

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07
Date: 15 September 2009

TRIAL CHAMBER II

Before: Judge Bruno Cotte , Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Hans-Peter Kaul

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

**IN THE CASE OF
THE PROSECUTOR *v.* GERMAIN KATANGA *and* MATHIEU NGUDJOLO CHUI**

Public Document

Decision on the interpretation of the court proceedings

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda
Mr Eric MacDonald

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 the Victims

Mr Fidel Nsita Luvengika
Mr Joseph Keta
Mr Jean-Louis Gilissen
Ms Carine Bapita Buyangandu
Mr Hervé Diakiese
Mr Jean Chrysostome Mulamba
Nsokoloni
Mr Vincent Lurquin
Ms Flora Mbuyu Anjelani

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber II ("Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, having regard to article 64(2) and 67(1)(f) of the Rome Statute ("Statute") and Regulation 40(2)(b) of the Regulations of the Court ("Regulations"), issues the following decision.

I. BACKGROUND

1. On 14 May 2009, the Chamber rendered its "Decision on a number of procedural issues raised by the Registry"¹. One of the issues dealt with in this decision was the question of whether Lingala interpretation of the proceedings should be continued to be provided to Mr. Germain Katanga. Both the Office of the Prosecutor ("Prosecution")² and the Registry argued that Mr. Katanga's command of the French language was such as to satisfy the standard of article 67(1)(f) and that therefore the interpretation should no longer be made available to the accused.³ Before ruling on the issue, the Chamber decided to seek the opinion of suitably qualified experts who were to independently assess Mr. Katanga's level of French as well as his proficiency in Lingala.⁴

2. On 20 May 2009, the Defence for Germain Katanga sought clarification and review of the Chamber's decision, or in the alternative, leave to appeal the Chamber's decision in relation to the Lingala interpretation for the accused.⁵ The Prosecution opposed the Defence's request for a review or leave to appeal⁶,

¹ ICC-01/04-01/07-1134

² "Requête de l'Accusation au sujet du « Report of the Registrar on the Provision of Lingala Interpretation for Germain Katanga at the Trial Stage »" ICC-01/04-01/07-870-Corr, par. 9

³ "Report of the Registrar on the Provision of Lingala Interpretation for Germain Katanga at the Trial Stage", 21 January 2008, ICC-01/04-01/07-843; "Requête de l'Accusation au sujet du « Report of the Registrar on the Provision of Lingala Interpretation for Germain Katanga at the Trial Stage »", 4 February 2009, ICC-01/04-01/07-870-Conf

⁴ ICC-01/04-01/07-1134, par. 49

⁵ "Defence request to review, or in the alternative, for leave to appeal, the Decision on a number of procedural issues raised by the Registry", 20 May 2009, ICC-01/04-01/07-1161-Corr

⁶ "Prosecution's Response to Defence Request to review or, in the alternative, for leave to appeal, the Decision on a number of procedural issues raised by the Registry", 25 May 2009, ICC-01/04-01/07-1169

stating that the Defence application failed to establish the existence of an appealable issue and that the Trial Chamber had not made any finding as to whether or not Mr Katanga shall be provided with Lingala interpretation.⁷ Leave for appeal was denied⁸ on 14 July 2009. The same day, the Chamber instructed Professor André Nyembwe and Dr. André Motingea, as joint experts pursuant to regulation 44(4) and (5) of the Regulations⁹, to independently evaluate Mr. Katanga's level of proficiency of the French language in order to assist the Chamber in making a fully informed assessment of whether the accused fully understands and speaks French within the meaning of the Appeals Chamber's interpretation of the standard laid down in article 67(1)(f) of the Statute.¹⁰

3. The experts met both with the accused and his counsel and subsequently submitted their confidential joint expertise ("Report") on 31 August 2009.¹¹ Pursuant to the Chamber's instructions, the document was reclassified as public on 1 September 2009.¹²

4. No further submissions of the parties were received on the issue following the notification of the Chamber's order instructing the experts.

⁷ ICC-01/04-01/07-1169, par. 9

⁸ "Decision on the 'Defence Request to review or, in the alternative, for leave to appeal, the Decision on a number of procedural issues raised by the Registry'", 14 July 2009, ICC-01/04-01/07-1301

⁹ "Order instructing experts pursuant to regulation 44 of the Regulations of the Court", 14 July 2009, ICC-01/04-01/07-1300, par. 3

¹⁰ "Judgment on the appeal of Mr. Germain Katanga against the decision of Pre-Trial Chamber I entitled 'Decision on the Defence Request Concerning Languages'", 27 May 2008, ICC-01/04-01/07-522, par. 61

¹¹ "Rapport d'experts", p. 21 of Annexe 1 of "Transmission du rapport d'experts conformément à l'ordre de la chambre de première instance II (ICC-01/04-01/07-1300)", 31 August 2009, ICC-01/04-01/07-1444-Conf-Exp

¹² ICC-01/04-01/07-1444

II. ANALYSIS AND CONCLUSION

5. As has previously been set out in detail¹³, the Chamber sought to ascertain whether the accused was indeed completely fluent in the French language “in ordinary, non-technical conversation”¹⁴, before rendering a decision on whether or not Lingala interpretation should be continued to be made available to Mr. Germain Katanga.¹⁵

6. After having carried out a thorough analysis of (i) whether a person in the Democratic Republic of Congo, with a comparable level of education and professional experience and social status as Mr. Katanga, would, in normal circumstances, be expected to be completely fluent in ordinary non-technical conversation in French¹⁶ and (ii) whether Mr. Katanga advances any arguments which, in the opinion of the experts, may explain why his level of comprehension of the French language varies from what may in normal circumstances be expected from a person of his level of education and professional experience and social status,¹⁷ the experts concluded that Mr. Katanga has an all in all imperfect command of the French language.¹⁸

7. The experts explained that Mr. Katanga does not only have difficulties in expressing himself in French, but also, and in particular, that he has difficulties in following the court proceedings conducted in the French language.¹⁹ Having also conducted a part of the interview with the accused in Lingala, the experts certify that Lingala is indeed the language in which Mr. Katanga expresses himself without difficulty.²⁰

¹³ ICC-01/04-01/07-1134, par 45; ICC-01/04-01/07-1300, par.1, ICC-01/04-01/07-1301, paras. 14 and 15

¹⁴ ICC-01/04-01/07-522, par. 61

¹⁵ ICC-01/04-01/07-1134, par. 44; ICC-01/04-01/07-1301 par. 14

¹⁶ ICC-01/04-01/07-1300, par. 3a

¹⁷ Ibid, par. 3b

¹⁸ P. 24 of Annexe 1 of ICC-01/04-01/07-1444

¹⁹ Ibid, p. 22

²⁰ Idem

8. Having analysed the content of the Report, the Chamber considers that Mr. Katanga's level of French falls short of the requirements set out in the said Appeals Chamber judgment²⁰. Accordingly, the Chamber finds that the accused does not master the French language well enough to follow the proceedings against him in that language.


FOR THESE REASONS,

THE CHAMBER

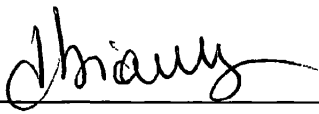
ORDERS the Registry to continue to provide Mr. Germain Katanga with interpretation into Lingala of the court proceedings in the case against him.

²⁰ ICC-01/04-01/07-522, par. 61

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



Judge Bruno Cotte
Presiding Judge



Judge Fatoumata Dembele Diarra



Judge Hans-Peter Kaul

Dated this 15 September 2009

At The Hague, the Netherlands