

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 22 January 2008

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 - URGENT

Decision on defence request for extension of time

Office of the Prosecutor

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

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

a/0001/06 to a/0003/06 and a/0105/06

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu

Background

1. On 22 January 2007, the defence filed an urgent “Requête de la Défense en prorogation du délai prévu pour le dépôt de la requête sollicitant l’autorisation d’interjeter appel de la Décision sur la participation des victimes datée du 18 janvier 2008,”¹ which was notified to the Chamber at 14.43 on that day.
2. The defence’s filing relates to the Trial Chamber’s “Decision on victims’ participation” of 18 January 2008.² The Chamber is requested to order the Registry to provide the defence team with a version of that Decision in the French language by 25 January 2008, and to order that the period of five days within which leave to appeal any decision must be sought, pursuant to Rule 155, should begin to run only upon service of such a translation to the defence.
3. The defence drew the Chamber’s attention to Article 50(2) of the Statute, which provides that the working languages of the Court are French and English, to the guarantee of access to “such translations as are necessary to meet the requirements of fairness” contained in Article 67(1)(f) and to Rule 22, which merely requires that counsel for the defence is fluent in one of the working languages of the Court.
4. It further pointed out that the Appeals Chamber of the *ad hoc* tribunals had considered factors linked to the absence of translations of decisions as constituting valid reasons for extending time limits, holding that the interests

¹ ICC-01/04-01/06-1123.

² ICC-01/04-01/06-1119.

of justice require the counsel for defence to have a reasonable period to familiarise themselves with a decision in a language which they understand.³

5. It was submitted that counsel for the defence do not have a sufficient level of English to allow them to adequately carry out their mandate without certain translations, particularly of decisions issued by the Chamber. As such, it is argued to be currently impossible for the defence to usefully enter an appeal against the decision of 18 January 2008.⁴
6. In the view of the defence, its request for an extension of the time limit in Rule 155 is reasonable, given the importance of the decision, the complexity of the questions raised, the requirements of fairness and the fundamental rights of the defence.⁵
7. The Office of the Prosecutor elected not to respond to the defence application.
8. Pre-Trial Chamber I⁶ considered this general issue within the context of the filing by the defence entitled "Motion requesting that all deadlines run from the date of receipt of the French version"⁷. The Chamber noted that Rule 22(1) only requires counsel for the defence to be fluent in at least one of the working languages of the Court, and that Article 67(1)(f) entitles him "(t)o have free of any cost the assistance of any 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". The Pre-Trial Chamber decided that the accused was not entitled to have all procedural documents and all evidentiary materials disclosed by the prosecution translated into a language that he fully

³ ICC-01/04-01/06-1123, paragraph 13.

⁴ ICC-01/04-01/06-1123, paragraph 10-11.

⁵ ICC-01/04-01/06-1123, paragraph 14.

⁶ ICC-01/04-01/06-268.

⁷ ICC-01/04-01/06-179-tEN.

understands and speaks. The Pre-Trial Chamber rejected the defence request and instead indicated that it would follow a case-by-case approach to applications to vary time limits.

9. Pre-Trial Chamber II has also considered this issue.⁸ Defence counsel requested the right to file a reply to a prosecution application upon receipt of the French version of relevant documents (this point was not decided); that the Chamber order the Registrar to translate into French all documents related to various victim's applications (filed in English); and that the Pre-Trial Chamber institute time-limits enabling the accused to make observations to the victims' applications which should run from the date of notification of the French version of the relevant documents (at page 3).
10. The Pre-Trial Chamber rejected these requests. The Chamber referred to the "Candidate Application Form" completed and submitted by the counsel in order to be included in the list of counsel of the Court, and in which she stated to have excellent proficiency of the English language. The Chamber also referred to the counsel's CV, and to article 24(3) of the Code of Professional Conduct for Counsel, in relation to "deceiving and misleading the Court" (at page 6).
11. The Chamber also stated that to deem that a party is notified (for time limit purposes) only after the translation is notified, would unduly delay the proceedings (at page 8).

⁸ ICC-02/04-01/05-211.

Analysis and conclusions

12. The Chamber rejects the application for the reasons set out hereafter. The Rome Statute framework does not provide for the exception to the general rule sought by the defence. Instead, Rule 155 is clear in its terms:

When a party wishes to appeal a decision under article 82, paragraph 1 (d), or article 82, paragraph 2, that party shall, within 5 days of being notified of that decision, make a written application to the Chamber that gave the decision, setting out the reasons for the request for leave to appeal.

13. The Decision in this case was delivered in one of the working languages of the Court (see Article 50(2)). Regulation 39(1) provides that:

[a]ll documents and materials filed with the Registry shall be in English or French, unless otherwise provided in the Statute, Rules, these Regulations or authorised by the Chamber or the Presidency.

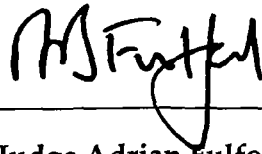
14. No provision exists which entitles a party or a participant to stipulate that time limits should only apply when the decision is provided to it in the working language of the Court of their choice. Instead, the guiding provision is Article 67(f) and the provision of translations should be consistent with the requirements of fairness.

15. The request by the defence, if granted, would have consequences that are inimical to the interests of justice. If applied generally, *inter alia*, a two tier system would be created in which a party or participant who maintains it has difficulties understanding or utilising the particular working language used by a Chamber would have the benefit of a significantly longer time-period for service of documents than any party or participant who does not raise the same difficulty. The longer time-period would be based on the time period, sometimes significant, that is needed in order to make a translation available.

16. The Court is entitled to assume that the accused's representatives, in accepting instructions in this case, have put procedures in place to enable them to deal with applications and filings within the stipulated time-limits of the provisions of the Rome Statute framework, regardless of whether the decision is in English or French. Article 67(f), if utilised correctly, should enable the defence to have immediate access to working translations of decisions that will enable them to deal properly with decisions filed in English.
17. The Chamber notes that this request has not been made as regards any other decision delivered to date by the Trial Chamber.
18. The deadline for the filing for request for leave to appeal runs in accordance with amended Regulations of the Court 33.⁹
19. Regulation 35 (Variation of time limits) does not apply in this situation since this does not relate to a time limit prescribed in the Regulations or ordered by the Chamber.
20. The defence application, which required an immediate response, was made whilst Judge Blattmann was travelling and could not be contacted.

⁹ Amended 14 November 2007 and entered into force 18 December 2007.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 22 January 2008

At The Hague, The Netherlands