

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07

Date: 9 April 2009

TRIAL CHAMBER II

Before:

**Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Fumiko Saiga**

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA and MATHIEU NGUDJOLO
CHUI***

Public Document

Decision on the E-Court Protocol

Order to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
 Ms Fatou Bensouda, Deputy Prosecutor
 Mr Éric MacDonald, Senior Trial Attorney

Counsel for Germain Katanga

Mr David Hooper
 Mr Andreas O'Shea
 Ms Caroline Buisman

Counsel for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
 Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Ms Carine Bapita Buyangandu
 Mr Joseph Keta
 Mr Jean-Louis Gilissen
 Mr Hervé Diakiese
 Mr Jean Chrysostome Mulamba
 Nsokoloni
 Mr Fidel Nsita Luvengika
 Mr Vincent Lurquin
 Ms Flora Ambuyu Andjelani

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

HAVING REGARD to regulation 26 of the *Regulations of the Court* (“the Regulations”), Trial Chamber II (“the Chamber”) of the International Criminal Court (“the Court”), hereby makes the following decision.

I. BACKGROUND

1. On 13 March 2009, the Chamber decided to adopt the “Consolidated *E-Court* Protocol” as used by Trial Chamber I.¹ However, as the Chamber had been made aware of a number of suggestions to refine the said protocol, it ordered the Registry to revise the “Consolidated *E-Court* Protocol”, in consultation with the competent technical staff of the Office of the Prosecutor, in order to eliminate any technical errors and imprecision.² The Defence Counsel, the Office of Public Counsel for the Defence and the Office of Public Counsel for Victims were invited to communicate proposals for technical improvement directly to the Registry.

2. On 27 March 2009, the Registry reported on the consultation process conducted by it³ and submitted the revised version of the “Consolidated *E-Court* Protocol”.⁴

II. ANALYSIS

3. The Chamber reiterates its agreement with the position of Trial Chamber I that it would be beneficial if there was one *E-Court* Protocol for the

¹ “Order concerning the Presentation of Incriminating Evidence and the *E-Court* Protocol”, 13 March 2009, ICC-01/04-01/07-956, par. 20

² *Id.*

³ “Submission by the Registrar of a revised version of the *E-Court* Protocol of Trial Chamber I”, 27 March 2009, ICC-01/04-01/07-1003.

⁴ “Submission by the Registrar of a revised version of the *E-Court* Protocol of Trial Chamber I”, 27 March 2009, ICC-01/04-01/07-1003-Anx1

entire Court, which would be applied consistently and universally before all chambers.⁵ As long as there is no court-wide protocol, the Chamber considers it desirable to adopt the “Consolidated *E-Court* Protocol” used by Trial Chamber I, as technically revised by the Registry.

4. The Chamber notes, in this regard, that, according to the Registry, there have been proposals to amend the “Consolidated *E-Court* Protocol”⁶, which went beyond mere technical revision because they were “of a substantial nature”.⁷ The Chamber is of the view that substantive changes to the *E-Court* Protocol should not be implemented by an individual Chamber, but should rather be introduced on a court-wide basis. By their nature, chambers are not in a position to adopt measures that have a bearing beyond the cases they are dealing with. For this reason, the Chamber will not entertain requests for substantive changes to the *E-Court* Protocol.

5. The Chamber further takes note of the concerns expressed by the Knowledge Base Unit of the Prosecution that in order to be able to comply with the limitation in terms of file size for video files to 700 Megabytes, as provided in point (f.) on page 4 of the revised “Consolidated *E-Court* Protocol”, the parties will need to be provided with a “forensically sound” software tool.⁸ The Chamber takes this concern seriously and asks the Registry to identify such an adapted software tool that could be made available to the parties, in case they wish to submit video evidence.

⁵ “Order concerning the Presentation of Incriminating Evidence and the *E-Court* Protocol”, 13 March 2009, ICC-01/04-01/07-956, par.19

⁶ “Submission by the Registrar of a revised version of the *E-Court* Protocol of Trial Chamber I”, 27 March 2009, ICC-01/04-01/07-1003-Anx2

⁷ ICC-01/04-01/07-1003, p. 5

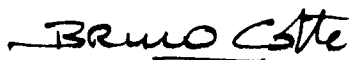
⁸ “Submission by the Registrar of a revised version of the *E-Court* Protocol of Trial Chamber I”, 27 March 2009, ICC-01/04-01/07-1003, p. 5.

FOR THESE REASONS, THE CHAMBER

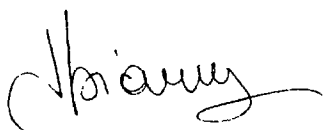
ADOPTS the revised “Consolidated *E-Court* Protocol”;

INSTRUCTS the Registry to select an appropriate software tool that will allow the parties to divide video files that are larger than 700 Megabytes and make it available to the parties if they so request.

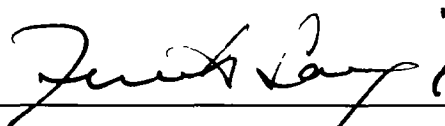
Done in both English and French, the English version being authoritative.



Judge Bruno Cotte
Presiding Judge



Judge Fatoumata Dembele Diarra



Judge Fumiko Saiga

Dated this Thursday, 9 April 2009

At The Hague