

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 28 March 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 vs. THOMAS LUBANGA DYILO**

Public

Prosecution's observations on the video-link presentations

The Office of the Prosecutor

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Background

1. On 29 January 2008, the Chamber issued the 'Decision on various issues related to witnesses' testimony during trial', in which it ordered the Victims and Witnesses Unit to prepare a presentation on the different levels of quality of audio and video-link for the Chamber, parties and participants¹.
2. On 12 March 2008, the first presentation took place with a video-link from a remote location, using a fixed satellite antenna ('the First Presentation'). On 13 March 2008, a second presentation took place, this time with a video-link from a different remote location, using a mobile satellite antenna ('Second Presentation').
3. During the public hearing of 12 March 2008, the Prosecution made preliminary observations², and was invited to make observations on the quality of the video-link³.

Prosecution's Observations

First Presentation

4. During the First Presentation, the parties and participants had the opportunity to examine a person ('Mock Witness') present at the remote location concerned. Albeit a few seconds delay, the Prosecution submits that the video-link was satisfactory for the conduct of examination in the form of questions to, and answers from the Mock Witness.

¹ ICC-01/04-01/06-1140, para. 44 (vi).

² ICC-01/04-01/06-T-78-CONF-ENG-ET 12-03-2008, page 44, lines 5-13, page 45, lines 5-7.

³ ICC-01/04-01/06-T-78-CONF-ENG-ET 12-03-2008, page 43, lines 24-25.

5. During that presentation, the Prosecution also had the opportunity to show the Mock Witness documentary evidence and a video.
6. In respect of the documentary evidence, the Prosecution believes that the transfer of the document image from and to the remote location was acceptable. However, the Prosecution notes that the transfer was conditioned upon the use of a document camera⁴, which: (i) only allows for clear transmission of a half page A4 at a time; (ii) does not allow for the comparison of documents; and (iii) requires the party or participant showing or annotating the document, to have hard copies readily available⁵.
7. In respect of the display of a video, the Prosecution believes that the transfer of the video images from the Ringtail system did not allow for the Mock Witness or the parties or participants to clearly view the video. The transmission-delay impeded the Court Officer from pausing the video at the moment indicated by the Mock Witness, preventing the relevant portions of the video being precisely identified. Furthermore, the Prosecution notes that no time-stamp markings were viewable from the Court Room and that no simultaneous interpretation of the audio was available. The latter two observations however may be unrelated to the video-link technology.

Second Presentation

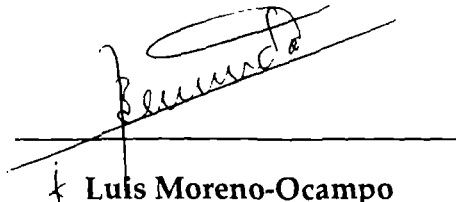
8. In respect of the envisaged Second Presentation, it appeared impossible to establish the video-link. Consequently, the exercise was cancelled.

⁴ At a later stage during the presentation, a document was shown through the Ringtail system, using PC video over the link. Using this technique, the image of the document was blurred and therefore unreadable.

⁵ The Prosecution observed no system that would allow the annotation of the evidence not already held in hard copy at either end of the link (e.g. by printing and writing on a document or by any other means).

Conclusion

9. As a result of the above, the Prosecution does not oppose live testimony by means of video-link using a fixed satellite antenna.
10. However, it submits that such video-link should only be considered for witnesses in respect of whom no videos, and no documentary evidence is used, until the technical means are improved to an extent that provide for the proper use and display thereof through video-link.



Luis Moreno-Ocampo
Prosecutor

Dated this 28th day of March 2008
At The Hague, The Netherlands