>21</sup> (iii) insists that it is of fundamental importance that Germain Katanga be assisted by an interpreter at least during the hearings,<sup>22</sup>

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<sup>17</sup> ICC-01/04-01/07-62, p.6-7 and ICC-01/04-01/07-T-11-ENG ET, p.16, lines 8-25 and p.17, lines 1-13.

<sup>18</sup> ICC-01/04-01/07-130, para. 24.

<sup>19</sup> ICC-01/04-01/07-137, para. 14.

<sup>20</sup> ICC-01/04-01/07-130, para. 16

<sup>21</sup> ICC-01/04-01/07-130, paras 16 and 22.

<sup>22</sup> ICC-01/04-01/07-130, para. 16.


although the Defence does not request “that the necessary interpreting facility for Lingala be in place until, in the event of confirmation, the trial itself”;<sup>23</sup>

**FOR THESE REASONS,**

**GRANT** the Defence Application for leave to appeal in relation to the issue of whether the Decision “incorrectly found that Mr. Katanga’s competency in French meets the standards of articles 67(1)(a) and (f) of the Statute”;

**DECIDE** that, pending a ruling by the Appeals Chamber on the issue for which leave to appeal is granted in this decision, Germain Katanga shall be assisted during the hearings held in the proceedings of the case ICC-01/04-01/07 by an interpreter in the same manner in which he was assisted during the status conference held on 14 December 2007.

Done in both English and French, the English version being authoritative.



**Judge Sylvia Steiner**  
**Single Judge**

Dated this Friday 18 January 2008

At The Hague, The Netherlands

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<sup>23</sup> ICC-01/04-01/07-130, para. 22.