

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 13 November 2007

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

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

Public

**Prosecution's response to the "MOTION BY FORMER COUNSEL TO FILE
WRITTEN CORRIGENDA TO ORAL ARGUMENTS"**

The Office of the Prosecutor

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

Legal Representatives of Victims

Mr Luc Walley
Mr Frank Mulenda
Ms Carine Bapita Buyangandu

Counsel for the Defence

Ms Catherine Mabilille
Mr Jean-Marie Biju-Duval
Mr Marc Desalliers
Ms Caroline Buteau

Former Counsel for the Defence

Mr Jean Flamme

Background

1. On 13 September 2007¹, the former defense counsel of Mr. Thomas Lubanga Dyilo, Maitre Jean Flamme (“the Applicant”), filed a “Motion by Former Counsel for Leave to File Written Corrigenda to Oral Argument”² before the Trial Chamber. In this filing, the applicant requested leave to file a written corrigendum to his oral argument before the Pre-Trial Chamber during the confirmation hearing of Thomas Lubanga Dyilo on 9 November 2006.³

2. On 3 October 2007, the Prosecution filed a “Prosecution’s reply to motion for leave to file written corrigenda to oral argument”⁴, which requested the motion to be dismissed on the ground that the Trial Chamber was without jurisdiction to hear the motion. On 11 October 2007, the Applicant filed a response to the Prosecution’s reply with the Trial Chamber, wherein he stated *inter alia* “...given that the Court has now been made aware of the true position intended by Counsel, and given no motion to strike has been filed by the Prosecution, it is respectfully submitted that no further action is required”.⁵

¹ The Registry notified this filing in accordance with Regulation of the Court 31 on 24 September 2007.

² ICC-01/04-01/06-958

³ ICC-01/04-01/06-958, at para. 1.

⁴ ICC-01/04-01/06-968

⁵ ICC-01/04-01/06-98 at para.9

3. On 12 October 2007, the Trial Chamber dismissed the applicant's motion on jurisdictional grounds, stating: "the oral submissions which are sought to be corrected were made by former counsel during the hearing on the confirmation of charges before Pre-Trial Chamber I." ⁶

4. On 30 October 2007 the applicant filed a "Motion by Former Counsel for Leave to File Written Corrigenda to Oral Argument before the Pre-Trial Chamber" (the motion) with Pre-Trial Chamber I wherein the Applicant seeks as relief that the Pre-Trial Chamber "note the corrigenda as set out in the present motion". ⁷

The Position of the Prosecution

5. To the extent that the Applicant's motion can be construed as a request to amend or alter the transcript of proceedings before the Pre-Trial Chamber on November 9, 2006, the Prosecution opposes the application on the ground that such a remedy is not available.

6. The Applicant does not seek an amendment of the transcript on the basis that the transcription of the proceedings is inaccurate. Indeed, the Applicant

⁶ ICC-01-04-01-06-980, para. 3

⁷ ICC-01-04-01-06-1009

confirms the accuracy of the transcription of his submissions to the Pre-Trial Chamber on November 9, 2006. Instead, the Applicant seeks, almost a year later, an amendment to the transcript to reflect an appreciably different factual assertion. Precedents from the *ad hoc* tribunals support the principle that a Chamber has inherent authority to order the amendment of a transcript to accord with transcription or translation errors.⁸ However, these authorities do not extend so far as to support the Applicant's extraordinary proposition that, as a result of a Rule of Professional conduct,⁹ this Chamber has authority to reopen the proceeding and order a material alteration to the Applicant's submissions, eleven months after the fact. Indeed, the Prosecution submits that the remedy requested by the Applicant seems to run contrary to the intent and spirit of Regulation 27(2) of the Regulations of Court, which codifies the importance of accurate transcripts of hearings.

7. It is the Prosecution's position that the remedy requested by the Applicant cannot be granted. It is submitted that, notwithstanding the ostensible

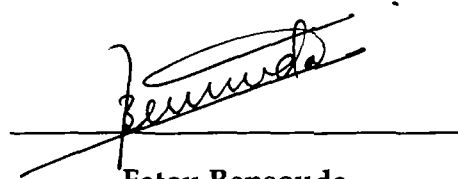
⁸ The Prosecution refers to the following examples in the jurisprudence of the *ad hoc* tribunals that address the issue of alterations to records of proceedings wherein the changes allowed ex post facto were merely typographic or translation related. *The Prosecutor v. Ferdinand Nahimana Jean-Boscoarayagwiza Hassan Ngeze* (30 October 2006) Decision on the Appellant Jean-Bosco Barayagwiza's Corrigendum Motion of 5. UN ICT (App)(Rwa), Dec 2006 (No. ICTR-99-52-A); *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana* (24 June 2004) Decision on the Defence Motion to Strike Annex B from the Prosecution Response Brief and for the Re-Certification of the Record. UN ICT (App)(Rwa), June 2004 (No. ICTR-96-10-A and ICTR-96-17-A); *The Prosecutor v. Zeljko Mejakic et al.*, Case No. IT-02-65-AR11bis. 1 Decision on Joint Defense Motion for Enlargement of Time to File Appellants' Brief, 30 August 2005.

⁹ It is the position of Prosecution that authority to amend a transcript of a hearing to account for typographical or translation errors is derived from the Chamber's inherent authority over its own proceedings. The Applicant has cited no authority that a Rule of professional conduct for counsel can grant a Chamber substantive, remedial powers.

explanation given by the Applicant, the transcript of the proceedings must remain as it is – the authoritative record of the exact words spoken by the Applicant before the Pre-Trial Chamber on the date in question.

Order Requested

8. The Prosecution requests that the Pre-Trial Chamber dismiss the Applicant's motion.

A handwritten signature in black ink, appearing to read 'Fatou Bensouda', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.

Fatou Bensouda
Deputy Prosecutor (Prosecutions)

Dated this 13th day of November 2007
At The Hague, The Netherlands