



Original : **French**

No.: **ICC-01/04-01/06**

Date: **3 July 2006**

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr. Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR
V. THOMAS LUBANGA DYILO**

Public Document

**Motion requesting that all deadlines run from the date of receipt of French
version**

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
Mrs. Fatou Bensouda, Deputy Prosecutor
Mr. Ekkehard Withopf, Senior Trial
Lawyer

Counsel for the Defence

Mr. Jean Flamme
Legal Assistant
Ms. Veronique Pandanzyla

1. Factual Background:

1. On 19 June 2006, the Defence filed its confidential request to file a reply to the Prosecution's response to the Defence motion of 23 May 2006. In its application of 19 June, the Defence *inter alia* requested that the deadline for filing its reply should run from the date on which it received a French translation of the Prosecution's response.
2. This issue arose subsequently during the Status Conference convened on 23 June 2006, and the Defence informed the Honourable Pre-Trial Single Judge of its intention to file a written motion in relation to the general procedure for deadlines as soon as practicable.

2. Factual Submissions

3. The ability of the Defence to fully comprehend and react to motions and decisions filed in English is impeded by the following factors:
4. Unlike the Prosecution, which is able to avail itself of several staff members – many of whom will be perfectly fluent in either of the two working languages – the interests of Mr. Thomas Lubanga Dyilo are being represented by one counsel and one legal assistant, who are both currently swamped by the requirements of preparing the defence for the confirmation hearing, particularly, and continually, by general procedural matters which prevent them from conducting the defence proper.
5. Although both counsel and the legal assistant possess conversational English, French is the working language of the defence team, and neither the counsel nor the legal assistant are proficient in precise English legal terminology, particularly in extremely technical areas such as disclosure and e-court protocols.
6. Mr. Thomas Lubanga Dyilo is not able to read or understand English. It would not only be time consuming, but would invite misunderstandings and inaccuracies if the defence team were to attempt to translate and convey the nuances of Prosecution filings and Court decisions to Mr. Lubanga Dyilo.
7. These motions and decisions are eventually translated into both working languages of the Court. However, notwithstanding the best efforts of the

translation services, a two-week delay in receiving the translated document is common. It is also reasonable to expect that as the case proceeds, the volume of documents will necessarily increase, which may place a greater burden on the translation services, and thus further delay their ability to provide even rough working translations to assist the defence.

8. Accordingly, the defence either has the option of attempting to work with documents in language in which it is not conversant or risk missing deadlines by waiting for the French translation. The defence respectfully submits that neither option is consistent with the rights of the defence set out in article 67 of the Statute.

3. Legal Submissions:

9. Under article 50(2) of the Statute, the working languages of the Court are English and French. Article 50(3) provides that a party which does not utilise one of the working languages must request the authorisation of the Chamber to use a language other than English or French. It is therefore all the more clear that a party is not required to seek the leave of the Court to participate in the proceedings in just English or French. There is also no requirement in the rules or regulations that Counsel or legal assistants should be bilingual.
10. Article 67 of the Statute sets out the minimum rights of the defence, including, the right to “have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or or **documents presented to the Court** are not in a language which the accused fully understands and speaks” and the right to “have adequate time and facilities for the preparation of the defence”. Honourable Judge Steiner confirmed in her decision of 15 May 2006 that the application of article 67 is not limited to the trial stage.¹
11. In combination, these rights imply that the defence should have the ability to avail itself of any translation or interpretation services necessary to give effect to the requirements of fairness, and that in exercising this right, it should have

¹ ‘Decision on Final System of Disclosure and the Establishment of a Timetable’, Prosecutor v. Thomas Lubanga Dyilo.

sufficient time to adequately prepare its case. Such preparation necessarily includes consulting with Thomas Lubanga Dyilo in relation to the contents of decisions and motions, before the applicable deadline for filing a response or appeal expires.

12. In the present circumstances, the translation of Prosecution applications and motions, as well as decisions of the Pre-trial Judge, is absolutely necessary to enable the defence to effectively participate in the proceedings. At the same, an extension of the deadline such that it runs from the date on which the translation or the French text is received is also necessary in order to allow the defence adequate time to prepare its response.

13. The requested approach would also be consistent with the practice of the ad hoc Tribunals. For example, in the case of the *Prosecutor v. Talic*, in order to address the fact that the defence worked in French whereas the Prosecution filed their documents in English and to alleviate the unfairness which would result from being compelled to respond to a motion in a language in which the party was not fully proficient, the Pre-trial judge ordered that all deadlines should run from the date on which the party received the documents in the working language utilised by that party.² It is notable that the Pre-trial Judge did not require the defence to establish that they were not able to work with English versions.

14. The ICTR Appeals Chamber has also recognised that “it is imperative, for the proper administration of justice and for equality of treatment of the parties that their written submissions, and particularly their briefs, are translated into the Tribunal’s two working languages”.³ Moreover, in the event that is necessary to choose between one of the working languages for any determination in the proceedings, it is preferable to choose the working language which is most

² See ‘Further Order for Filing of Motions’ dated 26 October 1999, *Prosecutor v. Talic*, and ‘Decision on Motion to Translate Procedural Documents into French’ dated 16 December 1999, *Prosecutor v. Talic*.

³ Order for Translation of Appellant’s Briefs dated 29 March 2001, *Prosecutor v. Akayesu* Case No. ICTR-96-4-A

favourable to the accused.⁴ In this particular case, the defence is not requesting that the entire proceedings be conducted in French, merely that the right of the defence to effectively participate in French be fully recognised.

Relief Sought:

15. On the basis of the above arguments, and in order to give effect to the right of the defence to effectively participate in the proceedings, the defence respectfully requests the Honourable Pre-Trial Chamber to order that all future deadlines in these proceedings should run from the date on which the defence receives the relevant documents in the working language of the defence (and Thomas Lubanga Dyilo), which is French.

(signed)

Jean Flamme

Counsel for the Defence

Dated this 3 July 2006

The Hague

⁴ See, 'Decision on the Defence Motion, pursuant to Rule 72 of Rules of Procedure and Evidence, pertaining to, *inter alia*, lack of jurisdiction and defects in the form of the Indictment' dated 25 April 2001, Prosecutor v. Karemera *Case No. ICTR-98-44-T* and Trial Judgement of 2 September 1998, Prosecutor v. Akayesu, at paras. 319 and 501