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Pénale
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**International
Criminal
Court**

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

Date: **30 June 2009**

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Hans-Peter Kaul

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

Public

**with Annexes A and B - Confidential, *ex parte*, only available to the Office of the
Prosecutor**

**Prosecution's Urgent Application to Be Permitted to Present as Incriminating
Evidence Transcripts and Translations of Videos and Video DRC-OTP-1042-0006
pursuant to Regulation 35 and Request for Redactions**

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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**Unrepresented Applicants for
Participation/Reparation**

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**Victims Participation and Reparations
Section**

Other

The Office of the Prosecutor ("Prosecution") seeks permission to add to its List of Incriminating Evidence ("List"), 25 transcripts and 14 translations of these transcripts.¹ The Prosecution also seeks the addition of newly received video DRC-OTP-1042-0006² to the same List and the Prosecution requests redactions to one of the transcripts and its corresponding translation as submitted with this application.

Request for Receipt of the Annexes to this Filing as Confidential Ex Parte

The Prosecution requests that the Annexes to this filing be received by the Chamber as confidential, *ex parte*, only available to the Office of the Prosecutor as they relate to evidence which the Prosecution seeks to add to its List. The Prosecution submits that such classification is also necessary to protect the identity of the persons regarding whom redactions are sought to one transcript and corresponding translation.

Background

1. On 23 January 2009, the Prosecution was ordered to disclose all incriminating evidence to the Defence by 30 January 2009 ("Order").³
2. In compliance with the Order, the Prosecution disclosed to the Defence, *inter alia*, 24 videos as incriminating evidence prior to 30 January 2009.⁴

¹ Appended to this filing as Annexes A1 to A39.

² Appended to this filing as Annexe B.

³ Ordonnance fixant le calendrier de communication des éléments de preuve à charge et à décharge avant le procès et la date d'une conférence de mise en état, ICC-01/04-01/07-846.

⁴ Videos DRC-OTP-0083-0002, DRC-OTP-1017-1482, DRC-OTP-0080-0011, DRC-OTP-0113-0218, DRC-OTP-0087-0014, DRC-OTP-0080-0010, DRC-OTP-0081-0004, DRC-OTP-0116-0002, DRC-OTP-0127-0061, DRC-OTP-0081-0007, DRC-OTP-1018-0145, DRC-OTP-0035-076, DRC-OTP-0080-0006, DRC-OTP-0124-0008, DRC-OTP-0120-0294, DRC-OTP-0081-0009, DRC-OTP-0036-0194, DRC-OTP-0151-0665, DRC-OTP-0124-0014, DRC-OTP-0127-0065, DRC-OTP-0081-0012, DRC-OTP-0082-0004, DRC-OTP-0081-0011, and DRC-OTP-0081-0006.

3. Additionally, on 18 May 2009, the Prosecution was permitted⁵ to add video DRC-OTP-0155-0004 to its List.
4. All transcripts of relevant segments of the videos listed above were completed by 25 June 2009. Fourteen translations of the transcripts were completed by 26 June 2009.
5. The Prosecution is still awaiting the translations of six transcripts.⁶ These six translations are expected to be completed by 21 August 2009 at the latest, with some available for disclosure before that date. Additionally, while an English translation is already available for video DRC-OTP-0120-0294⁷, the Prosecution will prepare a French translation of this transcript as soon as possible.
6. On 8 June 2009, the Prosecution received, from a new witness, video DRC-OTP-1042-0006, which is a more complete version of incriminating video DRC-OTP-0155-0004 disclosed on 20 June 2008 pursuant to Rule 77⁸ and later as incriminating evidence on 5 May 2009⁹. The situation in relation to video DRC-OTP-1042-0006 is dealt with separately below.

⁵ Décision relative à la requête urgente du Procureur aux fins d'autorisation d'utilisation d'une vidéo en tant qu'élément de preuve à charge (norme 35 du Règlement de la Cour), ICC-01/04-01/07-1144. See further Prosecution's Urgent Application to be Permitted to Present as Incriminating Evidence a Video Previously Disclosed to the Defence Pursuant to Rule 77 [Regulation 35], ICC-01/04-01/07-1128.

⁶ Four transcripts do not necessitate a translation.

⁷ Regulation 39(2) states that documents and materials filed with the Registry shall be in English or French.

⁸ Preconfirmation Rule 77 Package 17.

⁹ INCRIM Package 34. See further Prosecution's Communication of Incriminatory Evidence Disclosed to the Defence on 5 May 2009, ICC-01/04-01/07-1110.

Transcripts and Translations of Videos

7. The Prosecution seeks permission to add the 25 transcripts and 14 translations, referred to above, to its List pursuant to Regulation 35 of the Regulations of the Court ("Regulations"). The Prosecution is applying today for such permission as it was not possible to finalise these transcripts and translations earlier because of the length of time required to undertake such a task.¹⁰

8. The Prosecution would like to add that although these transcripts and translations are not yet disclosed, the actual videos were disclosed as incriminating evidence prior to 30 January 2009 (at least seven months prior to the commencement of the Trial). Accordingly, the Prosecution submits that the Defence has been well positioned to prepare its defence on the basis of the video footage already provided.

9. If the current request is granted by the Chamber, the Defence will have access to the 25 transcripts and 14 translations in a timely manner, i.e. approximately three months prior to the commencement of the Trial.

10. As detailed at paragraph 5, the six translations that are not yet completed will be ready for disclosure by 21 August 2009 at the latest, with some available for disclosure before that date. However, if the current request is granted by the Chamber, the Defence will already have had access to the transcripts of the relevant segments of the same videos approximately three months prior to the commencement of the Trial. The Prosecution notes that it proposes to seek

¹⁰ In this regard, the Prosecution notes that the average time necessary to transcribe one hour of video is approximately 5.8 days (for English and French language footage) and 6.1 days (Swahili and Lingala footage). The time necessary to translate one hour of video fluctuates significantly according to scenes and language, but on average amounts to 10 days.

leave to submit the finalised versions of these translations once they are completed.

11. The Prosecution respectfully submits that the aforementioned reasons establish good cause within the meaning of Regulation 35(2) of the Regulations of the Court, to permit the addition of the 25 transcripts and 14 translations to the Prosecution's List.

Video DRC-OTP-1042-0006

12. The Prosecution recently obtained video DRC-OTP-1042-0006 from Witness 444. The Prosecution first became aware of the existence of Witness 444 during the interview of Witness 30 on 20 February 2009. The Prosecution then sought to trace the contact details of Witness 444 and succeeded in contacting Witness 444 on 5 May 2009. It took several weeks to organize delivery of the video via courier. The Prosecution finally received video DRC-OTP-1042-0006 on 8 June 2009.

13. Upon receipt, video DRC-OTP-1042-0006 was analysed and reviewed. The Prosecution determined that the video footage within it mostly overlaps with video DRC-OTP-0155-0004.¹¹ As detailed above, the Prosecution previously disclosed video DRC-OTP-0155-0004 to the Defence, initially pursuant to Rule 77 on 20 June 2008, and subsequently as incriminating evidence on 5 May 2009.

¹¹ E.g. images of child combatants at timestamps [00:12:20 – 0:12:33] and [00:36:53 – 0:39:31] of DRC-OTP-1042-0006 match those at timestamps [00:46:51-00:47:17] and [01:08:06-1:10:08] of DRC-OTP-0155-0004.

14. The Prosecution now seeks to add video DRC-OTP-1042-0006 to its List in light of its superior video and audio quality, and the limited, but relevant, additional footage contained within it.¹²

15. The Prosecution submits that the Defence will not suffer prejudice from the addition of video DRC-OTP-1042-0006 to the Prosecution's List, since much of the footage in video DRC-OTP-1042-0006 is contained in video DRC-OTP-0155-0004. If this application is granted, Defence will receive video DRC-OTP-1042-0006 three months in advance of the Trial. The Prosecution observes further that video DRC-OTP-1042-0006 also includes footage with the accused Mathieu Ngudjolo Chui.

16. The Prosecution respectfully submits that the aforementioned reasons establish good cause within the meaning of Regulation 35(2) of the Regulations to add video DRC-OTP-1042-0006 on the Prosecution's List of Incriminating Evidence.

17. The Prosecution proposes to interview Witness 444 during the week of 20 July 2009 to authenticate video DRC-OTP-1042-0006 and obtain certain clarifications regarding its contents. The Prosecution does not envision any protective measures being required for Witness 444.

¹² E.g. images of a child combatant at timestamps [1:21:30 – 1:22:12] and images of Mathieu Ngudjolo at timestamps [01:38:25 – 1:39:28] and [01:44:00 – 01:46:44] of DRC-OTP-1042-0006.

**Request for redactions to the Transcript and Translation of video
DRC-OTP-0155-0004**

18. When disclosing video DRC-OTP-0155-0004 to the Defence, the Prosecution sought¹³ and obtained¹⁴ permission to apply, *inter alia*, the following protective measures:

- Voice distortions: Minutes 00:31:27 to 00:34:42; 00:34:42 to 00:57:30; 01:03:48 to 01:05:04; and 01:05:05 to 01:36:11.
- Redaction of name: Minutes 00:34:26 to 00:34:33.

19. The transcript and translation of the relevant segments of video DRC-OTP-0155-0004 are found in Annex A24 and A25 to this filing. Should the Chamber grant the current request to present as incriminating evidence the 25 transcripts and 14 translations, the Prosecution requests that it be authorized to make redactions to the transcript and translation of video DRC-OTP-0155-0004 that correspond to the protective measures set out in paragraph 18, above. The Prosecution submits that such redactions will be necessary to ensure the continued effectiveness of the protective measures applied to video DRC-OTP-0155-0004.

¹³ ICC-01/04-01/07-899.

¹⁴ ICC-01/04-01/07-989.

Conclusion

20. The Prosecution requests the Chamber pursuant to Regulation 35 to permit the addition of the 25 transcripts and 14 translations and video DRC-OTP-1042-0006 to the Prosecution's List of Evidence and to authorize the requested redactions.



Luis Moreno-Ocampo, Prosecutor

Dated this 30th day of June 2009

At The Hague, The Netherlands