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

Date: **17 July 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 and 2**

Prosecution's Application for Admission of Additional Video Excerpts

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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**Victims Participation and Reparations
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Background

1. During the Prosecution's examination of Witness 0014 on 29 May 2009 and its examination of Witness 0046 on 8 and 9 July 2009, the Prosecution played several scenes of video recordings, without sound, and asked the witnesses to comment upon them. Not having been present during the filming of these videos, the witnesses commented only on their location; persons present in the scenes; and the time-period during which the scenes was filmed (in the case of witness 0046).
2. The excerpted scenes were admitted and given evidence number ("EVDs"). The Prosecution now moves for the admission of the additional portions of the videos, including sound.
3. In **Annex 1** the Prosecution has provided a chart of all the video portions that the Prosecution seeks admission of. In **Annex 2**, the Prosecution attaches a compilation of the translations of the portions of videos concerned. The most relevant passages of the translations are highlighted in grey.
4. The Prosecution also seeks leave to play the videos in court so that they become part of the publicly-accessible record or, alternatively, that the transcripts be included in the public record.¹
5. Together with present filing, the Prosecution provides the Registry with six copies of the videos. A public redacted version of this filing is filed simultaneously.²

¹ As regards videos DRC-OTP-0116-0011 and DRC-OTP-0116-0005, the Prosecution notes that a final decision on the confidentiality level of certain excerpts from these two videos at trial is pending while the Prosecution [REDACTED]. The Prosecution submits that all portions from these two videos should be assigned the same level of confidentiality.

Videos concerned

Video DRC-OTP-0116-0011 (EVD-OTP-00487³) and DRC-OTP-0116-0005 (EVD-OTP-00488⁴)

6. Minutes 00.42.00 to 00.42.57 and minutes 00.57.30 to 01.00.28 of video DRC-OTP-0116-0011 as well as minutes 00.00.00 to 00.02.00 of video DRC-OTP-0116-0005 were shown to Witness 0046 on 8 July 2009.⁵ The Prosecution seeks admission of minutes 00.42.00 to 00.42.57 and minutes 00.50.39 to 01.00.28 of video DRC-OTP-0116-0011 as well as minutes 00.00.00 to 00.29.25 of video DRC-OTP-0116-0005, all with sound.
7. The videos are the raw footage of a documentary entitled 'The devil's footpath', produced by Insight News Television. The first video (DRC-OTP-0116-0011) depicts [REDACTED].⁶
8. [REDACTED].
9. Witness 0046 confirmed during her testimony that [REDACTED].⁷ She also testified that the footage was filmed [REDACTED].⁸ In the video, several references are made to [REDACTED].⁹ In addition, in the video [REDACTED].¹⁰ The Prosecution therefore submits that the footage was filmed between June 2003 and the end of 2003.

² For the same reasons as set out in footnote 1, the prosecution will not provide the transcript of videos DRC-OTP-0116-0005 and DRC-OTP-0116-0011 in annex 2.

³ See ICC-01/04-01/06-T-206-CONF-ENG ET, page 59, line 1.

⁴ See ICC-01/04-01/06-T-206-CONF-ENG ET, page 59, line 2.

⁵ See ICC-01/04-01/06-T-206-CONF-ENG ET, page 57, lines 7 to 10.

⁶ There is an overlap in the translation: translation DRC-OTP-0160-0564 (of DRC-OTP-0116-0011), lines 473 to 764 are identical to translation DRC-OTP-0160-0517 (of DRC-OTP-0116-0005), lines 5 to 293.

⁷ See ICC-01/04-01/06-T-207-CONF-ENG ET, page 7, line 9.

⁸ See ICC-01/04-01/06-T-207-CONF-ENG ET, page 7, lines 11 to 13.

⁹ Transcript of the video: DRC-OTP-0160-0564, lines 275 to 303 and DRC-OTP-0160-0517, lines 305 to 318.

¹⁰ Transcript of the video: DRC-OTP-0160-0517, line 52.

10. With respect to the place where the video was filmed, Witness 0046 indicated that [REDACTED]¹¹, in [REDACTED].¹² In the documentary itself, several references were made to the fact that it is [REDACTED].¹³ The Prosecution therefore submits that the documentary was filmed in Bunia.
11. The Prosecution submits that the scene is relevant to the following issues: [REDACTED].
12. The raw footage was filmed contemporaneously with the events relevant to the charges. It was not prepared for judicial purposes and it was prepared in the normal course of business for the production company. It contains continuous views and captures [REDACTED]. The footage is unedited and contains even the instructions given [REDACTED]. Aspects of the video were corroborated by other oral evidence, such as the testimony of witness 0046. These factors establish the reliability and authenticity of the video.

Video DRC-OTP-0159-0441 (EVD-OTP-00461¹⁴)

13. Minutes 00.00.43 to 00.04.36 of this video were shown to witness 0014 on 29 May 2009.¹⁵ The Prosecution requests the admission of the entire scene consisting of minutes 00.00.00 to 00.04.36 with sound.
14. The video is a short documentary made on behalf of and broadcast on the French television channel 'France 2'. The documentary shows Hema child soldiers who appear to be under the age of 15. One of these child soldiers is interviewed by a journalist. The child soldier explained how he himself killed the enemy and how well he can use the weapons. He showed the journalist

¹¹ See ICC-01/04-01/06-T-207-CONF-ENG ET, page 2, lines 12 and 13.

¹² See ICC-01/04-01/06-T-207-CONF-ENG ET, page 2, line 3.

¹³ Transcript of the video: DRC-OTP-0160-0564, line 294, DRC-OTP-0160-0517, line 251.

¹⁴ See ICC-01/04-01/06-T-182-CONF-ENG CT, page 54, line 5.

¹⁵ See ICC-01/04-01/06-T-182-CONF-ENG CT, page 49, line 19.

how to carry and manipulate a Rocket Propelled Grenade (RPG). The journalist also interviewed the commander of the group, who explains that the 'shorter' soldiers fight very well, that they are disciplined and that he likes to work with them only.

15. Witness 0014 confirmed during his testimony that the soldiers in the video are UPC soldiers.¹⁶ He also recognised one of the adults present at minute 00.02.42¹⁷ as a person [REDACTED] UPC headquarters (in August 2002) reporting to Richard LONEMA and Floribert KISEMBO, both founding members of the UPC.¹⁸ Finally, several references are made in the documentary to the Lendu being the enemy.¹⁹
16. The documentary was broadcast on the news programme of France 2, on 13 June 2003 at 20.00 pm.²⁰ In the documentary, the journalist discusses the arrival of the French (i.e. Artemis, in June 2003) with one of the child soldiers.²¹ The timing of the broadcast and the content of the tape establishes that the documentary was filmed in June 2003.
17. Witness 0014 identified the film location as an area called 'sous-région' in Bunia.²² In the documentary itself, reference is made to the fact that it was filmed in Bunia.²³ These factors substantiate that the video was filmed in Bunia.

¹⁶ See ICC-01/04-01/06-T-182-CONF-ENG CT, page 51, line 3.

¹⁷ See ICC-01/04-01/06-T-182-CONF-ENG CT, page 59, line 11.

¹⁸ See ICC-01/04-01/06-T-182-CONF-ENG CT, page 58, lines 5 to 24.

¹⁹ Transcript of the video: DRC-OTP-0176-0655: at line 27, reference is made to the Lendu being the enemy; at line 34, the child soldier indicates that he killed 5 Lendus there; at line 53 it is indicated that the Lendus would have killed the father of the child soldier; at line 93, it is indicated that this group repelled an attack by the Lendus; between lines 105 and 119 the child soldier explains that he would be slain by the Lendus if they would go to school together.

²⁰ The video was bought on the website of the Institut National de l'Audiovisuel: <http://www.ina.fr/fictions-et-animations/feuilletons-et-series/video/2315161001034/enfants-soldats-au-congo.fr.html> the information as to the date that the video was broadcast and the producer is indicated on this website.

²¹ Transcript of the video: DRC-OTP-0176-0655, lines 94 to 102.

²² See ICC-01/04-01/06-T-182-CONF-ENG CT, page 50, lines 16 to 24.

18. The Prosecution submits that the scene is relevant to the following issues: (i) the visible presence of what clearly appear to be child soldiers who are under the age of 15 in the UPC/FPLC; (ii) their participation and use in combat; and (iii) the preference of UPC/FPLC commanders to work with children.

19. The documentary was filmed contemporaneously with the events relevant to the charges. It was not prepared for judicial purposes and it was prepared in the normal course of business for the television company. It too contains continuous views and captures conversations between the journalist and child soldiers, in the format of questions and answers that flow logically one to the next. The video was broadcasted on the news programme of 'France 2', a renowned French television channel. Aspects of the video were corroborated by other oral evidence, such as the testimony of witness 0014. These factors establish the reliability and authenticity of the video.

Request

20. Based on the foregoing the Prosecution contends that the videos cited above are relevant, reliable, and authenticated, and therefore seeks the admission of:
 - (i) Minutes 00.42.00 to 00.42.57 and minutes 00.50.39 to 01.00.28 of video DRC-OTP-0116-0011;

 - (ii) minutes 00.00.00 to 00.29.25 of video DRC-OTP-0116-0005; and

 - (iii) minutes 00.00.00 to 00.04.36 of video DRC-OTP-0159-0441.

²³ Transcript of the video: DRC-OTP-0176-0655, lines 16 and 94.



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Prosecutor

Dated this 17th of July 2009

At The Hague, The Netherlands