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Court

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No.: **ICC-01/04-01/06**
Date: **07 December 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

Addendum to "Report to Trial Chamber I on the e-court"

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7 December 2007

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Attention: Mr Uros Mijuskovic

Mr Marc Dubuisson
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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 my *Report to Trial Chamber I on the e-court* ("my Report"), which I note is now document ICC-01/04-01/06-1024. I have reviewed my Report, and formed the view that it would be of benefit to the Trial Chamber for me to provide some brief additional comments on certain sections.

Accordingly, I have prepared an Addendum to my Report, and trust that the matters it addresses will be of further assistance both to the Trial Chamber and to the Court as a whole. I am pleased to enclose this Addendum.

Yours faithfully,

Sandra Potter
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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

Addendum to

Report to Trial Chamber I on the e-court

Expert witness: Ms Sandra Potter

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. On 12 November 2007, in response to the Instructions, I submitted my *Report to Trial Chamber I on the e-court* (my "**Report**"), which now bears document number ICC-01/04-01/06-1024.

3. In this Addendum I wish to clarify and expand on certain issues discussed in my Report. In this way I hope to assist the Chamber in its deliberations on the e-court for this Case, and – as requested in the Instructions – to assist the Court more broadly.

4. 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.

5. In preparing this Addendum, as with my Report, 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.

Further comments regarding my Report

6. My comments can all be considered under Question A of the Instructions:

> "What is the rationale behind the e-court protocol? What can it achieve?"

However they are all just as relevant to any future case and to the Court more broadly, and should be received with this dual purpose in mind.

7. In paragraph 36 of my Report, I stated that the purpose of an e-court protocol is

> "...to capture purely objective information about documents or records related to each case, so that the information could be exchanged, searched, retrieved and presented in court - all with ease, precision and consistency on multiple occasions."

8. Bearing this purpose in mind, I consider there is a real risk of the potential benefits that can be obtained through applying a protocol being significantly diluted if the protocol is ordered to apply to anything less than all information that might possibly be placed before the Chamber in a particular case.

9. To express this in positive terms, in my opinion the protocol should apply to all case information filed with the Registry or exchanged between parties/participants. There are three main reasons for this:

   a) Information which is exchanged but not filed may then become needed for use at a future hearing. If it is already compliant, then it can be filed both easily and quickly.

   b) Compliance with the protocol produces a set of information which is described by a consistent set of fields. This allows the information to be exchanged and then accessed with consistency and reliability no matter what system is being used to do this.

   c) Once information is in a compliant form, it can readily be used or used again in any future hearing, or indeed a future case, without the need for significant reprocessing.

10. There is perhaps a fourth and broader reason, which I covered in paragraphs 100 – 103 of my report. I wish to emphasise here that there are benefits in mandating a protocol that is standard across the Court as a whole. In particular, this would allow anyone to begin processing material in a compliant way at any time.

The effect on exculpatory material

11. One clear consequence of this is that the protocol should apply equally to potentially exculpatory material as to any other material. I refer back to paragraph 93 of my report in which I said

> "...the protocol should facilitate access to *all* material that might be placed before the Chamber. The categorisation of material into positive case evidence, potentially exculpatory material and the remainder, is ideally a review process that is unrelated to the process of capturing select information within a document in a manner structured by the protocol so it can be stored electronically and then recalled with ease, precision and consistency on multiple occasions..."

The effect on non-compliant material

12. In the same way, the protocol should apply to all material in this Case which is currently non-compliant or partially-compliant. Where any material exists that does not fully comply, there is a significant risk of rendering the protocol – and the e-court itself – far less effective. In particular, the practical effect of this needs to be understood.

13. If this is not done for material that is entirely non-compliant then the material can not be exchanged between the parties and participants or filed with the Court. It also can not be searched for or retrieved with confidence by the Court, members of the Chamber or any parties or participants.

The effect on partially-compliant material

14. If this is not done for partially-compliant material, then the e-court will be operating with material where fewer (if any) of the fields specified by the protocol have been populated. As the material is partially compliant, it can still be searched within limited parameters (depending entirely on what fields are populated and how they have been populated), and retrieved and displayed in a hearing. However, without all fields populated in a compliant manner, any search/retrieval of information will yield results that can not be relied upon with confidence.

15. For these reasons, in my opinion any existing non-compliant and partially-compliant material should still be processed into a compliant form. As I indicated above, it should not be forgotten that it would then be possible for any compliant material to be used in future hearings and indeed future cases.

The effect of adding the proposed objective fields

16. In paragraph 55 of my report, having reviewed the various additional fields proposed by the parties and participants, I stated:

> "In my opinion, the proposed additional objective fields for both the physical evidence and material and the witness information should be included, to allow fuller searching capability in the database."

17. A further consequence of enforcing the protocol arises if the protocol is amended in this manner. It would be the expanded protocol which should then apply both to current material relevant to this case and to any material identified in the future as being relevant. All existing compliant, partly-compliant and non-compliant material would need to be re-processed with respect to these new fields, and the new fields would then need to be considered when processing any future material to be filed or exchanged.

The relevance of the protocol to new material

18. By new material I refer here to any material not already identified as relevant to this Case. It may be material that has been obtained by the Office of the Prosecutor ("**OTP**") but not identified as being relevant to this Case. It would also include material that is obtained by any party or participant at some stage in the future.

19. In my experience I would expect that material in both classes exists and the need to consider the material is at least foreseeable.

20. One benefit that a protocol can deliver the Court is realisable if the protocol is mandated as a standard across the Court. As I explained in paragraphs 100 – 103 of my Report, once a protocol is mandated as a standard, it allows any person who needs to begin preparation of material in anticipation of a Case to do so at any time, knowing that this preparation will not turn out to be wasted effort.

21. Although this benefit would apply to any person who might ultimately come before the Court, it would be available and be of most direct relevance to the OTP. With the principal burden for case preparation, the OTP would be able to process material at any time for its own purposes even before changes have been laid in any particular case.

22. Additionally, processing could also start on any of the material the OTP presently holds. If any of this material were to become relevant during the progress of a case or even the course of a hearing, provided the material was fully compliant then no further processing would be required to file or exchange this material.

23. Finally, I would emphasize that a standardized protocol would be highly desirable, as any compliant material could readily be used in more than one hearing or case, the prospect of which I would assume to be quite high.

I submit this Addendum to my Report to the Chamber.

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

Dated this 7 December 2007

At Bermuda