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No.: ICC-01/04-01/07

Date: 4 February 2009

**TRIAL CHAMBER II**

**Before:** Judge Bruno Cotte , Presiding Judge  
Judge Fatoumata Dembele Diarra  
Judge Fumiko Saiga

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO  
IN THE CASE OF  
THE PROSECUTOR  
*v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

**Public Document**

**Defence Response to the *Report of the Registrar on the Provision of Lingala  
Interpretation for Germain Katanga at the Trial Stage***

**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**

Mr Luis Moreno Ocampo, Prosecutor  
Mr Eric Macdonald, Senior Trial Lawyer

**Counsel for the Defence for Germain  
Katanga**

Mr David Hooper  
Ms Caroline Buisman

**Counsel for the Defence for Mathieu  
Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi Basila  
Ms Maryse Alié

**Legal Representatives of Victims**

Ms Carine Bapita Buyangandu  
Mr Hervé Diakiese  
Mr Jean-Christostome Mulamba  
Nsokoloni  
Mr Joseph Keta  
Mr J.L. Gilissen

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. In response to the *Report of the Registrar on the Provision of Lingala Interpretation for Germain Katanga at the Trial Stage*, issued on 21 January 2009,<sup>1</sup> the Defence for Germain Katanga (“the Defence”) submits the following observations concerning Mr. Katanga’s right to be informed of the charges “in a language which the accused fully understands and speaks” pursuant to Article 67(1)(a) and his right to have “the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks” pursuant to Article 67(1)(f).
2. The Defence concedes that the Trial Chamber may revisit the Pre-Trial Chamber’s *Decision Implementing the Appeals Chamber Judgement concerning Languages*, issued on 2 June 2008,<sup>2</sup> for the purpose of the trial proceedings. The question as to whether Mr. Katanga speaks and understands French fully is still open, given that neither the Appeals Chamber nor the Pre-Trial Chamber has yet applied the standard set out by the Appeals Chamber in its *Judgment on the appeal of Mr. Germain Katanga against the decision of Pre-Trial Chamber I entitled “Decision on the Defence Request Concerning Languages”*, issued on 27 May 2008,<sup>3</sup> to the facts underlying the dispute on the level of French spoken by Mr. Katanga.
3. The Defence submits that the Trial Chamber should only revisit the decision to grant Mr. Katanga’s firm request for interpretation of the trial proceedings into Lingala if it has no reasonable doubt that Mr. Katanga’s level of French reaches the high level of fluency as required under Articles 67(1)(a) and (f). The Appeals Chamber emphasised that the standard applicable under Articles 67(1)(a) of the Statute is “high - higher, for example, than that applicable under the European Convention on Human Rights and the ICCPR”, and that to give effect to this higher standard the language requested by the accused “should be granted unless it is absolutely clear on the record that the person fully understands and speaks one of the working languages of the Court and is abusing his or her right under article 67 of the Statute.”<sup>4</sup>
4. Accordingly, the Trial Chamber may only reject Mr. Katanga’s request for interpretation into Lingala if the Chamber is convinced that Mr. Katanga’s request is not genuine and that it is absolutely clear that he fully understands and speaks French.

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<sup>1</sup> ICC-01/04-01/07-843.

<sup>2</sup> ICC-01/04-01/07-539.

<sup>3</sup> ICC-01/04-01/07-522, paras. 49-62.

<sup>4</sup> *Ibid*, paras. 61-62.

It is respectfully submitted that the Registrar's submissions fail to demonstrate this to be the case.

5. In earlier submissions on the issue of language, the Defence has emphasised that Mr. Katanga is a principal party in determining whether his level of French reaches the required level of fluency under Article 67 of the Statute. It is Mr. Katanga's position that he requests Lingala interpretation of the trial proceedings because his French is not fluent. The Defence repeats its observation made previously that Mr Katanga is best placed to assess his own capacities and that he "knows better than anyone else what his French is worth. He has no ulterior motive in asserting that he feels significantly more comfortable in Lingala than in French. If he, indeed, would speak and understand French to a level of perfection or even fluency, he would have no interest in Lingala interpreters during the proceedings. Interpretation complicates matters also for the defendant, given that mistakes in translation are regularly being made".<sup>5</sup>
6. The Appeals Chamber is in full agreement with this argument. It held that "[t]he subject of understanding is exclusively the accused. Thus, the Chamber must give credence to the accused's claim that he or she cannot fully understand and speak the language of the Court. This is because it is the accused who can most aptly determine his or her own understanding and it should be assumed that he or she will only ask for a language he or she fully understands and speaks."<sup>6</sup>
7. As is clearly demonstrated in the earlier submissions made by the Defence,<sup>7</sup> which the Defence fully relies on and reiterates in the present proceedings, there is no evidence that Mr. Katanga's request for Lingala interpretation is an abuse of his right under Article 67. On the contrary, given that Mr. Katanga's upbringing was in the Lingala speaking community of Isiro<sup>8</sup> and that he mainly spoke Lingala over the last few years before his transfer to The Hague, it being the language spoken in the army and in Kinshasa central prison,<sup>9</sup> Mr. Katanga's request for Lingala interpretation is entirely

<sup>5</sup> ICC-01/04-01/07-175, Defence Document in Support of Appeal Against «Decision on the Defence Request Concerning Languages», 1 February 2008, para. 26.

<sup>6</sup> ICC-01/04-01/07-522, para. 59.

<sup>7</sup> ICC-01/04-01/07-78, *Observations de la Défense de Germain Katanga sur le 'Rapport du Greffe relatif aux renseignements supplémentaires concernant ses langues parlées, écrites et comprises par Germain Katanga'*, 23 November 2007; ICC-01/04-01/07-T-1 I-Fr, page 18 lines 13-15; ICC-01/04-01/07-130, *Defence Application for Leave to Appeal the Decision on the Defence Request Concerning Languages*, 27 December 2007; ICC-01/04-01/07-175, *Defence Document in Support of Appeal Against «Decision on the Defence Request Concerning Languages»*, 1 February 2008.

<sup>8</sup> It should be noted that Lingala is the main language spoken in Isiro, where he was brought up by his uncle. Isiro is not a Swahili or Ngiti speaking community.

<sup>9</sup> ICC-01/04-01/07-175, para. 27.

reasonable. The Defence has set out the reasons for doubting that the evidence produced earlier by the Registrar<sup>10</sup> demonstrates that Mr. Katanga speaks and understand French fluently.<sup>11</sup>

8. The Defence respectfully submits that the new arguments of the Registrar raised in its *Report of the Registrar on the Provision of Lingala Interpretation for Germain Katanga at the Trial Stage*, are not persuasive of the issue and the Defence notes the careful and circumspect language used in the report. At paragraph 18, the Registrar submits that “[i]t could be argued that an interpretation in Lingala will not assist a person who already has a reasonable control of the French language to understand the proceedings more thoroughly. ...” (emphasis added). At paragraph 19, the Registrar holds that “it is questionable whether Mr. Katanga has so far benefited from liaison interpretation. ...” (emphasis added). At paragraph 20, the Registrar states that “[i]t can be questioned further whether the provision of this interpretation to Mr. Katanga gives as full a restitution of what the initial speaker says as simultaneous interpretation does. ...” (emphasis added). Also at paragraph 20, the Registrar suggests that “[o]ne may consider the arguments developed above when assessing whether the liaison interpretation provided so far gives him a better understanding of the proceedings than a proceedings in French. ...” (emphasis added).
9. In making those submissions, at most, the Registrar attempts to raise a doubt as to the need for Lingala interpretation. However, as previously argued by the Defence<sup>12</sup> and confirmed by the Appeals Chamber, “[i]f there is any doubt as to whether the person fully understands and speaks the language of the Court, the language being requested by the person should be accommodated.”<sup>13</sup>
10. In that light, the Defence’s simple answer to the question-marks raised is that, notwithstanding the difficulties of providing proper translation as has sometimes been a concern for Mr. Katanga, he continues to request that Lingala interpretation be provided.
11. Finally, the Defence observes that the Registrar’s initial concerns of costs and delay<sup>14</sup> are now moot, given that the Lingala interpretation equipment has now been put in place. The Defence, therefore, sees no compelling reason to deny Mr. Katanga’s

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<sup>10</sup> ICC-01/04-01/07-62.

<sup>11</sup> ICC-01/04-01/07-78, *inter alia*, paras 26-37; ICC-01/04-01/07-175, *inter alia*, paras 26-31.

<sup>12</sup> ICC-01/04-01/07-175, paras 30, 57-59.

<sup>13</sup> ICC-01/04-01/07-522, para. 3.

<sup>14</sup> ICC-01/04-01/07-T-1 I-Fr, page 16 lines 15-20; page 29 lines 17-21.

request for interpretation in his preferred language and, instead, to impose the French language despite the risk that he may not then fully comprehend the trial proceedings.

12. On these grounds, the Defence prays the Trial Chamber to authorise the continuation of Lingala interpretation until the end of the appellate proceedings (if any).

Respectfully submitted,



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David HOOPER

Dated this 4 February 2009

At The Hague