

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/06
Date: 31 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

**Prosecution's submission for the Trial Chamber's consideration in respect of the
"Decision on the E-Court Protocol"**

The 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/105/06
Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu

Background:

1. On 24 January 2008, the Trial Chamber rendered the "Decision on the E-Court Protocol" (Decision).¹ In the Decision, the Trial Chamber ordered the Prosecution within 7 days of the Decision to file reasons for the Trial Chamber's consideration in the event that the provision of certain metadata would not be reasonably achievable before trial.²

Information:

2. In general, the Prosecution's standard evidence management practices are consistent with the underlying considerations of the E-Court Protocol (Protocol) as it has evolved within the Court. The Prosecution intends to adhere to and to improve the Protocol throughout all of the situations and cases that it submits to the Court.³
3. The Prosecution informs the Trial Chamber that it is in a position to and will communicate information on the "Full Chain of Custody of Material Evidence" and on the "Date Source Restriction Lifted" via the E-Court system.

¹ ICC-01/04-01/06-1127. In respect of the procedural history, the Prosecution refers to paragraphs 2 to 9 of the Decision.

² ICC-01/04-01/06-1127, at paras. 22, 26 and 30(a).

³ The Prosecution invites the Registry to co-ordinate a forum within the Court - as foreseen in the Protocol - by which operational enhancements may be made by agreement of all Parties and Participants, the Registry and Chambers.

4. In respect of the field on "Date Source Restriction Lifted", the Prosecution will indicate the date on which the respective correspondence was received by the Office of the Prosecutor (OTP).⁴
5. Contrary to the assumption in the Decision,⁵ the Prosecution is in a position to and will provide metadata for materials that are unsearchable.⁶

Observations on the field "Person/Witness from whom the Document Originated":

6. In light of the fact that the "Author" of materials is already included in the metadata of the Protocol, the Prosecution presumes that information on the origins of documents is meant to cover information on their source.
7. In this context, the Prosecution considers "documents" covering all types of disclosed evidence.
8. The Prosecution draws the attention of the Trial Chamber to the fact that it can be anticipated that providing information on the source of evidence will repeatedly result in the Prosecution having to reveal the identities of its witnesses and/or "third parties" that fall within the parameters of either Rules 81(2) and (4) or Article 54(3)(f). This observation applies to

⁴ The Prosecution notes that regularly the letters of the information providers lifting the Article 54(3)(e) restrictions are received by the OTP at a time that diverges significantly from the date of the letter.

⁵ ICC-01/04-01/06-1127, at para. 23.

⁶ The Prosecution notes, however, the following: The Prosecution considers the "semi or completely illegible materials" as referred to in para. 23 of the Decision being unsearchable materials. Where the Protocol requires that searchable text be provided corresponding to the text of documents, the Prosecution is regularly not in a position to generate such text. Furthermore, the Prosecution draws the attention of the Trial Chamber to the fact that neither the law nor the Protocol requires "typing the record" in full. Such a requirement would significantly impact on the resources of all Parties and Participants and the Court.

sources of incriminatory and potentially exculpatory evidence and to evidence that meets the criteria of Rule 77.

9. Against this background, it can be anticipated that security and protection related issues that currently apply to witnesses and “third parties” will extend to sources, resulting in the Prosecution having to refer additional individuals⁷ to the Victims and Witnesses Unit for protection.

10. The Prosecution seeks guidance from the Trial Chamber on how to proceed:

- (i) The Prosecution suggests that in respect of sources - witnesses and “third parties” - for which it obtained authorisation of the Trial Chamber to not (yet) reveal their identities, it is authorised to not provide the source until the time it has to reveal their identities to the Defence.
- (ii) For other sources, in applying the criteria as spelled out in Rules 81(2) and (4) and Article 54(3)(f), the Prosecution suggests to seek authorisation of the Trial Chamber for the temporary non-disclosure of the sources until the time the sources concerned are sufficiently protected.⁸

⁷ The Prosecution notes that it has received materials from individuals who are not witnesses. The Prosecution is currently about to inquire how many individuals are concerned.

⁸ It can be anticipated that adequate protection for such sources will not be available before trial, resulting in the Prosecution not being in a position to provide for the metadata revealing the source. -- The Prosecution notes that the redaction of sensitive metadata will significantly impact on the Prosecution resources; the related metadata control processes will in addition to the source include, *inter alia*, the data in respect of the chain of custody, people and organizations authoring the documents, and the title.

- (iii) Other sources may include individuals and organizations that object to the OTP revealing their identities, thus making it impossible to refer their cases to VWU for protection. In these instances, the Prosecution suggests that it is permitted to not reveal the identities of the sources concerned.⁹

Consolidation of various Protocols:

11. The Prosecution notes that in the course of the procedural history of the Protocol¹⁰ various Protocols were applicable. Accordingly, in order to guarantee the full implementation of the Protocol as determined by the Trial Chamber, the Prosecution deems it necessary that the Registry provides for a consolidated Protocol.

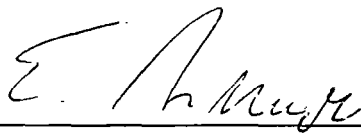
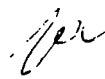
⁹ If the Trial Chamber deems it necessary, the Prosecution will provide further information.

¹⁰ See footnote 1.

Request:

12. In light of the foregoing, the Prosecution requests the Trial Chamber:

- (i) to provide guidance on the provision of metadata concerning the "Person/Witness from whom the Document Originated"; and
- (ii) to request the Registry to provide for a consolidated Protocol.



Luis Moreno-Ocampo
Prosecutor

Dated this 31st day of January 2008

At The Hague, The Netherlands