

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 7 November 2006

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Single judge

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. Thomas Lubanga Dyilo***

Public Document

Decision on the Defence "Request to exclude video evidence which has not been disclosed in one of the working languages"

The Office of the Prosecutor

Mr Luis Moreno Ocampo

Ms Fatou Bensouda

Mr Ekkehard Withopf

**Legal Representatives of the Victims
a/0001/06 to a/0003/06 and a/105/06**

Mr Luc Walley

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

Office of Public Counsel for the Victims

Ms Paolina Massida

Counsel for the Defence

Mr Jean Flamme

Ms Véronique Pandanzyla

**Office of Public Counsel for the
Defence**

Ms Melinda Taylor

I, Judge Claude Jorda, judge at the International Criminal Court (“the Court”);

NOTING the “Request to exclude video evidence which has not been disclosed in one of the working languages” (“the Defence Application”), filed by the Defence on 2 November 2006;¹

NOTING the Response to the Defence “Request to exclude video evidence which has not been disclosed in one of the working languages” (“the Prosecution Response”), filed by the Prosecution on 6 November 2006;²

NOTING articles 50 (2), 61, 67 and 69 (4) of the Rome Statute (“the Statute”) and rule 121 of the Rules of procedure and evidence (“the Rules”);

CONSIDERING that between 9 June and 23 August 2006, the Prosecution disclosed 18 video excerpts to the Defence; that, on 28 August 2006, the Prosecution included the said video excerpts in the Prosecution List of Evidence filed along with the Prosecution Charging Document; and that prior to the filing of the Defence Request on 2 November 2006, the Defence had not raised the issue of the lack of translation, nor it has requested a translation, of any of these video excerpts into one of the two working languages of the Court;

CONSIDERING that the Defence now requests that the Chamber order that nine of the said 18 video excerpts be excluded from the list of evidence on which the

¹ ICC-01/04-01/06-642.

² ICC-01/04-01/06-662.

Prosecution intends to rely at the confirmation hearing because these videos are partially or predominantly in Swahili;

CONSIDERING that pursuant to article 61 (3) of the Statute, within a reasonable time before the hearing, Thomas Lubanga Dyilo must be provided with a copy of a document containing the charges on which the Prosecutor intends to bring him to trial and be informed of the evidence on which the Prosecutor intends to rely at the confirmation hearing; and that, pursuant to article 67 (1) of the Statute, in the determination of any charge, Thomas Lubanga Dyilo is *inter alia* entitled to be informed promptly and in detail of the nature, cause and content of the charge, in a language which he fully understands and speaks;

CONSIDERING that the above-mentioned material was transmitted to the Defence between 9 June and 23 August 2006, and that Thomas Lubanga Dyilo fully understands and speaks Swahili;

CONSIDERING, however, that under no circumstances may evidence not translated into one of the working languages of the Court at the time of commencement of the confirmation hearing be admitted into evidence insofar as the Chamber must be in a position to fully understand the evidence on which the parties intend to rely at the hearing; and considering, therefore, that pursuant to article 69(4) of the Statute, video excerpts (i) which are not translated into one of the working language of the Court by Thursday 9 November 2006 at 9h30 and (ii) whose translation is not made available to the Chamber and the Defence by that time must be declared inadmissible;

CONSIDERING further that, in principle, in order for the Court to conduct its business effectively, the Prosecution must be prepared to provide the evidence on which it intends to rely at the confirmation hearing in one of the working languages

of the Court by the time it is required to file the Prosecution List of Evidence and the Prosecution Amended List of Evidence in accordance with rule 121 (3), (4) and (5) of the Rules;

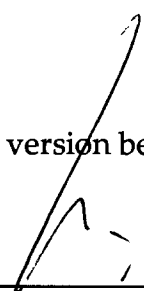
FOR THESE REASONS

DECIDE, pursuant to article 69 (4) of the Statute, to declare inadmissible for the purpose of the confirmation hearing those video excerpts:

- (i) which are not translated into one of the working languages of the Court by Thursday 9 November 2006 at 9h30; and
- (ii) whose translation into one of the working languages of the Court is not made available to the Chamber and the Defence by the said time-limit;

DECIDE to deny the remaining requests contained in the Defence Application.

Done in both English and French, the English version being authoritative.



Judge Claude Jorda
Single judge

Dated this Tuesday 7 November 2006

At The Hague

The Netherlands