



Original: **French**

No.: ICC-01/04-01/07
Date: 13 December 2011

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

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

Public Document

**Decision on the Defence for Mathieu Ngudjolo Chui's application for a complete
review of the transcripts of his evidence**

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Mr Éric MacDonald, Senior Trial Lawyer

Counsel for Germain Katanga

Mr David Hooper
Mr Andreas O'Shea

Counsel for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

TRIAL CHAMBER II of the International Criminal Court (“the Chamber” and “the Court” respectively), acting pursuant to article 64(10) of the Rome Statute, rule 137(1) of the Rules of Procedure and Evidence, the oral decision of the Chamber of 19 October 2011¹ and the Decision of Trial Chamber I of 18 June 2009,² decides the following.

I. Background

1. On 7 December 2011, the Defence team for Mathieu Ngudjolo (“the Defence”) filed an application (“Application”)³ for the Chamber to direct the correction of errors discerned in the transcripts of Mathieu Ngudjolo Chui’s evidence,⁴ the harmonisation of both versions of the transcripts and a review of all transcripts of his evidence.
2. The Defence seeks such correction and review so that the parties and participants may avail themselves of transcripts which are a faithful record of the hearings and of identical versions in both languages. It argues that transcript reliability is an essential prerequisite for a fair trial and that the irregularities may occasion difficulties in the analysis of the facts by the Bench, parties and participants.⁵
3. The Defence underlines that the discrepancies identified in the transcripts are not of equal importance, but observes, however, that they pertain to crucial testimony which could be used against the person who provided it. It further

¹ ICC-01/04-01/07-T-325-FRA ET, 19 October 2011, p. 71, line 3 to p. 72, line 19.

² Trial Chamber I, *Decision on discrepancies between the English and the French Transcripts and related issues*, 18 June 2009, ICC-01/04-01/06-1974-Conf.

³ Defence for Mathieu Ngudjolo Chui, “*Requête de la Défense pour la révision complète des transcriptions de la déposition de Mathieu Ngudjolo chui*”, 7 December 2011, ICC-01/04-01/07-3215.

⁴ See annexes to the Defence Application, ICC-01/04-01/07-3215-Conf-AnxA, ICC-01/04-01/07-3215-AnxB, ICC-01/04-01/07-3215-Conf-AnxC.

⁵ Defence Application, para. 10.

notes the twofold risk of error in the transcripts arising from the dual translation: first from Lingala into French, and then from French into English.⁶

II. Discussion

4. The Chamber recalls that rule 137 of the Rules of Procedure and Evidence binds the Registry to make, and preserve, a full and accurate record of all proceedings, including transcripts.
5. The Chamber again underscores that transcript reliability is a sine qua non condition to a fair trial and that the existence of discrepancies between, on the one hand, the statements in Lingala made by Mathieu Ngudjolo Chui when giving evidence, and the French and English transcripts on the other, may cause serious difficulties to the Chamber, which would thus be unable to rule promptly on important factual issues.
6. The Chamber observes that the Defence has identified numerous discrepancies and therefore considers the requested review as warranted inasmuch as it concerns testimony which is all the more crucial on account of its potential use against Mr Ngudjolo Chui. Accordingly, the Chamber finds that, in the instant case, and on an exceptional basis, an overall review of the transcripts is necessary to ensure a fair trial and ease the task of evidence analysis.

FOR THESE REASONS, the Chamber

GRANTS the Application;

⁶ Defence Application, para. 11.

ORDERS the verification of each transcript against the audio recording and of concordance between the French and English versions by 4 p.m. on 13 February 2012.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Christine Van den Wyngaert

Dated this 13 December 2011

At The Hague, The Netherlands