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By Email: CourtMgnt-CourtRecords.CourtMgnt-CourtRecords@icc-cpi.int

Attention: Mr Uros Mijuskovic

Mr Marc Dubuisson
Head of Division of Court Services
Registry of the International Criminal Court
PO Box 19519
2500 CM The Hague
The Netherlands

Dear Sir,

NO: ICC-01/04-01/06

SITUATION OF THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF

THE PROSECUTOR v. THOMAS LUBANGA DYILO

I refer to the Trial Chamber's *Decision on the E-Court Protocol* (document ICC-01/04-01/06-1127).

At the request of the Trial Chamber, I have reviewed certain issues arising out of document ICC-01/04-01/06-1148 *Prosecution's submission for the Trial Chamber's consideration in respect of the "Decision on the E-Court Protocol"*, ICC-01/04-01/06-1174 - Réponse de la Défense à la « Prosecution's submission for Trial Chamber's consideration in respect of the 'Decision on the E-Court Protocol ' » du 31 janvier 2008 and formed an opinion on them.

I have set out my opinion in a Second Addendum to my Report. I trust that this further information will clarify the issues for the benefit of the Trial Chamber and the parties and participants before it. I am pleased to enclose this Second Addendum.

Yours faithfully,

Sandra Potter
Managing Director
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NO: ICC-01/04-01/06
SITUATION OF THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR v. THOMAS LUBANGA DYILO

Second Addendum to
Report to Trial Chamber I on the e-court
Expert witness: Ms Sandra Potter

Background

1. On 1 November 2007, Trial Chamber I (the “**Chamber**”) issued document ICC-01/04-01/06-1010 *Instructions to the expert on e-court* (the “**Instructions**”) requesting me to provide an expert witness report on the e-court protocol in this Case, and on the e-court as a whole within the Court.
2. In response to the Instructions, I submitted my *Report to Trial Chamber I on the e-court* (document ICC-01/04-01/06-1024) and my *Addendum to Report to Trial Chamber I on the e-court* (document ICC-01/04-01/06-1062).
3. On 24 January the Chamber issued the *Decision on the E-Court Protocol* (document ICC-01/04-01/06-1127) (the “**Decision**”).
4. Subsequent to the Decision, the Office of the Prosecutor (the “**prosecution**”) filed document ICC-01/04-01/06-1148 *Prosecution's submission for the Trial Chamber's consideration in respect of the "Decision on the E-Court Protocol"* (the “**prosecution submission**”) and ICC-01/04-01/06-1174 - Réponse de la Défense à la « Prosecution's submission for Trial Chamber's consideration in respect of the 'Decision on the E-Court Protocol ' » du 31 janvier 2008 (the “**defence submission**”).
5. In this Second Addendum, I will comment on certain issues arising out of the prosecution submission and the defence submission.
6. I confirm again that my appointment is to assist the Chamber as an expert, and that I do so independently of any of the parties or participants before the Chamber.

7. In preparing this Second Addendum, I have made all the inquiries that I believe are desirable and appropriate. To my knowledge, no matters of significance that I regard as relevant have been withheld from the Chamber.

The prosecution submission

8. In paragraphs 6 - 10 of the prosecution submission, the prosecution seeks the Chamber's guidance on how to process metadata to populate the "Person/Witness from whom the Document Originated" field. Its particular concern is where such metadata would contain the identity of persons which must initially be kept confidential, even if it is subsequently to be disclosed.
9. In particular, footnote 8 to paragraph 10 (ii) reads:

"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.

Comments regarding the prosecution submission

10. Upon my further consideration of my earlier report dated 12 November 2007 (page 15 *No. b Witness Information* table) it is my opinion that this metadata field ("Person/Witness from whom the Document Originated" field) must only appear against *physical evidence and material* and not as part of the *witness information* metadata fields.
11. Having said this, the identity of a person as the source of a document may need to be kept confidential for different reasons, and the International Criminal Court's general rules on confidentiality should apply to this field if this is the case.
12. The issue in the present case is how to maintain confidentiality where the identity of such a person is contained in the metadata of a field of the e-court protocol (the "Person/Witness from whom the Document Originated" field).

13. Where the identity of such a person is recorded on the face of a document, confidentiality can be maintained in the document exchange process: before the document is exchanged the critical parts of it can be hidden or 'redacted' so that the party receiving the document cannot see them.
14. In an e-court protocol, where the identity of such a person forms the content of a protocol field (such as the "Person/Witness from whom the Document Originated" field in this case), it is not possible to redact the field or its contents. If that identity is required to be kept confidential, that is, if it is a person whose name would be redacted if it appeared on the face of the document, then in my opinion the approach to the metadata field should achieve the same level of confidentiality.
15. The approach in this situation is of course not to redact. The set of documents where confidential identity information exists is still processed in the usual manner and the metadata field is completed for each document. However, when this set of documents is exchanged, it is exchanged discretely and *without* the "Person/Witness from whom the Document Originated" field or the metadata within that field.
16. This approach does not require significant resources and has a number of benefits. It ensures that the identity information can be recorded during the usual processing of documents, so that the prosecution team can work with the confidential information itself, in ordering and preparing its case. It ensures that confidentiality is maintained at the initial exchange stage whilst the identity information is confidential. It allows for the information to be exchanged subsequently (if the confidentiality is lifted later in the case), thus minimising delays through reprocessing.
17. To formalise this approach if it is to be adopted by the Chamber, the process should be added to any further protocol to be drafted this matter.

I submit this Second Addendum to my Report to the Chamber.



**Sandra Potter, Managing Director,
Potter Farrelly & Associates Pty Ltd**

Dated this 18 February 2008
At Melbourne