

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/10

Date: 28 April 2011

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

***IN THE CASE OF
THE PROSECUTOR V. CALLIXTE MBARUSHIMANA***

Public

Decision amending the e-Court Protocol

Decision 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 Anton Steynberg, Senior Trial Lawyer

Counsel for the Defence

Mr Nicholas Kaufman
 Ms Yael Vias-Gvirsman

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
 Participation/Reparation**

**The Office of Public Counsel for
 Victims**

**The Office of Public Counsel for the
 Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section Others**

I, Judge Cuno Tarfusser, the Single Judge of Pre-Trial Chamber I of the International Criminal Court (“Chamber” and “Court” respectively) responsible for carrying out the functions of the Chamber in relation to the case of *The Prosecutor v. Callixte Mbarushimana* in the absence of Judge Sanji Mmasenono Monageng;¹

NOTING the “Decision on issues relating to Disclosure”² issued by the Chamber on 30 March 2011, whereby the Chamber *inter alia* ordered the parties to comply with the e-Court Protocol adopted in the case of *The Prosecutor v. Abdhalla Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, as subsequently amended and attached to the Decision (“Protocol”);

NOTING the “Prosecution request to amend the e-Court Protocol” (“Prosecution Request”)³ filed on 14 April 2011, whereby the Prosecutor (i) observes that the Protocol (notably, its paragraph 27), “if, as it appears, ... is intended also to apply to the electronic data and other electronic items, it cannot in fact be applied efficiently to that type of evidence” and, accordingly, requests an amendment of the Protocol “to include provisions specifically dealing with original electronic evidence relating to this case” and (ii) requests “amendments or corrections to the portions of the Protocol which address the specific measures required for translated documents;”⁴

NOTING the “Decision on the ‘Prosecution request to amend the e-Court Protocol’” (“Decision”)⁵ issued by Single Judge Sanji Mmasenono Monageng on 15 April 2011, whereby she ordered the Registry, with the assistance of the

¹ICC-01/04-583.

² ICC-01/04-01/10-87 and its annex.

³ ICC-01/04-01/10-100.

⁴ *Ibid.*, paras 3 and 4.

⁵ ICC-01/04-01/10-104.

e-Court user Group, to file a report containing recommendations on the issues raised in the Prosecution Request;

NOTING the “Registry Report on the eCourt Protocol”⁶ filed on 21 April 2011 whereby, while highlighting the advantages and disadvantages thereof, the Registry suggests amendments to the Protocol in light of the following two reasons:

- (i) the application of the Protocol to some types of materials/items which will be potentially disclosed could lead to loss of important information contained in the originals of electronic items; and
- (ii) the application of the Protocol to the volume of the material relevant to the case (“hundreds of thousands of electronic items collected”) would be lengthy;

NOTING regulation 26 of the Regulations of the Court and regulations 10 and 26 of the Regulations of the Registry;

CONSIDERING that, in compliance with the Decision on issues related to Disclosure, the parties shall comply with the appropriate metadata in accordance with the Protocol *when submitting any evidence on which they intend to rely at the confirmation* (emphasis added);⁷

CONSIDERING that the Registry submits that for any material intended to be used at the confirmation hearing, the use of “Tiff” image format remains

⁶ ICC-01/04-01/10-118 and its Annex 1.

⁷ ICC-01/04-01/10-87, p.14.

nonetheless mandatory as well as the referencing of each page with ERN numbers;⁸

CONSIDERING therefore that, while the parties may resort to an automatic processing of the electronic items, as soon as the item is intended to be used at the confirmation hearing the conversion into "Tiff" image format shall be made;

NOTING in particular that, in respect of items and material in electronic form, the Prosecution suggests that "only metadata which can be extracted from the automatic processing of the electronic items can be provided";⁹

CONSIDERING that the Protocol aims at ensuring that all the necessary information is available electronically during the proceedings, notably to the benefit of the parties and the Chamber;

CONSIDERING that, in this respect, the Protocol defines the metadata that should accompany the materials submitted and that, as ordered by the Chamber, such metadata shall be complied with when submitting evidence intended to be used at the confirmation hearing;

CONSIDERING further that, in any event, any item intended to be used at the confirmation hearing will need to be converted into "Tiff" image format and that, as a result of this process, information in the electronic files might be lost;¹⁰

⁸ ICC-01/04-01/10-118, paras 1 and 2 at p.5.

⁹ ICC-01/04-01/10-118, p.6.

¹⁰ ICC-01/04-01/10-100.

CONSIDERING also that there is no compelling reason to treat differently evidence depending on its nature and that, accordingly, the metadata required in the Protocol shall also be provided for electronic items;

CONSIDERING therefore that the scope of paragraph 27 of the Protocol shall not be limited to the data that can be extracted from the automatic processing of the electronic items and that, accordingly, whenever a required metadata cannot be extracted from this automatic processing or is lost during the conversion process into "Tiff" image format, the disclosing party shall enter the missing data manually, if need be;

NOTING, as regards translated documents, that the Prosecution (i) highlighted technical problems concerning their ERN numbering; and (ii) requested that the Protocol be amended so as to include the provision for a "translation suffix" for such documents;

CONSIDERING that the proposed amendments to the Protocol also address the Prosecution's concerns in relation to the translated documents;

CONSIDERING finally that, in light of the foregoing and with a view to preserving the expeditiousness of the proceedings, the Single Judge is of the view that the Defence's observations on the Prosecution's Request are not necessary;

RECALLING that pursuant to the Decision, the Registry was tasked to file a report containing recommendations on the issues raised in the Prosecution's Application primarily for the purposes of the present case and that, therefore, the present decision is without prejudice to further discussions within the e-Court user Group in relation to the treatment of electronic items;


FOR THESE REASONS,

DECIDE to amend the Protocol as recommended by the Registry with the exception of the amendment suggested as to the scope of paragraph 27;

DECIDE that the metadata specified at paragraph 27 shall be provided, when applicable, regardless of whether "it is available in the original electronic item";

ORDER the Registry, as soon as feasible and no later than Monday 2 May 2011, at 16 hours, to file the amended e-Court protocol to be followed in the present case.

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



Judge Cuno Tarfusser

Single judge

Dated this Thursday 28 April 2011

At The Hague, The Netherlands