

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 19 June 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**

**URGENT
Confidential**

Further information to the Chamber on the matter of the confidentiality level of the Registry's *"Information to the Chamber in relation to the interpretation and transcription matters related to trial proceedings"* submitted on 18 March 2009

Source: Registrar

Document 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
Ms Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju Duval

Legal Representatives of Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Catherine Bapita Buyangandu
Mr Joseph Keta Orwinyo
Mr Jean Louis Gilissen
Mr Jean Chrysostome Mulamba
Nsokoloni
Mr Paul Kabongo Tshibangu
Mr Hervé Diakiese

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Deputy Registrar

Didier Preira

Victims and Witnesses Unit

Simo Vaatainen

Detention Section

**Victims Participation and Reparations
Section**

Other

Ms Charlotte Dahuron, Chief Court
Management Section
Ms Alexandra Tomic, Chief Court
Interpretation and Translation Section

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

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

NOTING the "*Information to the Chamber in relation to the interpretation and transcription matters related to trial proceedings*" (the "Registrar's Submission") submitted by the Registrar on 18 March 2009;²

NOTING the "*Prosecution's Response to the 'Information to the Chamber in relation to interpretation and transcription matters related to trial proceedings' filed by the Registry on 18 March 2009*" (the "Prosecution's Response") submitted by the Office of the Prosecutor on 2 April 2009;³

NOTING the "*Decision on discrepancies between the English and the French Transcripts and related issues*" (the "Decision") issued by the Chamber on 18 June 2009;⁴

NOTING article 67 of the Rome Statute, Rule 42 of the Rules of Procedure and Evidence, Regulations 23bis, 24bis 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 in the Registrar's submission, the Registrar justified the level of confidentiality thereof in the following terms: "*The present submission is filed Confidential for it contains specific information related to the workings of the judicial*

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.

² ICC-01/04-01/06-1788-Conf.

³ ICC-01/04-01/06-1808-Conf.

⁴ ICC-01/04-01/06-1974-Conf.

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".⁵

CONSIDERING that in the Decision, the Chamber noted the above justification;⁶

CONSIDERING that in the Decision, the Chamber further states that *"If this confidential status is to remain [that of the Registrar's submission], further particulars will need to be provided, by way of a filing, as to the ways in which it is considered this information 'might be exploited to the disadvantage of the court'";⁷*

CONSIDERING the very short deadline given to the Registrar to provide further information on this matter and that the Registrar⁸ has done its utmost in order to provide to the Chamber as much additional information as possible in the form of the present submission, the Registrar would appreciate the Chamber's consideration as regards the time of submission of the present document;

RESPECTFULLY SUBMITS, for the attention of the Chamber, further information as to the ways in which the Registrar considers that the information contained in the confidential Registrar's Submission might be exploited to the disadvantage of the Court. In doing so, the Registrar wishes to convey to the Chamber her view, that from the perspective of the Registry, there is a the need to maintain the Registrar's

⁵ ICC-01/04-01/06-1788-Conf, p. 12.

⁶ ICC-01/04-01/06-1974-Conf. p. 27, para 55.

⁷ Ibid.

⁸ The Registrar informs the Chamber that she does not have a team of staff attached to a particular case, therefore, any written submissions made in respect of any case before any Chamber are normally drafted by the same small team of people who work on all the cases, therefore it has not been possible to make this submission earlier in the day.

submission and relevant information contained in related documents⁹ available only to the parties and participants to the proceedings, as opposed to the public.

A. Expectations

1. The Registrar observes that in performing its functions as regulated under the Rome Statute, the Rules of Procedure and Evidence, the Regulations of the Court and the Regulations of the Registry, the Registry not only tries to adhere to the minimum requirements, but conducts its work in way so as to achieve very high standards in all areas of operation. To exemplify, this has involved, *inter alia*, finding and training para-interpreters in rare languages, as well as creating, implementing and improving a highly sophisticated ICT infrastructure in order to not only meet the required standards as set out in the previously mentioned legal texts, but to try to find innovative solutions so as to address the needs of parties and participants as appropriate. One such solution was the implementation of French transcripts further to the Chamber's "Decision on defence's request to obtain simultaneous French transcripts".¹⁰
2. With respect to the high standards that are being achieved – for instance the ICC is the only international judicial institution that has been able to implement a unique integrated system with respect to the provision of English and French transcripts¹¹– and the difficulties encountered in attempting to do so, the Registrar has come to realize that, notwithstanding adherence to the relevant legal texts by the Registry, the implementation of these standards has created a higher level of expectation among the public.

⁹ Such as documents ICC-01/04-01/06-1808-Conf, and ICC-01/04-01/06-1974-Conf.

¹⁰ ICC-01/04-01/06-1091.

¹¹ This entails that the same software is used for both languages and the software has been developed and customized to ICC's needs and this forms part of the e-court system.

3. From this perspective, and taking the above into consideration, the Registrar is of the view that by exposing details of the work of the Registry -as set out in the Registrar's submission-, to the public at large, this may wrongly create a permanent perception of the Court as a dysfunctional institution, or as an institution unable to manage complex trials, at a time when the improvement of the relevant systems and procedures is taking and will continue to take place.
4. Furthermore, the Registrar's Submission may also be interpreted by the public, as implying a certain difficulty for speakers (which may include the Chamber, the parties and participants as well as members of the Registry) to be able to cope with the requirements of the environment.¹² And, in the view of the Registrar it would not be desirable for the public to make any erroneous assumptions as to the competencies of any of the relevant actors.

B. Recruitment of interpreters

5. The Registrar is of the view that rendering public the Registrar's submission and related documents might have an effect on future recruitment of interpreters. In this regard, the Registrar observes that, in relation to court interpretation, the current ICC standard is higher than that required by the AIIC (the worldwide association for conference interpreters). For instance, the number of interpreters per booth has been increased. In this regard, the Registrar's submission not only demonstrates the difficulties faced in terms of interpretation matters but may also be perceived as a highly demanding institution for interpreters to work, and this perception may potentially be a deterrent factor for professional interpreters to apply for a position at the Court.

¹² ICC-01/04-01/06-1788-Conf, p. 7, para. 12, for instance.

6. In addition, should any discussion be held with AIIC on the issue of interpretation before the Court, it is conceivable that making public such information would also render any such discussions more difficult.

C. Integrity of interpreters and court reporters

7. Furthermore, the Registrar submits that without having a thorough understanding of all relevant issues and factors related to transcription and interpretation matters, public access of the Registrar's submission containing some very specific information about particular areas of concern may be perceived as giving the impression that ICC interpreters and court reporters are not of a high standard. It is feared that the public might be inclined to raise questions about the reliability of 'the person behind the tool', and thus have a possible detrimental effect not only on their performance, but also on their professional integrity. Furthermore, the publicity of specific details as those contained in the Registrar's submission could have a negative impact on their future professional life, if misinterpreted. An additional issue that this raises is whether, in the event of any public reactions, the interpreters and court reporters would be given the opportunity to a public reply.

D. Details on software usage

8. The Registrar's submission includes information related to difficulties with the software used. In this regard, as specific software shortcomings are referred to therein, publicity of this information would not only give the public information on the exact software being used, but also on the specificity of the areas in which the system may be fragile. From the Registry's point of view, it is not desirable to

have such information available to the public as it might be perceived by potential hackers that the system is not well protected.

E. Cultural sensitivity

9. Through the Registrar's submission, the Registrar outlines the aim of a proposal for interpretation from French to French for witnesses who may have a very strong accent in order to facilitate the work of the court reporters¹³. The public may not fully understand all the difficulties related to the work behind the creation of a hearing transcript and may, therefore, erroneously perceive that the Court is not sensitive to cultural issues.

Conclusions

10. In the course of the first trial at the ICC, the issues raised in relation to interpretation and transcripts came about for a number of reasons, some technological – transcription software, technical booth arrangements, all relevant actors having to familiarise themselves with specific requirements attached to a highly technical judicial environment– some recruitment and administrative. Some of these issues, among others, are mentioned in the Registrar's Submission and they are objective difficulties encountered behind the coulisses of the first trial.

11. The Registrar's Submission reveals only part of the picture and does not shed any light on all the factors underlying the issues. In this regard, it is the Registrar's view that lifting the confidentiality from not only the Registrar's Submission but

¹³ ICC-01/04-01/06-1788-Conf, p. 8, para. c).

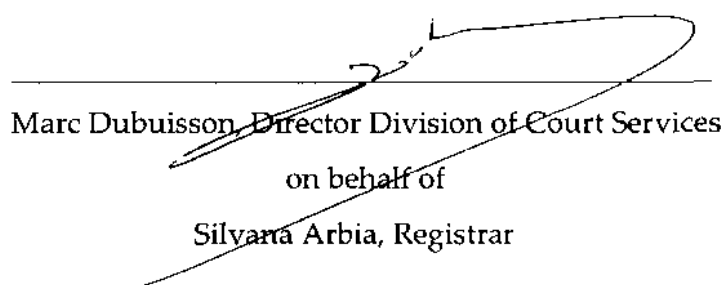
also from the Prosecution's Response and the Decision, would not add to the public nature of the proceedings in terms of substance, but would most likely put additional strain on the services under scrutiny: interpreting, court reporting and ICT support.

12. Therefore, and for all of the reasons outlined above, the Registrar would request the Chamber to consider maintaining the confidentiality level attached to the Registrar's submission and related documents.

The present submission is filed *Confidential* as it relates to matters before the Chamber that are currently labeled as *Confidential*.

The Registrar awaits further instructions from the Chamber regarding the confidentiality level of the relevant documents, after consideration of the present submission.

Respectfully submitted,



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

Dated this 19 June 2009

At The Hague, The Netherlands