

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 14 December 2007

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

Registrar: Mr Bruno Cathala

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

Public

Decision on defence's request to obtain simultaneous French transcripts

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TRIAL CHAMBER I ("Trial Chamber") of the International Criminal Court ("Court"), in the case of Mr Thomas Lubanga Dyilo delivers the following decision on the issue of the provision of real time transcripts in French during hearings before the Court:

I) Procedural Background

1. During the status conference on 1 and 2 October 2007, the legal representative of victims a/0001/06 to a/0003/06 and the defence drew the attention of the Chamber to problems arising from the fact that live transcripts are available only in English during hearings before the Court, even when the original submission is delivered in French.¹
2. The defence was directed by the Chamber to attempt to find a solution to this problem through direct communication with the Registry².
3. The issue remained unresolved and the defence filed on 24 October 2007 a "Requête de la Défence aux fins d'obtention des transcriptions d'audience en simultané en langue française" ("defence's request")³ in which it asked the Chamber to order that simultaneous French transcripts be provided during all hearings in the present case.
4. Following an order by the Chamber,⁴ the Registry on 8 November 2007 filed the "Registrar's Submission on the Issue of Provision of Real Time French Transcripts at Hearings."⁵

¹ ICC-01/04-01/06-T-52-ENG, pages 7-8.

² ICC-01/04-01/06-T-54-ENG, page 52-53.

³ ICC-01/04-01/06-999.

⁴ Order requesting the Registrar to file submissions on the issue of the simultaneous provision of LiveNote in French, 1 November 2007, ICC-01/04-01/06-1011.

⁵ ICC-01/04-01/06-1018.

5. Also on 8 November 2007, the prosecution filed the "Prosecution's response to the 'Requête de la Défense aux fins d'obtention des transcription d'audience en simultané en langue française,'" in which it supported the request of the defence.

II) Relevant provisions

6. The following provisions from the statutory framework of the Court are relevant to the Chamber's consideration of this matter:

7. Article 50(2) of the Statute:

The working languages of the Court shall be English and French. The Rules of Procedure and Evidence shall determine the cases in which other official languages may be used as working languages.

8. Article 67 of the Statute:

In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;
- (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;
- (f) 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 documents presented to the Court are not in a language which the accused fully understands and speaks;

Regulation 27(1) of the Regulations of the Court:

Real time transcripts of hearings shall be provided in at least one of the working languages of the Court to the extent technically possible. Transcripts of proceedings other than hearings may be provided upon request.

III) Submissions

A. Defence

9. In its oral and written submissions, the defence highlighted the extreme inconvenience caused to it by the unavailability of live transcripts in French. It submitted that these transcripts are necessary in order to ensure the efficiency and effectiveness of the defence team's work during hearings.⁶ In particular, live transcripts were said to be useful because they can be highlighted, and errors in interpretation can be quickly spotted. As such, live transcripts in French will be particularly important for the accused during the trial.
10. Furthermore, the defence submitted that the current situation placed it at a significant disadvantage vis-à-vis the prosecution, violating Article 67(1)(f) of the Statute, which provides that the accused has the right to such translations as are necessary to meet the requirements of fairness.⁷
11. The defence argued that, pursuant to Regulation 27(1) of the Regulations of the Court, simultaneous transcripts should be provided in the working languages of the Court to the extent technically possible, and observed that at the International Criminal Tribunal for Rwanda, it is possible to receive simultaneous transcripts in either working language, and that the same facility should be available before the International Criminal Court.⁸

⁶ ICC-01/04-01/06-999, page 3.

⁷ *Ibid*

⁸ *Ibid*

B. The Registry

12. The Registry informed the Chamber in its written submissions that to date, and in accordance with Regulation 27(1) of the Regulations of the Court, the real time transcripts of hearings are provided in one of the working languages of the Court (English), with the French transcripts being provided to the parties and participants approximately two hours after the close of each hearing.⁹
13. The Registry's ultimate goal, it was submitted, is to provide real time transcripts in both English and French. Various avenues have been explored with a view to achieving this. None of the solutions in use at other institutions providing French real time transcripts are compatible with the technical infrastructure of the Court. As regards the International Criminal Tribunal for Rwanda, the technical configuration needed for the provision of such transcripts is not comparable with that at the ICC.¹⁰ The software used by that Tribunal is different to the one in place at the Court (LiveNote), and requires more staff to operate it.
14. The current set-up of LiveNote does not allow for letters bearing accented characters to appear on the screen, rendering the transcript practically illegible.¹¹
15. Further to investigations carried out by the Registry, the appropriate technology for the provision of real time French transcripts could be in place, by mid-April, at a cost of around €500,000.¹²

⁹ ICC-01/04-01/06-1018, page 4.

¹⁰ *Ibid*, page 4.

¹¹ ICC-01/04-01/06-T-62-ENG, page 19, lines 20-24.

¹² *Ibid*, page 17, line 15.

C. Prosecution

16. The prosecution submitted that since Article 50(2) provides that the working languages of the Court are to be English and French, all parties to, and participants in, the proceedings, as well as the accused, should have the same opportunity to follow the real time transcript of the submissions made during court hearings in the language in which they work.¹³

17. Furthermore, in the interests of making a full and accurate record of court hearings, it is desirable for the parties and participants to be able to examine efficiently, in real time, the transcription of submissions made in French and the French interpretation of submissions made in English.¹⁴

IV) Analysis and Conclusions

18. Article 67 of the Statute states the entitlement of the accused to “a public hearing, having regard to the provisions of the Statute, to a fair hearing conducted impartially, and to [certain] minimum guarantees, in full equality”. The Chamber considers this article encompasses the principle of ‘equality of arms’. This provision (and in particular the phrase “in full equality”) suggests that the minimum guarantees must be generously interpreted, so as to ensure the defence is placed insofar as possible on an equal footing with the prosecution, in order to protect fully the right of the accused to a fair trial.

19. Article 67(1)(b) provides that the accused is entitled “to have adequate time and facilities for the preparation of the defence.” The Chamber therefore has an obligation to take the measures within its power that are necessary to ensure appropriate facilities are made available to the defence. An assessment

¹³ ICC-01/04-01/06-1016, paragraph 4.

¹⁴ *Ibid*, paragraph 5.

of the adequacy of the facilities for the defence will clearly be influenced by the extent of those at the disposal of the prosecution, since it will in general be necessary and desirable to rectify significant disparities. However, a fact-sensitive evaluation will be required whenever unfairness is alleged, since it will be impossible to create a situation of absolute equality of arms.

20. In the view of the Chamber, the provision of live transcripts which in practice can be used by the prosecution only and not the defence, creates a situation where the facilities for the preparation of the defence may be said to be less than appropriate. Both parties have drawn the Chamber's attention to the significant advantages created by the availability of live transcripts during hearings, some of which have already been rehearsed above: being able to follow the proceedings on the screen, highlighting passages and immediately correcting errors in interpretation. As such, the unavailability of the transcripts in French creates real inconvenience for the defence team.

21. The Chamber is persuaded by the defence submission that at least by the trial stage of the proceedings, the provision of live transcripts in French is preferable. Article 50(2) of the Statute provides that the working languages of the Court are English and French, and as such the fact that the defence team in this case work exclusively in French should not place it at a material and avoidable disadvantage to an English-speaking team. The provision of the French transcript to the parties and participants two hours after a hearing, as currently takes place, operates only imperfectly to correct this imbalance.

22. The Chamber notes the Registry's observation that Regulation 27(1) of the Regulations of the Court merely states that real time transcripts shall be provided in at least one working language of the Court to the extent technically possible, and does not require such provision in the language(s)

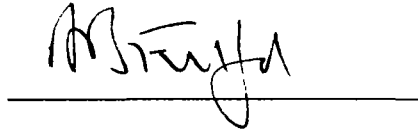
spoken by potential and/or actual defendant(s).¹⁵ However, it is clear that the fundamental right to a fair trial enshrined in the Statute, and in particular the specific minimum guarantees contained in Article 67, mean that in these circumstances undue importance should not be accorded to this regulatory provision, which in any event only purports to identify the minimum service to be provided. In the view of the Chamber, for the purposes of this case, the Registry has an obligation under the Statute to provide live transcripts by the trial phase in both working languages, if this is technically possible.

23. As set out above, the current software (LiveNote) cannot be adapted in such a way as to fulfil the need for a simultaneous French transcript and the Registry's investigations have identified the technology for providing real time transcripts in French, and it can be in place by mid-April. Despite the anticipated cost of implementation, the Chamber considers it of real importance that the Registry takes immediate action to put this in place by the beginning of the trial.

24. For the reasons above, the Chamber orders the Registry to provide live transcripts in French and English from the commencement of the trial, if this is technically feasible.

¹⁵ ICC-01/04-01/06-1018, page 3.

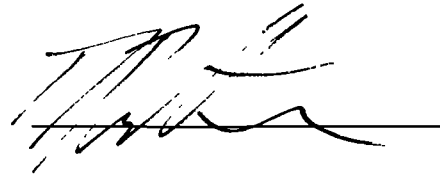
Done in both English and French, the English version being authoritative.



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 14 December 2007

At The Hague, The Netherlands