

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 2 November 2007

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 vs. THOMAS LUBANGA DYILO**

Confidential

**Prosecution's response to the "Information and requests from the Registrar concerning
the live broadcast of audiovisual recording of hearings within the ICC"**

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 Biju-Duval
Mr Marc Desalliers
Ms Caroline Buteau

Background

1. On 16 October 2007, the Registry filed the "Information and requests from the Registrar concerning the live broadcast of audiovisual recording of hearings within the ICC"¹ (16 October 2007 Submission).
2. In the 16 October 2007 Submission, the Registry recalled that both public hearings and hearings in closed session are broadcast live and in an unredacted form beyond the courtroom, to various groups of ICC staff members. As such, and after granted access, these groups of ICC staff members can follow the hearings in their offices.²
3. The Registry furthermore reiterated that *«when granted with this access outside the courtroom, it becomes the sole responsibility of the staff members to ensure that the live broadcast is viewed from their desktop only by authorised staff»*. It added that: *«in so doing, the Registry uses a tool which in its current configuration does not allow a fully safe management of access rights»*.³
4. As a result, the Registry in its 16 October 2007 Submission stated that *«the live unredacted broadcast of hearings beyond the courtroom to ICC staff members as it is currently provided could potentially affect the protection of witness»*, and that *«at this stage, and until a suitable technical solution is found which indeed allows a fully safe*

¹ Information and requests from the Registrar concerning the live broadcast of audiovisual recording of hearings within the ICC, Confidential, 16 October 2007.

² See 16 October 2007 Submission, page 2.

³ See 16 October 2007 Submission, page 2.

*management of access rights, the Registry would prefer if such access was preventively discontinued».*⁴ Consequently, the Registry requested the Trial Chamber to:

(1) Allow the Registry to notify the present confidential document to the legal representatives of victims who currently participate in the proceedings;

(2) advise as to whether such access should be awarded at all beyond the courtroom itself;

(3) in the affirmative:

a. indicate what policy, if any, should be applied in order to ensure that the staff members use this live broadcast responsibly;

b. allow the Registry to research a suitable technical solution, and

*c. order the termination of the live broadcast as currently until a suitable solution is devised.*⁵

5. On 18 October 2007, the Trial Chamber, as an interim measure, instructed the Registrar not to provide access to live unredacted broadcast of a scheduled closed hearing to anyone outside the courtroom and only to provide access to the delayed unredacted broadcast to those who were present in the courtroom during the hearing (the 18 October 2007 Instruction).⁶

⁴ See 16 October 2007 Submission, page 2.

⁵ See 16 October 2007 Submission, page 3.

⁶ Instruction to the Registrar on access to the broadcast of the closed hearing on 19 October 2007, Confidential, 18 October 2007, page 2.

Preliminary remarks

6. The Prosecution believes that the assessment of the requests submitted by the Registry requires a detailed consideration of the overall system. In the interest of a broader and common understanding, the Prosecution seeks to explain its views on the functioning of the system.⁷
7. The Prosecution understands that currently two types of broadcasting are conducted from the proceedings namely:
 - Live broadcasting (i.e. real time broadcasting) which is provided only to groups of ICC staff members, both for public and closed session (including *ex parte*) hearings – using the software system called ‘the record player’ (also known as ‘FTR’); and
 - 30 minutes delayed broadcasting which is provided to:
 - (i) The same groups of ICC staff members for public and closed session (including *ex parte*) hearings – also using FTR; and
 - (ii) The public at large and all ICC staff (e.g. through the ICC website) for public hearings.
8. In light of the 18 October 2007 Instruction, the Prosecution emphasizes that the software system encourages the management of access rights on a group-basis, which is currently also performed as such. Although possible from a technical point of view, access to the broadcast is not granted to specific individuals (like

⁷ The Prosecution invites and welcomes any further advice to this explanation.

for example the person that attended a given hearing) rather, to the group this individual belongs to, for example group 'OTP, Lubanga case'.

9. Furthermore, the Prosecution understands that the cause of the underlying problem raised by the Registry is that the software system requires access rights to be established on a daily basis. Once such access rights are set for the day, they cannot be altered during that day: if for example there is first an *ex parte* hearing, followed by a public hearing, the access rights for the full day will only be granted to the participants of the *ex parte* hearing. No access rights can subsequently be granted for the other participants of the public hearing. The Prosecution understands that the software system was not designed to 'micro manage' access to proceedings in this way.

10. As explained further, the Prosecution believes that these current limitations, associated with the software system, should not prevent the Prosecution and the other participants to the proceedings from using this valuable tool.⁸

Prosecution's response to the requests made by the Registry

11. In response to the requests made by the Registry, the Prosecution observes the following:

(1) On the request related to the notification of present document to the legal representatives of the victims who currently participate in the proceedings, the Prosecution has no objection;⁹

⁸ It is unclear to the Prosecution in how far the other participants have access to the software system.

⁹ The Prosecution also notes that in its view there was no reason to file the 16 October 2007 Submission confidentially. Whilst the Prosecution responds in maintaining the level of confidentiality, it informs the Trial

(2) On the request related to the broadcasting (especially live broadcasting) beyond the courtroom, the Prosecution requests such broadcasting to be continued. The Prosecution submits that a solution, which continues to utilise the FTR software is feasible and should be extensively researched.¹⁰ The Prosecution is of the view that the current technical limitations should not jeopardize the considerable assistance that the tool provides in organising its¹¹ resources efficiently: *access to live broadcasting permits the team-members that are not present in the courtroom to assist those that are in the courtroom instantly whenever needed, including for the benefit of the Chamber. As a result, it allows a limited number of team-members to attend the courtroom proceedings, while the other team members are 'on call', following the proceedings in their offices. Especially when court activity is frequent, this leads to a more proficient use of resources, but also allows for adequate and prompt responses in the servicing request of the Chamber or other court participants. Furthermore, it avoids team members entering and exiting the courtroom whenever their expertise is warranted and minimizes the suspension of the court proceedings.*

In addition to the above, the Prosecution notes that currently real time ('live') transcripts are provided in English through 'Livenote' to all participants, both ICC staff members and non ICC staff members. As a result, all English speaking participants can follow the court proceedings from their offices. While the Prosecution appreciates the provision of such real time transcripts, it believes that

Chamber that it does not oppose a decision of the Trial Chamber to reclassify its filing and the 16 October 2007 Submission as a public filing.

¹⁰ The Prosecution believes that solutions can be found by providing fragmented broadcasting (i.e. when hearings of a different nature take place during the same day) and access to identified individuals rather than groups of individuals.

¹¹ And where applicable, also the resources of the other participants to the proceedings.

in addition thereto, the broadcasting offers the possibility to follow the court proceedings both in French and English.

Moreover, it allows following the court proceedings in a passive way while continuing working activities as, unlike Livenote, the broadcasting is audible, and therefore less disruptive to monitor.

Finally, the broadcasting permits immediate and accurate examination or verification of the discussions in Court whenever the interpreted English real time transcript is confusing or incomplete. Particularly in an environment where different languages are used, the access to broadcasting has proven to provide additional safeguards and clarity.

(3) To conclude, and for the above-mentioned reasons the Prosecution requests continuing the provision of access to broadcasting, including live broadcasting.

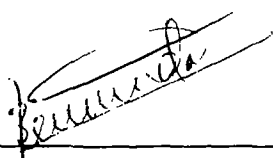
a. In response to the request on what policy on responsible use of the broadcasting should be applied, the Prosecution highlights that, in addition to the confidentiality obligations that apply to all ICC staff members,¹² the staff members of the Office of the Prosecutor sign a Confidentiality Undertaking upon the commencement of their appointment. This Undertaking has been tailored to the activities of the Office of the Prosecution.¹³

¹² See Staff Regulation 1.1. (Status of Staff); Staff Regulation 1.2. (General rights and obligations); and Staff Rule 104.4 (Confidentiality).

¹³ The Prosecution notes that in its 16 October 2007 Submission, the Registry repeatedly referred to the responsible use of the live broadcasting by authorised staff members and that the current practice could potentially affect the protection of witness. The Prosecution invites the Registry to clarify what practice it referred to, and whether possible irresponsible use has been identified, and if so by whom.

b. In relation to the requests to allow the Registry to research a suitable technical solution, the Prosecution welcomes this and informs the Registry of its willingness to provide assistance in the research and in any testing that may be required. The Prosecution also requests that a broader discussion should take place, co-coordinated by the Registry, engaging all affected parties, in order to define their respective requirements.¹⁴

c. With regard to the termination of the live broadcasting, the Prosecution submits to continue providing live broadcasting until a better technical solution is found. The Prosecution suggests that, where court hearings of a different nature¹⁵ are scheduled on the same court day¹⁶, both those sessions take place in different courtrooms. This may, in the opinion of the Prosecution, allow the continuation of the live broadcasting, including to those that were not present at the one or the other hearing, in a manner that respects the security according to the needs of the Court.



Fatou Bensouda
Deputy Prosecutor (Prosecutions)

Dated this 2nd of November 2007
At The Hague, The Netherlands

¹⁴ It is unclear to the Prosecution which division or section within Registry is responsible for the broadcasting. Clarifications on this would be welcomed.

¹⁵ I.e. public and closed sessions, especially *ex parte*.

¹⁶ I.e. the only scenario in which the management of access rights could be problematic.