



Original: **French**

No.: **ICC-01/04-01/06**
Date: **12 October 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
*v. THOMAS LUBANGA DYILO***

Public Document

**Observations of the Legal Representative of Victim a/0105/06 to the expert
appointed by the Chamber in respect of the E-Court Protocol and Annex**

The Office of the Prosecutor

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

Legal Representatives of Victims

Ms Carine Bapita Buyangandu
Mr Luc Walley and Mr Franck Mulenda

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

Noting Trial Chamber I's invitation at the hearing of 2 October 2007 requesting that the Legal Representatives of Victims a/0001/06 to a/0003/06 and a/0105/06 submit observations on the Court's e-Court Protocol (the "Protocol") by 4 p.m. on Friday 5 October 2007;¹

Noting the "*Demande d'extension du délai*" filed by the Legal Representatives of Victims a/0001/06 to a/0003/06 and a/0105/06;²

Noting the "Decision on the request of the legal representatives of victims for an extension of time to file submissions on the e-court protocol"³ issued by Trial Chamber I, authorising the Legal Representatives to submit their observations on the Protocol by 12 October 2007 at the latest;

The Legal Representative of Victim a/0105/06 (the "Legal Representative") submits the following observations on the matter of the Protocol.

1. Firstly, the Legal Representative observes that the Legal Representatives of the Victims were not consulted in the discussions on the Protocol used at the confirmation hearing, and that accordingly she was unable to put forward the specific needs of the Victim she represents. Moreover, the Protocol as approved by Pre-Trial Chamber I⁴ contains no mention of the legal representatives of the victims.

¹ See transcript of hearing of 2 October 2007, no. ICC-01/04-01/06-T-54-EN (Real Time), 2 October 2007, pp. 2-3, lines 22-11.

² See "*Demande d'extension de délai*", no. ICC-01/04-01/06-969, 4 October 2007.

³ See "Decision on the request of the legal representatives of victims for an extension of time to file submissions on the e-court protocol", no. ICC-01/04-01/06-973, 5 October 2007.

⁴ See *inter alia* "Decision on the final system of disclosure and the establishment of a timetable", no. ICC-01/04-01/06-102, 15 May 2006; "Submission of a new version of the E-Court Protocol prepared jointly by the Office of the Prosecutor, the Defence and the Registry", no. ICC-01/04-01/06-201, 20 July 2006; "Decision on the new version of the draft protocol on the presentation of evidence prepared jointly by the Office of the Prosecutor, the Defence and the Registry", no. ICC-01/04-01/06-213, 27 July

2. The Legal Representative considers however that she must be included in any discussion on the Protocol, given that it is possible that the Trial Chamber may authorise her to file evidence during the trial, in particular during the reparations process.

3. Recalling her submissions filed on 24 September 2007,⁵ the Legal Representative would like the expert appointed by the Chamber to consider the following matters.

1. Identification of the participants

4. The Legal Representative observes that under the current version of the Protocol, the participants are identified as V01 and V02, with the V02 group referring to Victim a/0105/06.

5. From the explanations given by Court Management Services and the Information and Communication Technology Section, the Legal Representative understands that new groups will be created as other victims are authorised to participate in the proceedings.

6. However, the Legal Representative considers that it would be more appropriate to create one group per legal representative and not per victim or group of victims he or she represents. Indeed, it is more than likely that the same legal

2006; and "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", no. ICC-01/04-01/06-360, 28 August 2006.

⁵ See "Submissions of the Legal Representative of Victim a/0105/06 in Response to the Order Setting out Schedule for Submissions and Hearings Regarding the Subjects that Require Early Determination", no. ICC-01/04-01/06-961tENG, 24 September 2007.

representatives will represent other victims in the future. Accordingly, if the criterion chosen in respect of the creation of the groups is the criterion based on the victim participating in the proceedings, a same legal representative may find him/herself compelled to manage more than one group simultaneously.

7. In addition, the creation of groups by legal representative would have the advantage of allowing each legal representative to manage and administer his or her own Ringtail workspace, and thus for example to be in a position to analyse the documents and classify them according to the particular needs and interests of his or her clients.

8. Nevertheless, the problem relating to the number of legal representatives allowed to belong to the same group remains unresolved. The issue would have significant impact in particular if the victims in question were to change legal representative or if the Chamber were to decide to appoint a common legal representative not chosen by the victims concerned.

9. The Legal Representative respectfully requests the expert appointed by the Chamber to give an opinion on the possibility of creating the groups according to legal representative, and to give an opinion as to the most appropriate way of managing the groups consisting of more than one legal representative.

2. The contents of the metadata

10. The question of the contents of the metadata presents a number of problematic aspects, as was already raised by the Legal Representative in her submissions of 24 September 2007.⁶

11. The first aspect relates to the fact that the Protocol does not provide for the parties and participants to include the number of the victim to which the evidence relates in the metadata. However, in the interests of being able to clearly identify the evidence relating to each victim, particularly in anticipation of the evidence being introduced during the reparations process, it seems necessary to include the said data in the metadata.

12. The second aspect relates to the need to verify whether certain data must be included in the metadata. The Legal Representative notes that the Protocol does not provide for the inclusion of information such as, *inter alia*, the victim number, the harm suffered, a description of the incident at the origin of the harm, the nature of the crime and certain information relating to the victim's situation (age, gender, state of health) which could be significant, in particular for the purposes of the reparations process.

13. Finally, the Legal Representative notes that questions relating to the safety of the victims concerned could have an impact on the disclosure of all the data included in the metadata to certain parties and/or participants.

14. The Legal Representative respectfully requests the opinion of the expert appointed by the Chamber on introducing into the Protocol new elements in the

⁶ See *supra* footnote 5.

metadata, and on introducing possible measures to guarantee the safety of the victims, by also restricting access to certain data contained in the metadata.

3. The introduction of a “victim file”

15. The Legal Representative observes that there is no provision in the Protocol for a “victim file” (along the same lines as a “witness file”). Such a file could be useful in the event a victim appears before the Chamber to present his or her views and concerns, and/or in the context of the reparations process.

16. The Legal Representative respectfully requests the opinion of the expert appointed by the Chamber on the possibility of introducing such a file.

4. On the Protocol fields currently disputed by the Parties

17. With regard to the Protocol fields currently disputed by the Parties, the Legal Representative observes that the majority of the said information will also be useful to her. However, it is the view of the Legal Representative that certain fields, particularly the fields relating to the charges, the elements of the alleged crime, the incidents, the elements of statements of fact and the mode of participation which, in the current version of the Protocol must only be filled in by the Prosecution, should also be filled in by the Defence and, where applicable, by the Legal Representatives.

18. In order to better clarify her requests, the Legal Representative attaches to the present observations a document in English reproducing the Protocol and containing her comments on each field.

19. The Legal Representative would like the Office of Public Counsel for Victims to be involved in any discussions on the Protocol and appoints the Principal Counsel of the said Office to provide, in consultation with herself, any information and/or relevant matter to the expert appointed by the Chamber.

FOR THESE REASONS, MAY IT PLEASE THE TRIAL CHAMBER TO:

Instruct the appointed expert to examine and assess the observations of the Legal Representative as set out in the present observations.

[signed]

Carine Bapita Buyangandu
Legal Representative of Victim a/0105/06

Done this 12 October 2007

At Kinshasa

Democratic Republic of the Congo