

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

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

Date: 29 March 2007

**TRIAL CHAMBER I**

**Before:** Judge Elizabeth Odio Benito  
Judge René Blattmann  
Judge Adrian Fulford

**Registrar:** Mr Bruno Cathala

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

**Public Redacted Version**

**Prosecution's Submission in Anticipation of a Status Conference**

**The Office of the Prosecutor**

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Ms Carine Bapita Buyangandu

## Background

1. On 29 January 2007, the Pre-Trial Chamber rendered the “*Décision sur la confirmation des charges*”<sup>1</sup> (29 January 2007 Decision) and committed Thomas LUBANGA DYILO for trial on the charges as confirmed.<sup>2</sup>
2. On 21 February 2007, the Pre-Trial Chamber accepted<sup>3</sup> the request to withdraw<sup>4</sup> of the then Counsel for the Defence, Maître Jean Flamme.
3. On 6 March 2007, the Presidency issued its “*Decision constituting Trial Chamber I and referring to it the case of The Prosecutor v Thomas Lubanga Dyilo*”<sup>5</sup> (6 March 2007 Decision), which constituted Trial Chamber I and referred to it the case against Thomas LUBANGA DYILO with immediate effect.<sup>6</sup> Simultaneously, the Presidency decided “to suspend transmission of the record of proceedings of Pre-Trial Chamber I to Trial Chamber I, until such time as new Defence counsel is assigned to Mr Thomas Lubanga Dyilo and it is determined that he/she has had adequate time to familiarise him/herself with the case.”<sup>7</sup>

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<sup>1</sup> “*Décision sur la confirmation des charges*”, confidential and public redacted version, 29 January 2007.

<sup>2</sup> See 29 January 2007 Decision, confidential, at page 133.

<sup>3</sup> See “*Décision relative à la demande d’autorisation de retrait du Conseil de la Défense*”, confidential, 21 February 2007, at page 5.

<sup>4</sup> See « *Demande d’autorisation de retrait du Conseil de la Défense* », confidential, 20 February 2007.

<sup>5</sup> “*Decision constituting Trial Chamber I and referring to it the case of The Prosecutor v Thomas Lubanga Dyilo*”, public, 6 March 2007.

<sup>6</sup> See 7 March 2007 Decision, at page 3.

<sup>7</sup> *Ibid.* – The Prosecution notes that in its view the delay of the transmission of the record of the proceedings to the Trial Chamber causes a significant impediment to the Trial Chamber to exercise its functions and powers under Article 64. In addition, the Decision lacks guidance as to who determines the criteria for the adequateness of the time necessary for Defence Counsel to familiarise him/herself with the case.

4. On 20 March 2007, the Registry informed the Trial Chamber about the appointment of Maître Catherine Mabilie as the new Counsel for the Defence for Thomas LUBANGA DYILO.<sup>8</sup>

### **Purpose and scope of the present filing**

5. In anticipation of the status conference that is to be scheduled by the Trial Chamber pursuant to Article 64 of the Rome Statute (Statute) and Rule 132 of the Rules of Procedure and Evidence (Rules), the Prosecution submits the following observations. These observations are solely aimed at raising a number of upcoming pre-trial and trial matters that in the Prosecution's view merit early consideration by the Trial Chamber, thus ensuring that Thomas LUBANGA DYILO will be tried without undue delay, as required by Article 67(1)(c) of the Statute.
6. In the present filing, the Prosecution will address the following matters: Instruction of expert witnesses, disclosure, the E-Court Protocol, proofing of witnesses, protection of victims and witnesses and the outcome of the Confirmation Hearing.
7. In the Prosecution's opinion, each of these matters necessitates an in-depth briefing.<sup>9</sup> The complexities of the matters concerned and their direct impact upon the pre-trial and the trial preparation of the Participants requires that such process be initiated at the earliest possible opportunity.

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<sup>8</sup> Désignation de Maître Catherine Mabilie comme conseil de la défense de M. Thomas Lubanga Dyilo, public, 20 March 2007. - REDACTED.

<sup>9</sup> When given the opportunity, the Prosecution is prepared to substantially expand on any of the matters addressed in the present filing.

## Expert witnesses

8. Regulation 54(m) of the Regulations of the Court (Regulations) provides for the Trial Chamber to, in the interests of justice for the purposes of the proceedings, issue orders on the joint or separate instruction by the Participants of expert witnesses.
9. The Prosecution - in particular taking into account the matters that were strongly contested in the course of the Confirmation Hearing - at this stage<sup>10</sup> anticipates the instruction of experts in order to cover the following matters that in the Prosecution's assessment require particular expertise to assist the Trial Chamber in its duty to determine the truth:
  - (i) An expert on context. "Context" in the Prosecution's submission entails political, military, ethnic, economic, and historical aspects of the situation in Ituri during the time-frame relevant to the Document Containing the Charges;
  - (ii) An expert on matters that concern various aspects of the anticipated testimony of the children victim-witnesses;
  - (iii) Furthermore, and pending further analysis, the Prosecution does not exclude the possibility that it will reach the conclusion that an expert on issues related to the specific military role Thomas LUBANGA DYILO played in the FPLC should be instructed.

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<sup>10</sup> Depending on the further litigation, the Prosecution may consider it necessary to instruct further experts on additional subject matters.

- (iv) In addition, the Prosecution anticipates that it may become necessary to instruct an expert on issues related to the different languages used in the region and their variations.

10. The Prosecution envisages significant advantages to the judicial process through the joint instruction of experts by the Participants. These advantages are in the interests of justice and include, *inter alia*, considerations of expediency of proceedings, judicial economy, saving of costs and fewer unnecessary challenges, in particular in relation to the qualifications and/or experience of possible experts.
11. For the same reasons, the Prosecution is also amenable to the idea of the instruction of experts by the Trial Chamber itself, provided that the Participants are given adequate opportunity to submit their observations on the qualifications and/or experience of the envisaged expert(s)<sup>11</sup> and on the subject-matter(s) and scope of the instructions.
12. The Prosecution informs the Trial Chamber and the Participants that it is currently in the process of identifying possible experts that could cover the aspects of context and of issues related to the testimonies of the child victim-witnesses. At this stage, pending possible orders of the Trial Chamber, the Prosecution has deliberately refrained from discussing the substance of the topics with the possible experts.

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<sup>11</sup> The Prosecution uses this opportunity to inform the Trial Chamber of its view that the Participants and the Trial Chamber, where applicable, are not bound by the Registry's List of Experts but are free to choose any expert they deem fit – particularly as at present the Registry's List of Experts is not extensively populated.

## Disclosure

13. On 15 May 2006, the then Single Judge of the Pre-Trial Chamber (Single Judge) issued the "Decision on the Final System of Disclosure and the Establishment of a Timetable"<sup>12</sup> (Decision on the Final System of Disclosure).
14. The Decision on the Final System of Disclosure was the result of extensive litigation of the Parties before the Single Judge.<sup>13</sup> In line with Article 61(3) of the Statute and Rule 121(2), the scope of the Decision on the Final System of Disclosure was limited to the purposes of the Confirmation Hearing.<sup>14</sup> Accordingly, at this stage of the proceedings, the Decision on the Final System of Disclosure is no longer applicable.
15. Although the system of disclosure ultimately adopted by the Single Judge addressed many of the Parties' concerns<sup>15</sup> about the system as it was initially put

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<sup>12</sup> "Decision on the Final System of Disclosure and the Establishment of a Timetable", public, 15 May 2006.

<sup>13</sup> In respect of the Prosecution's submissions see the "Filing of Incriminating Evidence and Potentially Exculpatory Evidence", public, 3 April 2006; the "Prosecution's Observations on Disclosure", confidential, 6 April 2006; the Transcript of the hearing on 24 April 2006, ICC-01-04-01-06-T-4-EN; the "Prosecution's Final Observations on Disclosure", public, 2 May 2006; the "Motion for Reconsideration", public, 2 May 2006; and the Transcript of the hearing on 24 August 2006, ICC-01-04-01-06-T-13-EN. - In respect of the Defence's submissions see the "Observations de la défense concernant le système de divulgation, requis par les décisions du 23 et 27 mars 2006", public, 6 April 2006; the Transcript of the hearing on 24 April 2006, ICC-01-04-01-06-T-4-EN; the "Observations of the Defence relating to the system of disclosure in view of the Confirmation Hearing", public, 2 May 2006; and the Transcript of the hearing on 24 August 2006, ICC-01-04-01-06-T-13-EN.

<sup>14</sup> See Decision on the Final System of Disclosure, at pages 4, 5, 15 (at para. 5).

<sup>15</sup> In particular, the permanent system adopted by the Single Judge addressed the Parties' concern that disclosure and inspection remain a fundamentally *inter-partes* matter. See the Decision of the Final System of Disclosure, at page 5.

in place<sup>16</sup>, a number of - in the Prosecution's view - problematic aspects were retained in the permanent system of disclosure. These aspects include, *inter alia*:

- (i) The equal status, for consistency<sup>17</sup> or any other purposes, assigned to the disclosure and inspection regimes;<sup>18</sup> and
- (ii) The requirement that the originals<sup>19</sup> of incriminating evidence should be transferred to the Registry.<sup>20</sup>

The Prosecution submits that these aspects should be re-visited by the Trial Chamber.

16. In this context, the Prosecution informs the Trial Chamber that it has disclosed further materials to the Defence on 20 March 2007. These materials include

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<sup>16</sup> See "Decision Requesting Observations of the Prosecution and the Duty Counsel for the Defence on the System of Disclosure and Establishing an Interim System of Disclosure", public, 23 March 2006; and "Decision Requesting Further Observations from the Prosecution and the Duty Counsel for the Defence on the System of Disclosure", public, 27 March 2006 (27 March 2006 Decision).

<sup>17</sup> The 27 March 2006 Decision (at page 4) stated that for reasons of "consistency", "inspection" should be treated equally to "disclosure" in terms of Articles 61(3)(b) and 67(2).

<sup>18</sup> In the Prosecution's view, the different legal bases for these two regimes obey different rationales, confer different rights upon the Parties and give rise to different obligations. The Prosecution maintains that Rules 77 and 78 enshrine a right for each Party to have access to evidence which, given its physical characteristics, must be subjected to direct visual and physical inspection. For details, see the Prosecution's objections to the approach adopted by the Single Judge in the "Prosecution's Observations on Disclosure", confidential, 6 April 2006, at page 7; at the hearing of 24 April 2006, ICC-01-04-01-06-T-4-EN, at pages 14 and 57-60; and in the "Prosecution's Final Observations on Disclosure", 2 May 2006, at pages 9-10.

<sup>19</sup> The Decision of the Final System of Disclosure required the Prosecution to communicate the evidence it intended to rely on at the confirmation hearing to the Chamber by filing in the record of the case "*the original and electronic copies, or electronic photographs in the case of tangible objects, of the relevant evidence*". See the Decision of the Final System of Disclosure, at page 6.

<sup>20</sup> Specific reference is made to the Prosecution's submissions in its "Motion for Reconsideration", at pages 8-9. The submissions highlight the absence of legal basis for the Single Judge's approach and points to the legal basis for the Prosecution's own responsibility for the retention, storage and security of the evidence. Finally the submissions raise as a concern the disruption of the chain of custody brought on by the transfer of the originals to the Registry.

documents that fall within the parameters of Articles 64(3)(c) and 67(2). In applying the Decision of the Single Judge and subject to further litigation before the Trial Chamber, the Prosecution in addition provided materials for “pre-inspection” that fall under Rule 77.

## **E-Court Protocol**

17. On 28 August 2006, the Single Judge issued the “Final Decision on the e-Court Protocol for the Provision of Evidence, Material and Witness Information in Electronic Version for their Presentation During the Confirmation Hearing”<sup>21</sup> (the Decision on the e-Court Protocol). This decision adopted the “Technical Protocol for the Provision of Evidence, Material and Witness Information in Electronic Version for their Presentation During the Confirmation Hearing”<sup>22</sup> (the Technical Protocol), which the Parties had discussed in the course of negotiations with the Registry in prior months. In addition to the requirements of the Technical Protocol, the Decision on the e-Court Protocol required the Parties to provide additional meta-data fields when filing with the Registry disclosed materials.<sup>23</sup>

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<sup>21</sup> Final Decision on the e-Court Protocol for the Provision of Evidence, Material and Witness Information in Electronic Version for their Presentation During the Confirmation Hearing, public, 28 August 2006.

<sup>22</sup> The e-Court Protocol is contained in Annex 1 to the “Submission of a New Version of the e-Court Protocol Prepared Jointly by the Office of the Prosecutor, the Defence and the Registry”, public, 20 July 2006.

<sup>23</sup> See the Decision on the e-Court Protocol, at pages 5-6. Viewed jointly, the Technical Protocol and the additional requirements are referred to hereinafter as the e-Court Protocol.

18. Like the Decision on the Final System of Disclosure, the Decision on the e-Court Protocol was limited to the purposes of the Confirmation Hearing.<sup>24</sup> Accordingly, at this stage of the proceedings, it is no longer applicable.
19. The Prosecution submits that the experience gained in the implementation of the E-Court Protocol should be scrutinized by the Trial Chamber prior to making any decisions on the provision of meta-data of disclosed documents. In particular, the Prosecution submits that the Trial Chamber should only adopt a protocol for the presentation of evidence at trial after detailed consideration of a number of issues that were dealt with unsatisfactorily by the e-Court Protocol,<sup>25</sup> and after inquiring about the benefits, if any, that the Pre-Trial Chamber and the Parties reaped from the enforcement of the Protocol.<sup>26</sup>
20. The Prosecution draws the attention of the Trial Chamber to the following problematic aspects<sup>27</sup> of the e-Court Protocol:
- (i) Contrary to the principal aims of any such a protocol, namely to make the evidence in the case easily searchable, the meta-data required by the e-Court Protocol often added little or no value;<sup>28</sup>
  - (ii) Much of the required meta-data had very limited temporal use;<sup>29</sup>

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<sup>24</sup> See the Decision on the e-Court Protocol, at page 3, and in particular at page 5.

<sup>25</sup> Reference is made *ia* to the Prosecution's submissions on the e-Court Protocol in its "Motion for Reconsideration", public, at pages 9-10.

<sup>26</sup> In this context, the Prosecution notes that it did not receive feedback, neither from the Pre-Trial Chamber nor from the Defence on the usefulness of the meta-data it provided.

<sup>27</sup> The Prosecution notes that these are the most pertinent examples only.

<sup>28</sup> Two examples are the fields "Element of alleged crime" and "Charge". Given the particularities of the charges against Thomas LUBANGA DYILO, the field "Element of alleged crime" was filled with the same value for all documents disclosed as incriminating. The field "Charge" was filled with all three values ("Count 1", "Count 2" and "Count 3") for all of the documents of a general nature which did not speak *specifically* to one of the three counts.

- (iii) Some of the fields required by the e-Court Protocol created significant additional work for the Parties, despite the fact that the practical implications of their use were very unclear.<sup>30</sup>

21. The Prosecution uses this opportunity to alert the Trial Chamber of the necessity of addressing early in the pre-trial proceedings the scope and details of the e-Court concept,<sup>31</sup> in order to ensure that the Participants' resources are used in a way that is consistent with the use that will be made of the e-Court concept during the trial of Thomas LUBANGA DYILO.<sup>32</sup>

### **Proofing of witnesses**

22. The Prosecution draws the attention of the Trial Chamber to the Pre-Trial Chamber's "Decision on the Practices of Witness Familiarisation and Witness Proofing"<sup>33</sup> (8 November 2006 Decision). By that decision,<sup>34</sup> the Pre-Trial

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<sup>29</sup> For example, in light of the Pre-Trial Chamber's partial reclassification of the conflict in Ituri as international (see the 29 January 2007 "Décision sur la confirmation des charges", ICC-01/04-01/06-803, Public redacted version), the field "Element of alleged crime" was entirely deprived of meaning, because all documents for which meta-data had to be provided had until now been tagged with the value "Article 8(2)(e)(vii)". Before imposing any further requirements for meta-data (or deciding to maintain the ones from the e-Court Protocol), the Chamber should consult the Participants and consider the required resources *vis-à-vis* the expected benefits.

<sup>30</sup> The use of the "Related to witness" field in combination with the "People", "Organisation", "To" or "From" fields, for example, created the risk that the identity of witnesses protected by codes used in the "Related to witness" field would be inadvertently revealed.

<sup>31</sup> The Prosecution allocated substantial resources to cover its share of e-Court related matters. While the Prosecution is in favor of the e-Court, it currently questions the benefit due to the lack of noticeable use by the various Participants.

<sup>32</sup> The Prosecution notes that in contrast to the very detailed requirements of the e-Court Protocol, the filings made by the Parties and the Chambers' own decisions continue to be unsearchable. No text searches can be performed on the content of such filings and decisions. The Prosecution is of the opinion that text-searches are the first and foremost e-Court tool that should be made available to the Participants and to Chambers.

<sup>33</sup> "Decision on the Practices of Witness Familiarization and Witness Proofing", public, 8 November 2006.

<sup>34</sup> See 8 November 2006 Decision, at page 21.

Chamber prohibited the Prosecution from undertaking the aspects the Prosecution considers fundamental in the practice of witness proofing as detailed in the "Prosecution's Information on the Proofing of a Witness."<sup>35</sup>

23. The Prosecution decided that it would not seek leave to appeal the 8 November 2006 Decision since due to the imminence of the Confirmation Hearing, the issue would have effectively become moot at the time it reached the appellate Court, if and when leave to appeal was granted. Rather, the Prosecution concluded that the adequate course of action was to have the issue re-visited once the Trial Chamber was constituted, considering that the matter of proofing becomes particularly relevant at the trial stage.

24. In the meantime - and in light of its far-reaching consequences -, the 8 November 2006 Decision became the subject matter of extensive litigation before Trial Chambers of both the ICTY and the ICTR.<sup>36</sup> The proceedings before the ICTY and the ICTR have both highlighted its controversy and the complexity of the issue.

25. The issue at hand is of key importance for the trial preparation of the Prosecution, the Defence and possibly the Representatives of the Victims. Due to its manifold

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<sup>35</sup> See "Prosecution's Information on the Proofing of a Witness", confidential, 1 November 2006, at para. 16.

<sup>36</sup> The Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj, "Prosecution's Written Submissions Opposing Verbatim Recording of 'Proofing' Sessions with the Witness", 22 March 2007, Case No. IT-04-84-T; The Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj, Corrigendum to the "Prosecution's Written Submissions Opposing Verbatim Recording of 'Proofing' Sessions with the Witness", 23 March 2007, Case No. IT-04-84-T; The Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj, "Defence Submissions on the Procedure for the Proofing of Prosecution Witnesses", 21 March 2007, Case No. IT-04-84-T; The Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera, "Decision on Defence Motions to Prohibit Witness Proofing", ICTR-98-44-T.

practical consequences, it militates for a decision of the Trial Chamber at the early stages of the proceedings.

### **Protection of victims and witnesses**

26. In light of the fact that the Trial Chamber at this stage has no access to the record of the proceedings, the Prosecution informs the Trial Chamber that the proceedings leading up to the Confirmation Hearing were to a high extent influenced by matters directly or indirectly linked to the protection of victims and witnesses. These problems were aggravated by the unstable political situation in the DRC and the continued insecurity in the region following civil war.
27. For the limited purpose of the Confirmation Hearing, the Prosecution sought and the Single Judge and/or the Pre-Trial Chamber authorised<sup>37</sup> redactions to a large number of the witness statements.<sup>38</sup>
28. Taking into account principles of fair trial and the rights of Thomas LUBANGA DYILO pursuant to Article 67 of the Statute, the Prosecution does not currently anticipate that it will continue to rely on anonymous witnesses for the trial. Thus, at a certain point in time, the Prosecution will have to disclose the identities of its

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<sup>37</sup> The Prosecution refers to the key decisions of the Pre-Trial Chamber in this context, namely the "Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rules 81(2) and (4) of the Statute", public, 19 May 2006; the "First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81", public document with a confidential and *ex parte* only available to the Prosecution Annex I, 15 September 2006; the "Second Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81", confidential *ex parte* only available to the Prosecution and Public Redacted Version, 15 September 2006; and the "Decision concerning the Prosecution Proposed Summary Evidence", confidential and *ex parte* only available to the Prosecution, 4 October 2006.

<sup>38</sup> The Prosecution notes that the notion of "witness statements" also includes transcripts of interviews and Investigator's Notes.

witnesses to the Defence and Thomas LUBANGA DYILO. In balancing the statutory duties to preserve the rights of Thomas LUBANGA DYILO and to provide for adequate protection of victims and witnesses, the Prosecution suggests that the Trial Chamber establish a system to disclose the identities of either Prosecution or Defence witnesses only shortly prior to their actual testimony.<sup>39</sup>

29. Considering the highly delicate and time-consuming aspects of providing for adequate protection of victims and witnesses, the Prosecution requests the Trial Chamber to address related matters as early as possible<sup>40</sup> in the proceedings, preferably with the involvement of the Victims and Witnesses Unit (VWU).

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<sup>39</sup> The international Tribunals and Courts have taken different approaches: (i) 21 days before testimony: Prosecutor v. Kajelijeli, "Decision on Juvénal Kajelijeli's Motion for Protective Measures for Defence Witnesses", 3 April 2001; Prosecutor v. Jean-Baptiste Gatete, "Decision on Prosecution Request for Protection of Witnesses", 11 February 2004, ICTR-2000-61-I (ii) 30 days before testimony: Prosecutor v. Mile Mrksic, Miroslav Radic, Veslin Slijivancanin, "Decision on Prosecution's Additional Motion for Protective Measures of Sensitive Witnesses", 25 October 2005, IT-95-13/1-T; Prosecutor v. Slobodan Milosevic, "Decision on Prosecution Motion for Trial Related Protective Measures for Witnesses (Bosnia)", 30 July 2002, IT-02-54-T; Prosecutor v. Gaspard Kanyarukiga, "Decision on Prosecution Motion for Protective Measures", 3 June 2005, ICTR-2002-78-1 (iii) 42 days before testimony: Samuel Hinga Norman, "Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for non-public Disclosure", 23 May 2003, SCSL-2003-08-PT; Issan Hassan Sesay, "Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure", 23 May 2003, SCSL-2003-05-PT; Alex Tamba Brima et al, "Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure", 23 May 2003, SCSL-2003-06-PT; Augustine Gbao, "Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for non-public Disclosure", 10 October 2003, SCSL-2003-09-PT; Brima Bazy Kamara, "Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for non-public Disclosure", 23 October 2003, SCSL-2003-10-PT.

<sup>40</sup> For reasons related to the protection of victims and witnesses, the Confirmation Hearing was postponed twice; see the "Decision on the Postponement of the Confirmation Hearing and the Adjustment of the Timetable set in the Decision on the Final System of Disclosure", public, 24 May 2006 and the "Décision sur le report de l'audience de confirmation des charges", public, 20 September 2006. Both decisions highlight the complexity of the matters that relate to the protection of victims and witnesses.

30. Furthermore, the Prosecution - following consultation with VWU - suggests to also address at the earliest possible opportunity the logistics that are required to facilitate the testimony of witnesses from the region of the DRC. In this context, the Prosecution considers it necessary to determine the preconditions<sup>41</sup> and the use of video-link testimony at an early stage.

### **Outcome of the Confirmation Hearing**

31. The Confirmation Hearing in the present case has been very extensive, lasting from 9 November to 28 November 2006. Documents and witness statements have been tendered into evidence by the Prosecution and the Defence, the Prosecution has shown video footage, and a Prosecution witness has testified for three days. The 29 January 2007 Decision is comprised of 134 pages.

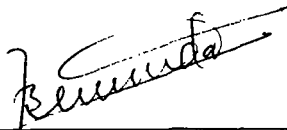
32. Against this background, the Prosecution encourages a discussion to what extent, if any, the submissions and evidence tendered in the course of the Confirmation Hearing can be used for trial and whether the Prosecution is bound by the evidence the Pre-Trial Chamber has used for its determination. The Prosecution furthermore envisages submissions to what extent, if any, the Participants are bound by their submissions in the course of the Confirmation Hearing or legal theories endorsed in the Decision. Finally, the Prosecution encourages a discussion about the role and possible impact of the 29 January 2007 Decision.

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<sup>41</sup> The Prosecution makes reference to Article 69(2) of the Statute.

**Suggested further process**

33. The Prosecution suggests that during the upcoming status conference the Participants be given the opportunity to make submissions on the matters addressed in the present filing, to be supplemented by written submissions.

  
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Fatou Bensouda  
Deputy Prosecutor (Prosecutions)

Dated this 29<sup>th</sup> day of March 2007  
At The Hague, The Netherlands