

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 2 June 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. Germain Katanga and Mathieu Ngudjolo Chui***

Public Document

Decision Implementing the Appeals Chamber Judgement concerning Languages

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, Prosecutor
Mr Éric MacDonald, Senior Trial Lawyer

**Counsel for the Defence
of Germain Katanga**
Mr David Hooper
Ms Caroline Buisman

**Counsel for the Defence of Mathieu
Ngudjolo Chui**
Mr Jean-Pierre Kilenda Kakengi Basila
Ms Maryse Alié

Legal Representatives of the Victims
Ms Carine Bapita Buyagandu
Mr Joseph Keta
Mr J L Gilissen

Legal Representatives of the 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

Registrar
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I, Judge 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’*”¹ (“the Defence Observations”), filed on 23 November 2007, in which the Duty Counsel for the Defence, 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 did not furnish sufficient evidence to establish that Germain Katanga fully speaks and understands French, requested the Chamber, *inter alia*, to:

- (i) order that documents in French transmitted to him as part of the proceedings be accompanied by a translation into Lingala;
- (ii) grant him the right to be assisted by a Lingala interpreter and translator during the proceedings; and
- (iii) 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”² issued by the Single Judge on 21 December 2007, in which the Single Judge, *inter alia*, found that the competency of Germain Katanga in French met the standards set by article 67(1)(a) and (f) of the Statute and rejected the requests made by the Duty Counsel for the Defence in the Defence Observations;

NOTING the “Defence Application for Leave to Appeal the Decision on the Defence Request Concerning Languages”³ filed by the Defence for Germain Katanga on 27 December 2007;

¹ ICC-01/04-01/07-78

² ICC-01/04-01/07-127.

³ ICC-01/04-01/07-130

NOTING the “Decision on the Defence Application for Leave to Appeal the Decision on the Defence Request Concerning Languages”⁴ issued by the Single Judge on 18 January 2008, by which leave to appeal was granted;

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’”⁵ (“the Appeals Chamber Judgment concerning Languages”) issued by the Appeals Chamber on 27 May 2008, in which the Appeals Chamber “determines that the Impugned Decision should be reversed to the extent that the Pre-Trial Chamber erred in its interpretation of the standard to be applied under article 67 (1) (a) and (f) of the Statute as relevant to this appeal, and the matter is remitted, Judge Pikis dissenting, to the Pre-Trial Chamber for a new determination of the Appellant’s request;”

NOTING articles 50, 61 and 67 of the *Statute*, rules 121 and 122 of the *Rules of Procedure and Evidence* (“the Rules”), and regulation 61 of the *Regulations of the Registry* (“the RoR”);

I. The Appeals Chamber Judgment concerning Languages

1. In the Appeals Chamber Judgement concerning Languages, the Appeals Chamber found that the Single Judge erred in the interpretation of the standard to be applied under article 67(1)(a) and (f) of the Statute⁶ because she “did not comprehensively consider the importance of the fact that the word “fully” is included in the text, and the article’s full legislative history.”⁷ In the opinion of the Appeals Chamber, the cumulative requirement “fully understands and speaks” in

⁴ ICC-01/04-01/07-149

⁵ ICC-01/04-01/07-522 - OA3

⁶ The Appeals Chamber Judgement concerning Languages, para. 66

⁷ The Appeals Chamber Judgement concerning Languages, para. 37

both paragraphs makes the applicable standard “high – higher, for example, than that applicable under the European Convention on Human Rights and the ICCPR.”⁸

2. As a result, the Appeals Chamber remitted the matter to the Chamber for a new determination of the request by Germain Katanga.⁹ In this regard, in defining the contours of Germain Katanga’s request, the Appeals Chamber highlighted:

The Appellant has modified his requests in the course of the proceedings before the Pre-Trial Chamber. In the Defence Observations on the Report of the Registry the Appellant sought both translation and interpretation. He changed this request during the 14 December 2007 hearing, during which he requested interpretation and stated that he may request translation of some documents. Later, in the Application for Leave to Appeal, the Appellant stated that he was “willing to abandon Mr. Katanga’s request for translation of documents” This was noted in the Decision Granting Leave to Appeal by the Pre-Trial Chamber wherein the Chamber granted leave to appeal on the aforementioned issue having considered, inter alia, that the Appellant had abandoned his request for translations. Before the Appeals Chamber, the Appellant stated that he would be “satisfied if the interpreting facility is in place at the beginning of the trial He also stated that although he was not requesting the translation of all documents, he “reserve[d] the right to request, on a case-by-case determination upon showing good cause, the translation of some significant documents, for instance, the indictment, the defence and closing brief’. In his conclusion, the Appellant “pray[ed] the Appeals Chamber to find that the Single Judge erroneously found that Mr. Katanga’s competency meets the requirements of articles 67(1)(a) and (f): to reverse the Single Judge’s Decision not to grant Mr. Katanga the right to a Lingala interpreter in the Courtroom; and to order the Registrar to put the facility in place in order that such Lingala interpretation can be offered to Mr. Katanga” . Since the Appellant seems to have abandoned his request for translation in his Application for Leave to Appeal, the Appeals Chamber will proceed on the basis that his request is limited to interpretation. Indeed, although he raises the issue of translation again in his Document in Support of the Appeal, he does so on the basis that he reserves the right to request certain translations.¹⁰

3. As a result, the Appeals Chamber found that the remitted request of Germain Katanga was confined to: (i) the granting of the right to a Lingala interpreter in the Courtroom; and (ii) the issuance of an order to the Registrar to put the facility in place in order that such Lingala interpretation can be offered to Germain Katanga.¹¹

4. The Appeals Chamber gave the Chamber certain guidelines for the determination of Germain Katanga’s remitted request. In particular, the Appeals Chamber stated the following:

⁸ The Appeals Chamber Judgement concerning Languages, para. 62

⁹ The Appeals Chamber Judgement concerning Languages, para. 66

¹⁰ The Appeals Chamber Judgement concerning Languages, para. 19

¹¹ The Appeals Chamber Judgement concerning Languages, para. 66

[...] Whether one speaks of article 67 (1) (a) or (f) of the Statute, it seems that the starting point, as far as languages are concerned, will be a working language of the Court. That is, proceedings will in principle be offered in English or French. An accused may state, however, that he or she wishes to use another language - presumably on the basis that he or she does not fully understand and speak a working language of the Court.¹²

The 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.¹³

The matter does not, however, end there. What if the accused fully understands and speaks the language of the Court? The Chamber may have reasons as to why it does not find it appropriate to grant a request to have interpretation into another language. For example, an accused may fully understand and speak more than one language and it may be evident that he or she is asserting the right to use a different language to that being offered by the Court even though the latter is one of the languages that he or she also fully understands and speaks. The Chamber may consider that the accused is acting in bad faith, is malingering or is abusing his or her right to interpretation under article 67. If the Chamber believes that the accused fully understands and speaks the language of the Court, the Chamber must assess, on the facts on a case-by-case basis, whether this is so.¹⁴

Given the addition of the word fully, and the drafting history, the standard must be high. Therefore, the language requested 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. An accused fully understands and speaks a language when he or she is completely fluent in the language in ordinary, non technical conversation; it is not required that he or she has an understanding as if he or she were trained as a lawyer or judicial officer. If 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. Ultimately, the Chamber in question is responsible for ensuring the fair trial of the accused.¹⁵

II. Implementation of the Appeals Chamber Judgement concerning Languages

5. In applying the criteria given by the Appeals Chamber, the Single Judge first observes that Germain Katanga has requested the use of Lingala because, according to him, this is the language that he "speaks best".¹⁶

¹² The Appeals Chamber Judgement concerning Languages, para 58

¹³ The Appeals Chamber Judgement concerning Languages, para 59

¹⁴ The Appeals Chamber Judgement concerning Languages, para 60

¹⁵ The Appeals Chamber Judgement concerning Languages, para 61

¹⁶ ICC-01/04-01/07-T-5 ENG 22 Oct 2007, p. 3, line 8.

6. Concerning Germain Katanga's competence in French, the Decision underlined that:

[...] Duty Counsel for the Defence acknowledged that Germain Katanga's competency in French was good in terms of both his passive (reading and listening) and active (speaking) knowledge of French. Counsel for Defence also confirmed this at the 14 December 2007 hearing when he acknowledged that "there's no doubt that Mr. Katanga does speak French to a reasonable standard, and indeed that's our language of communication with him".¹⁷

7. Nevertheless, the Single Judge notes that Germain Katanga has repeatedly made the claim that he does not fully understand and speak French, which according to the Appeals Chamber, must be given "credence".

8. The question, therefore, arises as to whether Germain Katanga - in addition to a reasonable understanding and speaking of ordinary, non-technical French - speaks and understands it to the exact level of "fully",¹⁸ that is to say "[i]n a full manner or degree; to the full, without deficiency; completely, entirely, thoroughly, exactly, quite"¹⁹ (or "*[d]'une manière parfaite*", "*[s]avoir parfaitement une langue*" and "*[a]bsolument, complètement, entièrement*", "*être parfaitement heureux*").²⁰

9. In the view of the Single Judge, a thorough factual determination of whether Germain Katanga's competence in French reaches the exact level of "fully understands and speaks",²¹ as defined by the Appeals Chamber, would require the Single Judge to undertake a number of procedural steps, which would most likely result in a further postponement of the confirmation hearing.

¹⁷ ICC-01/04-01/07-127, para. 31. Moreover, after the 14 December 2007 hearing in which a number of documents provided by the Registry and the Prosecution in relation to the Germain Katanga's competence in French were discussed, the Single Judge also found at paras 33 to 36 of the Decision that: (i) not only did Mr Katanga obtain his secondary school diploma (Section Pédagogie) in French, he passed the State examination in French; (ii) Germain Katanga was the subject of criminal proceedings in the DRC which were held in French, and, in the course of the proceedings, he filed a lengthy request for interim release written in French to a good standard, (iii) all proceedings concerning the execution of the cooperation request for the arrest and surrender of Germain Katanga to the Court were held in French, and at no time did he raise any concerns about his language of communication with the Congolese authorities or with Court officials – quite the contrary, in addition to writing his observations in French, Mr Katanga confirmed to the Duty Officer at the detention centre that he could read and understand all of the documents he had received in French, and (iv) at the detention centre, Germain Katanga was given a list of 15 French/Lingala speaking counsel from which he eventually chose a Defence Counsel with whom he communicates in French, despite the fact that his second Duty Counsel spoke not only French, but also Lingala.

¹⁸ The Appeals Chamber Judgement concerning Languages, para 61

¹⁹ The Appeals Chamber Judgement concerning Languages, para 40, quoting the definition of "fully" provided for by the Oxford English Dictionary.

²⁰ The Appeals Chamber Judgement concerning Languages, para. 40, quoting the definition of "fully" provided for by the *Le Nouveau Petit Robert, Dictionnaire Alphabétique et Analogique de la Langue Française*

²¹ The Appeals Chamber Judgement concerning Languages, para 61

10. In this regard, the Single Judge has recently highlighted that:

[...] after two postponements, the confirmation hearing is currently scheduled to start on 27 June 2008, less than a month away; that, according to article 61(1) of the Statute, Germain Katanga and Mathieu Ngudjolo Chui have the right to have the confirmation hearing held within a reasonable period of time after their surrender before the Court; and that Germain Katanga has been at the Court's Detention Centre in the Hague since 18 October 2007 and Mathieu Ngudjolo Chui since 8 February 2008;²²

11. Under these circumstances, and particularly in light of the reasons provided for in paragraphs 12 to 18 of the present decision, the Single Judge is of the view that the right of Germain Katanga and Mathieu Ngudjolo Chui to have the confirmation hearing held within a reasonable period of time must prevail.

12. In this regard, the Single Judge notes that the Appeals Chamber Judgement concerning Languages does not impose upon the Chamber an unequivocal obligation to undertake, for the purpose of a confirmation hearing that is about to start in the present case, a thorough factual determination of whether Germain Katanga's competence in French reaches the level of "fully understands and speaks".

13. In this regard, the Single Judge underlines that the Appeals Chamber emphasises that the request of Germain Katanga is confined to the right to have Lingala interpretation in the Courtroom.²³ Therefore, as long as the Chamber ensures that Germain Katanga has interpretation into Lingala available to him in all hearings to which he is entitled to attend in the proceedings leading to the confirmation hearing, as well as during the confirmation hearing, the interests underlying his request will be satisfied and the Chamber will have fully complied with its responsibility "for ensuring the fair trial of the accused."

14. In this regard, the Single Judge observes that as a precautionary measure to preserve Germain Katanga's right to a fair trial, the Chamber has ensured that liaison interpretation into Lingala is available to Germain Katanga in all hearings which he is entitled to attend in the present proceedings since his initial appearance on 22 October 2007. The need for maintaining this precautionary measure was

²² ICC-01/04-01/07-527-Corr, p. 7.

²³ The Appeals Chamber Judgement concerning Languages, paras 19 and 66

reemphasised by the Single Judge in the decision granting the Defence request for leave to appeal the Decision, in which the Single Judge expressly decided 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 2007.²⁴

15. As a result, the Single Judge finds that throughout the proceedings held in the present case to date, Germain Katanga has been provided with liaison interpretation into Lingala, which is one of the modes of interpretation envisaged by regulation 61 of the RoR.

16. Therefore, the Single Judge considers that as long as interpretation continues to be available to Germain Katanga in all hearings that he is entitled to attend for the duration of the proceedings to be held in the present case before the Chamber, the interests underlying the request of Germain Katanga remitted by the Appeals Chamber to the Chamber will be fully satisfied;

17. In the view of the Single Judge, the adoption of this measure will not only further Germain Katanga's right to a fair trial, but it will also further his right, as well as the right of Mathieu Ngudjolo Chui to have the confirmation hearing held within a reasonable period of time after their surrender to the Court.

18. For these reasons, the Single Judge will not engage at this advanced stage of the proceedings leading to the confirmation hearing in the present case, in a thorough factual determination of whether Germain Katanga - in addition to a reasonable understanding and speaking of ordinary, non-technical French - "fully speaks and understands" the language to the level as defined by the Appeals Chamber.²⁵ *A fortiori*, the Single Judge will not engage either, as requested by the Prosecution in the Prosecution's Appeal Brief, in any thorough factual determination of whether

²⁴ ICC-01/04-01/07-149, p. 7.

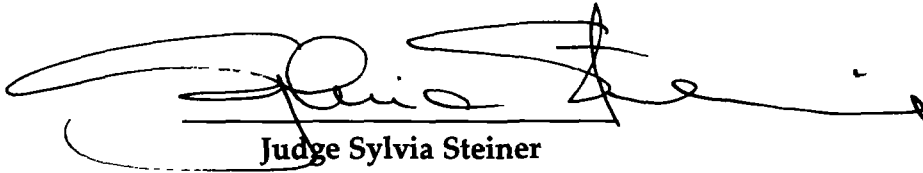
²⁵ The Appeals Chamber Judgement concerning Languages, para. 61

Germain Katanga may understand and speak ordinary, non-technical Congolese-Swahili to the level required by the Appeals Chamber.²⁶

FOR THESE REASONS

DECIDE that, in application of the Appeals Chamber Judgement concerning Languages, Germain Katanga shall continue to be assisted by an interpreter during the hearings held in the remaining proceedings before Pre-Trial Chamber I in the case of ICC-01/04-01/07 in the same manner as stipulated in the decision 01/04-01/07-149.

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



Judge Sylvia Steiner
Single Judge

Dated this Monday 2 June 2008

At The Hague, the Netherlands

²⁶ The Appeals Chamber Judgement concerning Languages, para 61