

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 11 May 2010

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

Registry report to the Chamber on Swahili interpretation matters

Source: Registrar

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

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Unrepresented Victims

**Unrepresented Applicants for
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REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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

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

NOTING article 67 of the Rome Statute, Rule 42 of the Rules of Procedure and Evidence, Regulations 23*bis*, 24*bis* of the Regulations of the Court, and Regulations 64 and 65 of the Regulations of the Registry;

CONSIDERING that on 27 April 2010 the counsel representing Mr. Thomas Lubanga ("the defence") formally raised with the Registry their concerns regarding the Swahili interpretation and that, by way of example, the team produced a full corrected version of the transcript of the three-day testimony of witness 24;

CONSIDERING that according to the results obtained during the first overall transcript revision pursuant to the order of Trial Chamber I of 18 June 2009,¹ it has transpired that the language discrepancies in the record of witness testimony did not appear to be as considerable as initially alleged;

CONSIDERING that the Registry gives serious consideration to reports of alleged discrepancies and that, therefore, it will engage in a second revision exercise and that it will scrutinize the underlying causes of any discrepancies found;

CONSIDERING that the Registry is undertaking all possible efforts to remedy the situation regarding interpretation;

¹ ICC-01/04-01/06-1974-Conf.

RESPECTFULLY INFORMS THE CHAMBER AS FOLLOWS:***- Change in the interpretation mode in respect of Swahili speaking witnesses***

1. For all remaining witnesses in the present case appearing before Trial Chamber I expressing themselves in Swahili, the Registry hereby informs the Chamber that during trial hearings, it may be expected that the interpreters will make more interventions in order to ensure that an accurate record of the witness testimony is properly registered on occasions where there are overlapping speakers, in situations where the interpreters cannot properly hear what the person intervening is saying or in situations where it is not clear what the person is saying. This approach ensures both the accuracy of the record of the proceedings as well as the integrity of the interpreters.
2. It must be noted however, that this approach may imply a slower pace of trial hearings due to an increase number in the intervention of interpreters during hearings, however, the Registry views this as the most favorable approach that would reduce the number of discrepancies in the Swahili interpretation, thereby reducing the risk of having further complaints founded on interpretation said to be inaccurate.

- Revision of witness testimony in Swahili

3. Bearing in mind the importance of having an accurate record of trial proceedings, and after discussion with the defence, the Registry has undertaken to carry out a full revision of all transcripts containing defence witness testimony in Swahili as well as the testimony of Prosecution witness 015. In order to work as efficiently as possible, it has been agreed that the defence team will provide the Registry by order of priority and urgency and indication as to which specific transcripts need immediate attention and

revision. In this regard the Registry will produce a time-line for completion and distribution of the revised version of the requested transcripts.

- Additional measures that may be taken

4. For this purpose and in order to meet the immediate needs, the Court Interpretation and Translation Section will engage additional external staff to carry out this revision exercise.
5. Parallel to this, and in order to endeavor to minimize the frequency of potential interpretation discrepancies in Swahili and ensure accuracy of the transcript, the Registry will undertake an evaluation as to whether it may be useful to engage additional Swahili/French staff to edit the transcript real-time. The modalities of such approach would require to be further developed, however on a preliminary basis such procedure may bring the added advantage of allowing the Registry to directly bring to the Chamber's attention any substantial errors occurring in the interpretation.

REPORTS TO THE CHAMBER AS FOLLOWS:

- Malfunction in the recordings of undistorted voice and face

6. On the week of 8 February 2010 it was discovered that the recordings of the undistorted voice and face of the witnesses appearing in Courtroom 1 had been malfunctioning for at least two weeks. These recordings were made on two separate devices and both appeared to have malfunctioned (by receiving a wrong feed from the courtroom).

-Underlying causes of the malfunction

7. The problem was identified and upon further scrutiny, it was discovered that both the DVD clear voice and face recorders were receiving the wrong audio channels. Instead of Floor, one was receiving the French interpretation channel and the other the English interpretation channel. This was caused by wrong settings, therefore wrong distribution, on the microphone/interpretation system.

- Standard procedures

8. The Court Management Section Audio Visual Operators (Av Operators) perform regular checks on results and operation of all recording media inside the booths of the Courtrooms. The DVD clear voice and face is no exception to that rule. The produced disks are checked every day after burning/finalizing and before they go to the vault, for clear vision. Audio checks were performed roughly once a week and AV operators increased the rate, after this incident.

- Why was the wrong setting not earlier detected by the AV operators?

9. When examining the DVD's, by coincidence it appears that it was always the case that a disk was listened to containing a French speaking distorted witness. If so, one would not be able to detect wrong settings as it appears to be a normal recording. Receiving the French interpretation channel in this case is the same as floor. As there were numerous French speaking witnesses, unfortunately the fault stayed undetected.
10. Further investigation of the matter has revealed that the problem started on 14 July 2009. It is a serious problem, which affects Swahili/Lingala speaking witnesses with voice distortion. It does not affect witnesses who spoke in French as the audio was on the French, hence the clear French is available.

11. The results of the verification are as follows :

a) Last DVD CLEAR Voice and Face of which the Registry was able to establish that the right language channel (floor) was recorded: 14 July 2009.

b) First DVD CLEAR Voice and Face of which the Registry was able to establish that the wrong language channel (English or French int.) was recorded: 25 November 2009.

12. The undistorted recording is again functional as of Thursday February 11, 2010.

- Requests made:

13. On 29 January 2010 the defence requested to have access to the audio tapes of the hearing related to witness DRC-D01-WWWW-0002, who gave evidence on January 27 and 28, 2010. On 10 March 2010 the defence requested by email copies of the Swahili audio tapes of all defence witnesses until that date. In addition, on 16 March 2010, the defence requested by email to have access to the audio tapes of DRC-D01-WWWW-0024 whose hearing took place from 15 to 17 February 2010. This request was reiterated on 21 April 2010, in accordance with the new procedure established by Trial Chamber I on 1 April 2010.² Finally, on 17 April 2010 it was also requested by email to have access those tapes from 11 to 17 March 2010.

- Action taken:

14. At the defence's request the copies of various hearings containing witness testimony that has taken place in 2010 have been provided to the defence.

² ICC-01/04-01/06-2387

Submits the present report as *Confidential* for it contains information with regard to an undetected fault in the internal recording system in relation to the undistorted voice and face of specific witnesses appearing before the Court.

The Registrar remains available to provide to the Chamber any further clarification or specification on any of the points addressed herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'p. p.' followed by a stylized, cursive signature, written over a horizontal line.

Marc Dubuisson, Director Division of Court Services

on behalf of

Silvana Arbia, Registrar

Dated this 11 May 2010

At The Hague, The Netherlands