

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 03 March 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 Redacted Version
with Public Redacted Annexes 1, 2 and 3**

**Prosecution's Submission on the presentation of Video Evidence and Requests for
Admission of Evidence and in relation to the Translations of the Videos**

Source: Office of the Prosecutor

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

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Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Other

Background

1. During the examination of witness 0030 by the Prosecution on 16, 17 and 18 February 2009, and the re-examination of witness 0030 on 19 February, the Prosecution presented scenes of video recordings and asked the witness to comment upon them. [REDACTION],¹ the presented scenes were marked for identification by way of an “MFI” (Marked for Identification) number pending an application by the Prosecution to admit the videos into evidence once the witness’ testimony was complete. The Defence does not object to the admission of videos [REDACTION] for which events witness 0030 testified that he was present.²
2. On 18 February 2009, the Trial Chamber ordered the Prosecution to provide, in a filing, a description of the video scenes that had been shown to witness 0030, together with an indication of the relevance to the Prosecution’s case of each presented scene. The Chamber further requested that the Prosecution clarify whether it intended to request the admission into evidence of a complete scene or only the limited portions of scenes as presented during the trial.³
3. In response, the Prosecution submits that it intends to seek admission solely of the portions of the scenes that were presented during the examination of witness 0030 and does not intend to seek admission of those portions of the scene that were not shown in Court.⁴ Moreover, in **Annex 1** the Prosecution has provided a chart of all the video portions that the Prosecution intends to rely on and seek admission of. In **Annex 2**, the Prosecution has set out a brief

¹ [REDACTION].

² [REDACTION] See also ICC-01/04-01/06-T-0129-CONF-ENG RT, page 33, lines 9-20; [REDACTION]; and ICC-01/04-01/06-T-0130-CONF-ENG RT, page 70, lines 15-25 and page 71, lines 1-10 which continues at ICC-01/04-01/06-T-0130-CONF-ENG RT, page 72, lines 2-4.

³ ICC-01/04-01/06-T-0130-CONF-ENG RT, page 3, lines 16 to 25 and page 4, lines 1 to 25 and page 5, lines 1 and 2.

⁴ In very few instances the Prosecution will make reference to lines of transcripts outside of the portion that was shown in Court, for background purposes only.

description of each such portion with an indication of its relevance to the Prosecution's case. In **Annex 3**, the Prosecution attaches a compilation of the translations of the portions concerned. The most relevant passages of the translations are highlighted in grey.

4. On 18 February 2003, some discussion took place on the translations of some of the portions of the videos played at trial. The Chamber requested that the Prosecution submit a transcript of the portions concerned to the parties and participants.⁵ After further difficulties, the Chamber invited the Prosecution to consider carefully how to deal with discrepancies between the instant (in-court) translations and the ones offered by the Office of the Prosecutor (OTP).⁶ Finally, the issue was addressed a third time, in respect of a specific term used by Thomas LUBANGA in one of his speeches.⁷
5. In respect of the above, the Prosecution submits that it has commissioned the translation of the scenes of videos upon which it intends to rely at trial. These translations were prepared by the language unit of the OTP. In order to translate the video scenes, a number of steps were followed. First, the OTP transcription unit made full transcripts of the scenes concerned. On average, one transcriber can transcribe 15 minutes of video per day.
6. Next, one translator of the OTP language unit translated the transcribed text. For this process, on average, one translator needs one hour and a half to translate one page of transcribed text. The translation subsequently underwent a quality control by a second translator. Both the transcribers and the translators worked under the best possible office conditions, i.e. with sufficient time to re-think, re-read or re-listen to sentences and with optimal audio facilities.

⁵ ICC-01/04-01/06-T-0130-CONF-ENG RT, page 14, lines 18-22.

⁶ ICC-01/04-01/06-T-0130-CONF-ENG RT, page 18, line 21 to page 19, line 12.

⁷ ICC-01/04-01/06-T-0130-CONF-ENG RT, page 77, line 14-22.

7. All of the relevant transcripts and translations were disclosed to the Defence in 2006 and 2007. In the years following disclosure, the Defence did not raise any objections to the translations or transcription provided by the Prosecution. In the two weeks prior to the testimony of witness 0030, the Prosecution provided the Defence with the subtitled versions of the excerpts of the video scenes that it intended to present during the examination of witness 0030, in order for the Defence to verify the translations. The Defence agreed in principle to the use of subtitles and did not raise any objections regarding the substance of the subtitles/ translations.
8. Suddenly, upon completion of the testimony of witness 0030, the Defence has taken the position that it cannot agree with any of the translations provided.
9. The Prosecution submits that the Defence ought to be in a position to indicate precisely the specific passages to which they take issue, in order to reduce the significant time and expense associated with preparing a new translation of each scene. Should the Defence refuse to do so and bearing in mind the great length of time required to prepare even one full translation, the Prosecution suggests that the transcripts and translations prepared by the Prosecution be provided to the Registry for use as a basis for French translation. This would significantly reduce the time that the Registry would need to compare the accuracy of OTP translations with the words spoken in the video scenes.⁸
10. For the purpose of the present filing and in the interests of time, the Prosecution has based its indication of the relevance of each presented video scene on the existing translations prepared and transcribed by the OTP.

⁸ In annex 2, the Prosecution has indicated the line numbers of the transcripts that correspond to the excerpts that were shown at trial and discussed in the present filing.

Request

11. Based on the foregoing, the Prosecution requests the admission of the excerpts as indicated above in the following videos: MFI-P-00025, MFI-P-00026, MFI-P-00027, MFI-P-00028, MFI-P-00030, MFI-P-00031, MFI-P-00032, MFI-P-00033, MFI-P-00034, MFI-P-00035, MFI-P-00036, MFI-P-00037, MFI-P-00039, MFI-P-00040, MFI-P-00041.
12. Moreover, the Prosecution requests that the Defence be asked to indicate the specific passages to which they take issue, or, alternatively, that the Prosecution be allowed to transfer the transcripts and translations of the videos concerned to Registry so that Registry can verify its accuracy.



Luis Moreno-Ocampo
Prosecutor

Dated this 3rd of March 2009

At The Hague, The Netherlands