

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07
Date: 26 September 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
URGENT**

Registrar's observations on the language used by Germain Katanga for testimony

Source: The Registrar

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

The Office of the Prosecutor

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Registrar

Ms. Silvana Arbia

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M. Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (the “Court”)

NOTING the “Rapport du Greffe relative aux renseignements supplémentaires concernant les langues parlées, écrites et comprises par Germain Katanga” submitted on 9 November 2007;¹

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” dated 23 November 2007;²

NOTING the “Prosecution’s Observations on the « Rapport du Greffe relatif aux renseignements supplémentaires concernant les langues parlées, écrites et comprises par Germain Katanga” dated 23 November 2007;³

NOTING the “Decision on the Defense Request Concerning Languages” rendered by Pre-Trial Chamber I on 21 December 2007;⁴

NOTING the “Defence Application for Leave to Appeal the Decision on the Defence Request Concerning Languages” dated 27 December 2007;⁵

NOTING the “Prosecution’s Response to the Defence Application for Leave to Appeal the Decision on the Defence request Concerning Languages” dated 8 January 2008;⁶

¹ ICC-01/04-01/07-62

² ICC-01/04-01/07-78

³ ICC-01/04-01/07-81

⁴ ICC-01/04-01/07-127

⁵ ICC-01/04-01/07-130

⁶ ICC-01/04-01/07-137

NOTING the “Decision on the Defence Application for leave to Appeal the Decision on the Defence Request Concerning languages” rendered by Pre-Trial Chamber I on 18 January 2008;⁷

NOTING the “Defence Document in Support of Appeal Against “Decision on the Defence request Concerning Languages” dated 1 February 2008;⁸

NOTING the “Prosecution’s Response to the Defence Document in support of Appeal Against “Decision on the Defence request Concerning Languages” dated 14 February 2008;⁹

NOTING the “Judgment on the appeal of Mr. Germain Katanga against the decision of Pre-Trial Chamber I entitled “Decision on the Defence Request Concerning Languages” (“Judgment”) dated 27 May 2008;¹⁰

NOTING the “Decision implementing the Appeals Chamber Judgment concerning languages” rendered on 2 June 2008 “(the Decision”);¹¹

NOTING the hearing of 28 November 2008;¹²

NOTING the “Ordonnance enjoignant aux participants et au Greffe de déposer des documents complémentaires” rendered by Trial Chamber II on 10 December 2008;¹³

⁷ ICC-01/04/01/07-149

⁸ ICC-01/04-01/07-175

⁹ ICC-01/04-01/07-194

¹⁰ ICC-01/04-01/07-522

¹¹ ICC-01/04-01/07-539

¹² ICC-01/04-01/07-T-53-ENG, 28 November 2008

¹³ ICC-01/04-01/07-788

NOTING the “Report of the Registrar on the Provision of Lingala Interpretation for Germain Katanga at the Trial Stage” submitted on 21 January 2009,¹⁴

NOTING the “Requête de l'Accusation au sujet du « Report of the Registrar on the Provision of Lingala Interpretation for Germain Katanga at the Trial Stage” submitted by the Office of the Prosecutor on 4 February 2009;¹⁵

NOTING the “Defence Response to the Report of the Registrar on the Provision of Lingala Interpretation for Germain Katanga at the Trial Stage” submitted by the Defence for Germain Katanga on 4 February 2009;¹⁶

NOTING the “Decision on a number of procedural issues raised by the Registry” rendered by Trial Chamber II on 14 May 2009;¹⁷

NOTING the “The Registry's proposal for a list of independent and neutral experts in compliance with the “Decision on a number of procedural issues raised by the Registry”, submitted by the Registry on 22 May 2009;¹⁸

NOTING the “Order instructing experts pursuant to regulation 44 of the Regulations of the Court” rendered by Trial Chamber II on 14 July 2009;¹⁹

NOTING the document entitled “Transmission du Rapport d'experts conformément à l'ordre de la Chambre de première instance II (ICC-01/04-01/07-1300)” submitted by the Registry on 31 August 2009²⁰

¹⁴ ICC-01/04-01/07-843

¹⁵ ICC-01/04-01/07-870

¹⁶ ICC-01/04-01/07-871

¹⁷ ICC-01/04-01/07-1134

¹⁸ ICC-01/04-01/07-1167-Conf

¹⁹ ICC-01/04-01/07-1300

²⁰ ICC-01/04-01/07-1444

NOTING the Experts' report²¹

5.8 M. Katanga a donc une compétence linguistique approximative du français, mais il n'a pas du tout de compétence communicative ou compétence de communication en cette langue.

5.9 Dans sa pratique du français, M Katanga accuse de nombreux signes d'hypercorrection, en ce sens qu'il se reprend tout le temps pour trouver le mot, l'expression ou la tournure qui conviendrait. Ceci est la preuve d'une insécurité linguistique en français. L'insécurité linguistique signifie qu'un locuteur parle une langue en ayant conscience qu'il ne possède pas le modèle du parler correct de cette langue, ce dernier existant chez les locuteurs légitimes de cette langue.

5.10 Quant aux raisons que M Kalanga évoque lui-même pour expliquer pourquoi il n'est pas capable de comprendre et de parler correctement le français, les experts ont noté comme raisons plausibles les suivantes:

- La dégradation du contexte d'enseignement/apprentissage du français en République démocratique du Congo (Voir le point 3 du présent rapport) ;*
- La différence de niveau de langue utilisée par le juge président de la chambre.*

NOTING Articles 50, 64, 67, 70 and 71 of the Rome Statute, Regulations 24*bis*, 39 (3) and 44 of the Regulations of the Court, Regulation 9 of the Regulations of the Registry;

CONSIDERING that the Defence for Germain Katanga, by way of e-mail sent by the Case manager on 22 September 2011 to the Court Officer in this case, confirmed that Germain Katanga will testify in French when he commences his testimony on 27 September 2011;

²¹ ICC-01/04-01/07-1444-Anx, page 24

SUBMITS, respectfully, the following observations:

A. General Remarks

1. The Registry would like to stress to the Chamber that the language of choice for the testimony of M. Germain Katanga comes as a total surprise taking into consideration all arguments presented on this issue.
2. Without referring in detail to all arguments forwarded on this issue, the Registry would like to recall that, *ab initio*, it was – and still is - of the view that M. Katanga would have been able to follow all trial related proceedings in French, as such rendering the provision of interpretation into Lingala unnecessary.
3. Notwithstanding the above, the Registry duly implemented the order of Trial Chamber II whereby M. Katanga was to be provided with interpretation into Lingala of the Court proceedings against him.

B. Defence submissions as to M. Katanga's alleged limited command of French

4. From the beginning of the proceedings, the Defence for Germain Katanga consistently challenged all Registry's observations and report as to M. Katanga's command of French. For reference, the Registry copies below a selection of submission of the Defence concluding that M. Katanga was not able to fully defend himself in French:

- In submission ICC-01/04-01/07-78, par. 40, the Defence wrote:

« M. Germain Katanga souligne que ce n'est pas du tout par caprice qu'il a soulevé ce problème de la langue. Il l'a fait parce qu'il est conscient de ses limites dans la compréhension et l'expression orale

et écrite du français, et ce, dans le souci majeur d'être en mesure de bien suivre le déroulement de son procès, d'assurer pleinement sa défense conformément aux dispositions pertinentes du Statut de la CPI, et de permettre à celle-ci de rendre une bonne justice attendue par tous. » (emphasis added)

- In submission ICC-01/04-01/07-130, par. 19, the Defence wrote:

“But what if the assessment that Mr. Katanga fully understands and speaks French is incorrect? In that case, Mr. Katanga will not be able to comprehend fully the grave charges against him. Such lack of full comprehension of the charges against him would severely hamper Mr. Katanga's ability to mount a defence against those charges. Consequently, the fairness of the entire proceedings would be wholly undermined.” (emphasis added)

- In submission ICC-01/04-01/07-175, par. 27, the Defence wrote:

“Mr. Katanga submits that his preferred language is Lingala because this is the language he spoke in the army as well as in prison in Kinshasa where he spent the last two years before being transferred to The Hague. Even if he speaks French reasonably well, he does not speak it to any level that would enable him to fully understand the highly technical proceedings against him before the ICC.” (emphasis added)

- In submission ICC-01/04-01/07-871, par. 5, the Defence wrote:

“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”” (emphasis added)

C. Consequences of measures implemented

5. In order to enlighten the Trial Chamber on the consequences of the provision of interpretation into Lingala - which now seems to have become a waste of resources both human and financial - the Registry would like to give the Chamber an overview of all measures implemented, necessary for the provision of interpretation into Lingala, and costs incurred.

C. 1. Recruitment and training of Lingala Interpreters

6. The Interpretation and Translation Section of the Registry started with the recruitment of paraprofessional interpreters in the summer of 2008. Due to the limited number of suitable candidates, only two candidates were recruited.

7. Before an interpreter is ready to provide interpretation in a Courtroom environment, meticulous training and preparation needs to take place. For instance, Court interpreters need to familiarize with the terminology used in a courtroom environment. After a rigorous training period, lasting five months, the two candidates were tested by a panel of examiners that consisted of one internal STIC examiner, one Lingala expert and four external examiners (European Commission, ESIT, ICTR, ACP). Both candidates passed the tests and were thus accredited for interpreting from and into Lingala and French.

8. The two paraprofessional interpreters had additional months to practice as the beginning of trial was slightly delayed and they started to work in the booth in November 2009, roughly 11 months after they were first recruited.

9. The Registry would like to stress that there has never been an occasion where Mr Katanga ever objected to or commented in any way the Lingala interpretation. On

occasions that comments were made, they were in relation to other languages, not Lingala.

C.2. Provision of parallel Swahili booth

10. As a consequence of the limited number of suitable candidates for Lingala interpretation, two staff members from the “Swahili booth”, who had Lingala as one of their languages, joined the Lingala Court interpreters as such necessitating the recruitment of two extra interpreters to complete the “Swahili booth”.

C.3. Costs

11. The Registry estimates the cost of providing Lingala interpretation (including training, terminology, translation, administrative support to staff) at 482,000 €. To these costs, the amount of 276,000 € needs to be added for costs incurred for completing the Lingala booth with staff members from the “Swahili booth” or freelancers.

D. Conclusion

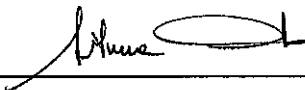
12. In light of M. Katanga’s manifest command of the French language, the Registrar expresses her deepest concern as to the rationales of Germain Katanga and his Defence for consistently requesting from the beginning of the trial interpretation into Lingala. In particular, the Defence above submissions that Mr. Katanga would not be in a position to fully defend himself,²² that is preferred language is Lingala²³ and that

²² ICC-01/04-01/07-78, par. 40; ICC-01/04-01/07-130, par. 19.

²³ ICC-01/04-01/07-175, par. 27.

he knows better than anyone else what his French is worth²⁴ now appear in contradiction with his choice of French as the language of his testimony.

13. The Registrar therefore respectfully requests from the Chamber the authorization to immediately stop trial interpretation in Lingala in order to prevent further delay in the proceedings and further expenses.



Silvana Arbia,
Registrar

Dated this 26 September 2011

At The Hague, the Netherlands

²⁴ ICC-01/04-01/07-871, par. 5.