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TRIAL CHAMBER I

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

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

Public

**Prosecution's Response to the Defence's « Requête de la Défense aux fins de
reconsidération de l'ordonnance de la Chambre de première instance I portant le
numéro ICC-01/04-01/06-2432, datée du 12 mai 2010 »**

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

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Introduction

1. On 12 May 2010, the Chamber decided in its “*Order on numbering of evidence*” (12 May 2010 Order) that from that moment onwards all exhibits should receive an EVD number, unless there is an objection in which case the exhibit will be assigned an MFI number.¹ It annexed three lists of exhibits bearing MFI numbers (Annexes 1 to 3) and instructed the parties and participants to review the exhibits and “*to file objections to the admission into evidence of any of them by 28 May 2010*”.²
2. Neither the Prosecution nor the Defence filed any observations or objections.
3. On 11 October 2010, some four and a half months after the expiration of the deadline, the Defence filed a “*Requête de la Défense aux fins de reconsidération de l’ordonnance de la Chambre de première instance I portant le numéro ICC-01/04-01/06-2432, datée du 12 mai 2010*” in which it objected to 74 of the listed exhibits being admitted into evidence.³
4. The Prosecution submits that the request of the Defence should be denied (i) because it was introduced too late, and (ii) because of the administrative nature of the Chamber’s decision.

Submissions

5. The Defence was given an unambiguous deadline to respond before 28 May 2010⁴, but did not submit any objections. As a result, and in accordance with the 12 May 2010 Order, the documents listed in Annexes 1 to 3 were assigned EVD numbers.⁵ Moreover the deadline to request leave to appeal the decision has

¹ ICC-01/04-01/06-2432, para. 2.

² ICC-01/04-01/06-2432, paras. 10 to 12.

³ ICC-01/04-01/06-2584-Conf.

⁴ ICC-01/04-01/06-2432, para. 11.

⁵ The EVD numbers were confirmed by an e-mail from Registry to the parties and participants on 14 June 2010 at 11.31 am.

passed. The Chamber's decision on these documents is therefore *res judicate* or final. Consequently, the Defence's request is late and should not be entertained.

6. Secondly, as the Chamber indicated in the 12 May 2010 Order, the Chamber has adopted a revised procedure for the numbering of exhibits to make the administration of the case record simpler and more efficient. The introduction of the 12 May 2010 Order reads: *"For the efficient administration of the record of the trial, pursuant to Article 64(10) of the Statute, bearing in mind the obligation of the Registrar to make, and preserve, a full and accurate record of all proceedings under Rule 137 of the Rules of Procedure and Evidence, and following consultations with the Registry, the Chamber adopts a revised procedure for the numbering of exhibits".*⁶
7. Hence, the Order has a purely administrative nature. The Prosecution trusts that the Chamber will evaluate every exhibit that was given an EVD number on its own merits, taking into account the context in which it was introduced, in order to give it the appropriate weight. However, and as indicated in the 12 May 2010 Order, numbering all exhibits in the same manner facilitates simple and efficient record-keeping.

Relief sought

8. As a result of the foregoing, the Prosecution respectfully submits that the Defence request should be denied.



Luis Moreno-Ocampo, Prosecutor

Dated this 2nd day of November 2010
At The Hague, The Netherlands

⁶ ICC-01/04-01/06-2432, introduction.