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No.: ICC-01/04-01/06
Date: 06 February 2009

TRIAL CHAMBER I

Before: Judge Adrian Fulford, President
Judge Elizabeth Odio Benito, Judge
Judge René Blattmann, Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. THOMAS LUBANGA DYILO***

Public Redaction Version

**Prosecution's Proposal for the Presentation of Video Evidence and
Request for the Prosecution to Manage the Presentation of its Video
Evidence from the Bar Table**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the

Regulations of the Court to:

The Office of the Prosecutor

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. As part of its case, the Prosecution intends to present scenes from approximately 20 videos. The Prosecution hereby submits the details of the procedure it intends to adopt for the presentation of video evidence.
2. Preliminarily, as indicated in the 'Prosecution's submissions on the use of audio/video material and on Rule 140(2)(d)'¹, the videos that the Prosecution has disclosed to the defence as incriminatory evidence contain compilations of several scenes, i.e. events filmed on different days and/or at different places. Not all scenes are relevant to the present case.
3. Given that each of the 20 videos contains both relevant and irrelevant scenes, the Prosecution has selected specific relevant scenes to present at trial (broadly defined).
4. For technical reasons², the contents of the original videos on VHS video format were copied onto CD format with the intention that they be played from a laptop, rather than from Ringtail. The content of the videos have not been altered in any way during the transfer.
5. The Prosecution intends to present the relevant scenes of the videos from a laptop and seeks the Chamber's permission to have an Information and Evidence Assistant of the Office of the Prosecutor assist in its presentation so that the relevant scenes can be played from the bar table. This manner of presentation would, in the Prosecution's submission, decrease the probability of technical malfunction and allow for a more efficient presentation.

¹ ICC-01/04-01/06-1260, paras. 9 and 10.

² The high-quality copies that were made from the original videos are too heavy to load into Ringtail. Moreover, Court Management has indicated that it is not possible to play videos directly from Ringtail.

6. For all of the relevant scenes the Prosecution intends to show, transcriptions have been made (French or English) which have been disclosed to the Defence.³ The Prosecution intends to tender both the video scenes and the corresponding translations into evidence.
7. The scenes that the Prosecution intends to tender fall into two categories: (i) scenes from approximately thirteen videos (copied onto CDs) that will be tendered through witnesses 0030 and 0002 [REDACTED]; and (ii) scenes from approximately seven videos (copied onto CDs) that will be tendered either through witnesses or, alternatively, from the bar table.

Proposed Procedure for Videos (copied onto CDs) which the Prosecution intends to tender through witnesses 0030 and 0002

8. With respect to the first group of CDs, the Prosecution intends to show both witnesses the beginning of each identified scene, with sound, to establish appropriate foundation.
9. However, in the interest of judicial economy, [REDACTED], the Prosecution does not intend to play the whole scene, but rather the relevant portions within the scene. The Prosecution thus intends to move to the relevant portions within the scene and show only these portions of the scene to the witness, depending upon the evidence given.
10. At times, the portions concerned will be subtitled (in French or English, corresponding to the disclosed transcripts).⁴

³ As indicated in filing ICC-01/04-01/06-1260, paras. 11 to 14.

⁴ With respect of one video, namely video DRC-OTP-0127-0061, the Prosecution intends to show two non-transcribed portions without sounds, as the portions contain no discussion.

11. The Prosecution intends to follow this procedure for each scene. However, given that each CD contains several different scenes, the Prosecution intends to tender the scenes on the CD only once the witness has testified regarding all relevant scenes. After the witness has testified regarding all scenes on that CD, the Prosecution will provide the CD to the Court Officer, seeking to admit the relevant scenes.⁵

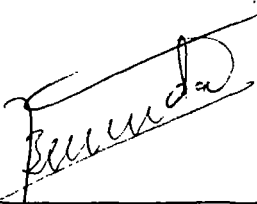
Proposed Procedure for Videos (copied onto CDs) which the Prosecution may seek to admit through a witness, or alternatively, from the bar table

12. With respect to the second group of videos, the Prosecution may show the videos to certain witnesses, and if so, the Prosecution intends to follow the same technical procedure as indicated above. However, for this category of video, the length of the portion the Prosecution intends to show to a witness will depend on the witness's testimony in relation to the content of the video.
13. Subsequently, the Prosecution will seek to tender these videos (copied onto CDs) either through the appropriate witness or, alternatively, from the bar table.

⁵ In theory, the Prosecution could have copied the scenes on separate CDs, and tender each CDs after the discussion of each individual scene. However, when the scenes are copied as individual excerpts, the time-codes thereof start at minute 00.00.00. As such, they would not be in line with the transcripts / translations of the videos, which follow the time-codes of the video, and create confusion and difficulty in following each scene.

Request

14. Based on the foregoing, the Prosecution seeks the approval of the Chamber to proceed as proposed with respect to the video evidence, and requests authorization to manage the presentation of video evidence from the Prosecution's bar table.



Luis Moreno-Ocampo
Prosecutor

Dated this 6th of February 2009

At The Hague, The Netherlands