

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 18 March 2009

TRIAL CHAMBER I

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

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

Confidential

**Information to the Chamber in relation to interpretation and transcription matters
related to trial proceedings**

Source: Registrar

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

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THE REGISTRAR of the International Criminal Court (the "Court"),

NOTING the information provided to the Chamber by the Office of the Prosecutor on 3 March 2009 related to interpretation and transcription matters;¹

NOTING article 67 of the Rome Statute, Rule 42 of the Rules of Procedure and Evidence, Regulations 23*bis*, 24*bis* and 27, 40(2) of the Regulations of the Court, Regulations 50, 57, 61, 62, 64, 65, 67 of the Regulations of the Registry;

CONSIDERING that there are some specific areas of concern related to interpretation and translation of in-court proceedings which have been identified;

CONSIDERING that in order to provide a full and accurate record of proceedings, the Registry is entrusted to provide the best services possible and that this process is enhanced by the cooperation of those participating during the oral proceedings;

RESPECTFULLY SUBMITS, for the attention of the Chamber, the information and proposals below in relation to interpretation and transcription matters related to trial proceedings;

A. Background

1. Both Defence and Prosecution teams approached the Registry separately with concerns related to the transcription and interpretation services provided during

¹ ICC-01/04-01/06-T-139-CONF-ENG ET 03-03-2009 1-100 NB T. p.97 line 17 – p.99 line 10.

trial hearings, and in particular with respect to such services as they relate to witness testimony.

2. In order to facilitate the assessment of the root cause of the issues of concern, the Prosecution provided to the Registry and the Defence a sample of a problematic transcript where considerable differences between the English and the French version could be noticed². Thereafter, a review and correction of the relevant extracts took place on the basis of the available written record in both English and French transcript versions and of the oral recorded version. After an internal analysis of the discrepancies, the Registry met with both parties in order to gain an understanding of the exact difficulties encountered when working with the transcripts and to explore possible solutions.
3. The main difficulties that have been encountered by both parties include the following: a) Difficulty in following the French real-time transcript during the court sessions due to the fact that when part of a sentence is redrafted the lines disappear during the correction exercise and when they come back they usually do so at a later stage when more sentences have been already added ('problem of disappearing lines'); b) The English and French real-time transcripts appear with a number of omissions, rendering work in both languages, for both parties, difficult, especially when the information is required for use the next day; c) Interpretation from French into English is not always accurate.
4. In relation to the above, the Prosecution inquired into whether it would be possible to implement a procedure whereby at the end of each day both English and French real-time transcripts are checked one against the other in order to ensure a more accurate record in both languages. For its part, the Defence

² These are transcripts T-124, T-125 and T-126.

requested for a solution to be found in order to have a better quality written record of the proceedings, especially with regard to the French real-time transcript, and in order to ensure that the English version which is used by the Chamber accurately reflects what is said in French.

B. Issues which require immediate attention

5. On the basis of the information provided by the Defence and the Prosecution, and after internal consultations with the relevant sections within the Registry which provide transcription and interpretation services, the main issues of concern with their respective proposed solutions are categorized below.

Issue of concern 1: Interpretation from French into English

6. In terms of interpretation staff available during the hearing for interpretation from French into English, the current ICC standard³ is that two interpreters are present in the English booth. After hearing from the parties that English interpretation is an area of concern, implementation of a two week testing period with modified interpretation arrangements has been in place since Tuesday 17 March 2009, as follows:

- a) Four English interpreters will be available and three present in the booth instead of two.
- b) The thirty minute standard rotation period will be maintained but the booths' configuration will be improved in order for the booths to ensure that any interpretation inaccuracies that may appear on the real-time

³ This is in accordance with Regulation 64(1) of the Regulations of the Registry following international standards.

transcript are noticed during the hearing for prompt correction to the transcript on the same day.

7. This testing period will allow the Registry to monitor whether progress is made or whether other solutions need to be considered.

Issue of concern 2: Distribution of the edited version of the transcript

8. It was brought to the attention of the Registry that the French edited version of the transcript is generally not available on the same day, and this renders difficulties, especially for those working on the basis of the French written record.
9. In this regard, the Registrar undertakes to strive to provide the edited versions of the transcripts in both English and French within two hours of the conclusion of the last court session during court sitting days, and in any event on the same day.
10. To implement this measure, the Registry has established a staff shift system since Tuesday 17 March 2009. This entails that the relevant staff will be required to stay three to four hours after the end of the last court session to ensure that the edited version is distributed on the same day. This means that distribution will be affected when the court sessions continue longer than originally foreseen, but will, in any case, take place on the same day.

Issue of concern 3: Problem of the 'disappearing lines' of the French real-time transcript

11. Since the implementation of the real-time transcript with the Transcend software, which is used for the French transcript, the Registry has been trying to identify the best solution to address the issue of the disruption caused to the user by the brief disappearance of lines or entire paragraphs. In this regard, a tool which will enhance compatibility between Case Catalyst (the software which translates steno strokes into words) and Transcend (the software that displays the transcript and allows for distribution and annotations) has been identified. This tool is yet to be tested and if successful, it could be implemented by 4 May 2009.

Issue of concern 4: Omissions in the transcripts

12. Other than gaps in interpretation, which are expected to be resolved with the new system described in paragraph 6 of the present submission, it has been concluded that there are also other elements that render portions of the transcripts incomplete. These include the following:

- a) Speakers not allowing enough time for the interpretation of the discourse of a previous interlocutor to finish before taking the floor. In this regard, it is essential that in-court speakers observe the following:
 - i) To speak at a slow pace, this is applicable for English, French, Swahili and Lingala;
 - ii) To be conscious that interpretation to and from Swahili and Lingala may last longer. This is due to the specific arrangements by which for instance a question in English is interpreted into French and

thereafter into Lingala and Swahili from French. This results in a delay of approximately fifteen seconds;

- iii) When reading or mentioning numbers, to do so at an extra slow pace (this includes ERN numbers, EVD numbers and any other numbers);
 - iv) To allow for the interpretation to finish before responding to a question posed. Looking at the real-time transcript just before answering assists in timing the beginning of the intervention. Wearing the headset also allows those participating inside the courtroom to monitor whether the interpreters are following;
- b) Court reporters are not always able to fully understand the speech of an interlocutor who may have a strong accent to which they are not familiar. Usually in the case of individuals with a strong accent, if the individual intervenes during court sessions over a period of time, the court reporters become accustomed to the way of speech of this person. However, this is not the case of witnesses who provide testimony over the course of a few days or a few hours. The situation up to date was that when the court reporters were not fully sure of what had been said, they preferred to insert '*inaudible*' in the real-time transcript. However, as a new measure, the court reporters have been asked to put on the written record in real-time also the words for which they are not fully sure of instead of inserting '*inaudible*'.
- c) In addition, a supplementary proposal is currently being studied and further assessment is required. Namely interpretation into the same language (e.g. French to French) with regard to witnesses testifying in French who may have a very strong accent. The objective in mind would

be to diminish the number of missing lines and/or paragraphs in the transcript by allowing the court reporters to rely on the interpreted version. In terms of concluding whether such type of interpretation would be required, a thorough assessment would need to be carried out during the familiarization process, to determine whether French to French interpretation might be necessary during testimony.

- d) Court reporters and interpreters are not always familiar with the correct pronunciation and spelling of certain names of persons and locations⁴ referred to by those taking the floor during the proceedings. In this regard, the Registry finds that there is a simple solution to reduce the number of omissions of names and locations not commonly known. The solution proposed by the Registry would be for speakers to provide a list to the Court Officer every morning for transmission to the interpreters and stenographers with the names of persons, as appropriate, and of locations that will be referred to during the court sessions of that particular day. An alternative proposal, which has proven to be very efficient in other judicial settings, would be for the speaker to spell out the name of persons and of locations, during the intervention.

Issue of concern 5: Corrections to the transcript

13. Regulation 65 of the Regulations of the Registry addresses matters related to quality control and linguistic problems at hearings. However, Regulation 65 does not set out a protocol on the procedure to follow should in the event that a party or participant wish to raise questions related to the accuracy of the interpretation provided during a hearing.

⁴ "Location" is to be understood, *inter alia*, as an area, region, settlement, neighborhood, town, place, community or village.

14. At least on two occasions, the Chamber has had brought to its attention applications for alteration to the transcript.⁵ On both occasions, the Chamber provided guidance as to the procedure to follow. On the first occasion, related to inaccuracies of interpretation from Swahili, the Chamber directed the parties to indicate to the interpreters, with the assistance of the Court Officer, the problematic passages.⁶
15. On the second occasion, the direction given by the Chamber in relation to any complaints as to the interpretation or as to the recording by the court reporters was for the parties and any concerned participants to discuss the matter and upon agreement, to contact the Court Officer with a suggested change. This could then be implemented if possible and with the agreement of the Chamber. In the event of disagreement by any of the parties and participants, interpreters or court reporters then, the Chamber further directed, the matter could be discussed in open court.⁷
16. In this regard, the Registrar respectfully informs the Chamber that in practice both sets of procedures described above aimed at achieving an accurate record of the proceedings have, in practice, proven to be quite complex and time consuming for those involved.
17. In relation to the above, in maintaining the spirit of the procedure established by the Chamber, and taking into account both the information provided by the parties in relation to the difficulties they have faced when working with the transcripts, as well as the proposed solutions provided in the present submission, the Registry respectfully brings to the attention of the Chamber, for its

⁵ Please see for instance, transcripts ICC-01/04-01/06-T-110-CONF-ENG ET 28-01-2009 1-51 NB T. p.45 line 12 – p.48 line 7; and ICC-01/04-01/06-T-124-CONF-ENG ET 11-02-2009 1-83 NB T. p.51 line 1 – line 24.

⁶ ICC-01/04-01/06-T-110-CONF-ENG ET 28-01-2009 1-51 NB T. p.45 line 12 – p.48 line 7.

⁷ ICC-01/04-01/06-T-124-CONF-ENG ET 11-02-2009 1-83 NB T. p.51 line 1 – line 24.

consideration, the proposed modifications to the procedure for corrections to the transcript, as follows:

- a) If, during a hearing either party or concerned participant has a reason to believe that any errors, omissions or discrepancies appear in the English or French real-time transcripts, due to interpretation or transcription, the relevant person could raise it before the Chamber so that this information will appear on the record, and in order to allow the relevant Registry staff to take appropriate action.
- b) Thereafter, and on the basis of the *edited version* of the transcript, should either party or concerned participant still face difficulties with the written record, the matter could be raised before the Chamber during the course of the next trial session.

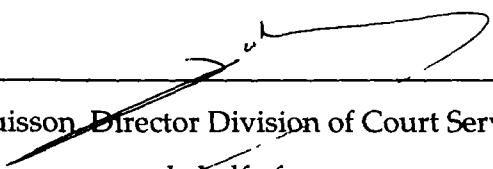
C. Other matters

Language of testimony

18. The Registrar is concerned by the fact that at times the language in which the witness is to provide testimony is suddenly changed (for instance from Swahili to French) last minute without prior indication to the Registry. In this regard, the Registrar understands that persons testifying may feel more comfortable doing so in a language other than that which has been previously indicated. In order to avoid the occurrence of sudden changes as much as possible, the Registry is prepared to verify the language of testimony during the courtroom familiarization process if this is deemed appropriate by the Chamber.

The Registrar remains at the disposal of the Chamber, should the Chamber consider it appropriate to further explore these matters.

The present submission is filed *Confidential* for it contains specific information related to the workings of the judicial administration system and which, in the opinion of the Registrar could be exploited in a way that could have negative consequences for court proceedings specifically. Whereas interpretation and transcription matters are shared with all the parties and participants through the present submission, the Registrar considers that by their nature, they should not be a public domain topic at present.



Marc Dubuisson, Director Division of Court Services
on behalf of
Silvana Arbia, Registrar

Dated this 18 March 2009

At The Hague, The Netherlands