

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 June 2008

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

**Decision on prosecution's requests to add items to the evidence to be relied on at
trial filed on 21 April and 8 May 2008**

Decision/Order/Judgment to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Mr Luc Walley
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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber I (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, delivers the following Decision on the “Prosecution’s communication of original versions of 37 items disclosed to the Defence on 15 April 2008 and application for authorisation to add 19 further items of disclosed evidence to the evidence to be relied on at trial” of 21 April 2008 and the “Prosecution’s application for authorisation to add further items to the evidence to be relied on at trial” of 8 May 2008:

I. BACKGROUND

1. On 21 April 2008 the Office of the Prosecutor (“prosecution”) filed the “Prosecution’s communication of original versions of 37 items disclosed to the Defence on 15 April 2008 and application for authorisation to add 19 further items of disclosed evidence to the evidence to be relied on at trial” (“prosecution’s first application”).¹
2. On 8 May 2008, the prosecution filed the “Prosecution’s application for authorisation to add further items to the evidence to be relied on at trial” (“prosecution’s second application”).²
3. On 13 May 2008, the defence filed its “Réponse de la Défense à la ‘Prosecution’s communication of original versions of 37 items disclosed to the Defence on 15 April 2008 and application for authorisation to add 19 further items of disclosed evidence to the evidence to be relied on at trial’ and ‘Prosecution’s application for authorisation to add further items to the evidence to be relied on at trial’”.³

¹ ICC-01/04-01/06-1287, and confidential prosecution and defence only Annex

² ICC-01/04-01/06-1312, and confidential prosecution and defence only Annex.

³ ICC-01/04-01/06-1321.

II. SUBMISSIONS

Prosecution

4. In the **prosecution's first application** the prosecution informed the Chamber that on 15 April 2008 it disclosed 56 incriminating items as incriminating evidence with prior agreement of the defence. The disclosed items refer to three witnesses (DRC-OTP-WWWW-0297, DRC-OTP-WWWW-0187, DRC-OTP-WWWW0055) and are tapes, transcripts and translations, investigator's reports and notes of interviews related to these three witnesses. The prosecution stated that although the tapes of their substantive interviews had been disclosed to the defence by the 28 March deadline set by the Trial Chamber, it had failed to disclose to the defence certain limited material relevant to these witnesses due to an oversight.⁴
5. Of these 56 items disclosed on 15 April 2008, the prosecution informed the Chamber that it had disclosed 37 items that are tapes of interviews of witnesses DRC-OTP-WWWW-0297 and DRC-OTP-WWWW-0055 previously disclosed to the defence by 28 March in English and Swahili (the latter being a language which the accused fully understands and speaks). In the view of the prosecution the disclosure of these additional 37 items was complementary to the initial disclosure that took place before 28 March 2008.
6. As regards the remaining 19 items disclosed on 15 April 2008, the prosecution applied for authorisation to add them to the evidence to be relied on at trial:⁵

⁴ ICC-01/04-01/06-1287, paragraph 2

⁵ *Ibid*, paragraphs 3 and 6 and Annex.

a) Portions of the transcripts of the taped interview of witness DRC-OTP-WWWW-0187 (items DRC-OTP-0182-0453, DRC-OTP-0182-0478, DRC-OTP-0182-0507, DRC-OTP-0182-0534, DRC-OTP-0182-0560, DRC-OTP-0182-0587, DRC-OTP-0182-0615, DRC-OTP-0182-0631, DRC-OTP-0182-0665, and DRC-OTP-0182-0697) and the translation of one portion of the transcripts of the interview of the same witness (item DRC-OTP-0192-0340). The prosecution noted that it disclosed the tapes of the witness's interview on 29 February 2008. The prosecution further stated that although the accused does not speak English or Lingala (languages of the tapes), his counsel are capable of preparing for trial on the basis of the English interpretation of the evidence given by the witness. The prosecution noted that the accused will have at least ten weeks before trial to review these transcripts and translations since the prosecution does not anticipate calling this witness to testify during the first half of the trial. Thus, in the submission of the prosecution, prejudice to the accused is limited.⁶

b) One audio (item DRC-OTP-0113-0047) and four video tapes (items DRC-OTP-0192-0323, DRC-OTP-0192-0324, DRC-OTP-0192-0325, DRC-OTP-0192-0326) of the interview of witness DRC-OTP-WWWW-0055 and one investigator's report (item DRC-OTP-0113-0234) and interview notes of the same witness (item DRC-OTP-0192-0189). The prosecution noted that the content of the tapes is almost exclusively procedural in nature and they relate to attempts to commence interviews with the witness and thus will not cause prejudice to the accused.⁷ The prosecution requested to add item 56 of the List of disclosed materials (item

⁶ *Ibid* , paragraph 9.

⁷ *Ibid* , paragraph 8.

DRC-OTP-0192-0369) to the evidence to be relied on at trial, but gave no explanation as to the nature of this item.⁸

7. Although the prosecution referred to the disclosure of transcripts of the taped interview of witness DRC-OTP-WWWW-0297, the prosecution did not request authorisation from the Chamber to rely on this material at trial (items 47-50 on the List of disclosed materials). Similarly, the prosecution did not request authorisation as regards items 13-45 and 47-51 of the List of disclosed materials.⁹
8. As regards the **prosecution's second application**, the prosecution informed the Chamber that on 15 April 2008 it disclosed to the defence, upon agreement, 7 items.¹⁰ The prosecution also reported that on 24 April 2008 the prosecution sought to disclose a further 7 items as incriminating evidence. The defence refused to receive four of these seven items as well as three other items which the prosecution sought to disclose on that day.¹¹
9. The prosecution gave details of the interviewing process of the witnesses to whom the items relate, stating in particular that all interviews are recorded in audio and/or video format and that subsequently transcripts are prepared that correspond to each audio or video cassette. The prosecution further explained that since the interview may have been originally conducted in a language that the accused does not fully understand and speak, the prosecution later prepared a translation of each transcript.¹²

⁸ *Ibid*, footnote 20

⁹ *Ibid*, Annex.

¹⁰ ICC-01/04-01/06-1312, paragraph 1.

¹¹ *Ibid.*, paragraph 3 and Annex.

¹² *Ibid.*, paragraph 4.

10. The prosecution submitted that it did not disclose several sections of the audio or video recording, the transcript or the translation of some witnesses due to an oversight.¹³
11. Consequently, the prosecution applied to the Chamber for authorisation to rely on the following 23 items as incriminating evidence at trial:¹⁴
 - a) French translations of 9 transcripts of the interview of witness DRC-OTP-WWWW-0187 (DRC-OTP-0192-0378, DRC-OTP-0192-0408, DRC-OTP-0192-0437, DRC-OTP-0192-0464, DRC-OTP-0192-0492, DRC-OTP-0192-0522, DRC-OTP-0192-0540, DRC-OTP-0192-0575, and DRC-OTP-0192-0609). The prosecution argued that these 9 items correspond to material disclosed to the defence in English and Lingala on 29 February 2008. The prosecution noted that the accused will have at least six weeks before trial to review these French translations. The prosecution indicated that the defence consented to the disclosure of these 9 items.¹⁵
 - b) Four portions of transcripts of a recording and a "statement of limited use" signed by witness DRC-OTP-WWWW-0055 (items DRC-OTP-0192-0643, DRC-OTP-0192-0652, DRC-OTP-0192-0664, DRC-OTP-0192-0680; no evidence number is provided for the "statement of limited use"). The prosecution emphasised that the substance of these items is almost exclusively procedural rather than substantive in nature and that the majority of the substantive material was disclosed to the defence on 28 March 2008. Therefore the prosecution submitted that the delayed disclosure of the items does not cause prejudice to the accused. The

¹³ *Ibid.*, paragraphs 4 and 5.

¹⁴ *Ibid.*, paragraph 5 and Annex.

¹⁵ *Ibid.*, paragraphs 7-8.

prosecution further argued that the defence had previously consented to having these items disclosed by 25 April 2008, but refused to receive them when disclosure was offered on 24 April 2008.¹⁶

- c) Two audio tapes of witness DRC-OTP-WWWW-0017 (items DRC-OTP-0141-0002, DRC-OTP-0141-0003). The prosecution noted that the original French transcripts were disclosed to the defence on 31 October 2007, as well as other related material that was disclosed on 9 November 2007. The prosecution argued that the delayed disclosure of these items will not cause prejudice to the accused.¹⁷ The prosecution did not specify when disclosure took place, if at all, and only notes that it envisages disclosing the French translation of this item by about 15 May 2008.¹⁸
- d) Four audio tapes of witness DRC-OTP-WWWW-0038 (items DRC-OTP-0149-0056, DRC-OTP-0149-0057, DRC-OTP-0149-0058, DRC-OTP-0149-0059). The prosecution stated that the items relate to an interview and that the transcripts of this interview were disclosed to the defence on 29 February 2008 and thus delayed disclosure does not cause prejudice to the accused. The prosecution did not specify when disclosure of these items took place, if at all.¹⁹
- e) One note from a member of the prosecution related to witnesses DRC-OTP-WWWW-0294 (no evidence number is provided for this item). The prosecution stated that the item is a one-paragraph

¹⁶ *Ibid.*, paragraphs 9-12.

¹⁷ *Ibid.*, paragraph 15.

¹⁸ *Ibid.*, footnote 16.

¹⁹ *Ibid.*, paragraphs 16-17.

note that relates to “chain of custody” information which the defence is entitled to receive through the E-court Protocol, but which is not available through the mere provision of meta-data. The prosecution affirmed that its content does not in any way impact on the substance of the evidence given by the witness and thus does not cause prejudice to the accused. The prosecution noted that it “seeks to disclose this document to the Defence”, but did not specify when this would take place.²⁰

f) One French translation of an investigator’s note related to witness DRC-OTP-WWWW-0157 (no evidence number is provided for this item). The prosecution argued that the item is a translation of items previously disclosed to the defence on 17 December 2007 and thus delayed disclosure will cause limited prejudice to the accused as the accused will have at least six weeks to review the translation. However, the prosecution did not specify when disclosure took place, if at all.²¹

g) One French translation of an investigator’s note related to witness DRC-OTP-WWWW-0116 (no evidence number is provided for this item). The prosecution argued that the item is a translation of items previously disclosed to the defence on 22 February 2008 and thus delayed disclosure will cause limited prejudice to the accused as he will have at least six weeks to review the translation. However, the prosecution did not specify when disclosure took place, if at all.²²

²⁰ *Ibid.*, paragraphs 18-19.

²¹ *Ibid.*, paragraphs 20-21.

²² *Ibid.*, paragraphs 20-21.

Defence

12. The defence requested that the Chamber rejects the prosecution's applications and declares that the items included in both applications cannot be relied upon at trial.²³ The defence explained that it had exceptionally agreed to receive a copy of items of incriminatory evidence after the 28 March 2008 deadline, but that it is not willing to accept any further items without prior authorisation by the Trial Chamber.²⁴
13. The defence explained that on 4 April 2008, it met with the prosecution and agreed to accept the disclosure of items of incriminatory evidence by 15 April 2008 on the understanding that the items corresponded to other versions of this evidence already disclosed to the defence before 28 March 2008.²⁵
14. However, the defence argued that it was not until 21 April 2008 (with the prosecution's first application), that the defence became aware that it had received material that was entirely new and was not related to the material disclosed before 28 March 2008.²⁶
15. During the meeting with the prosecution on 24 April 2008, the defence informed the prosecution that it would only receive items that were transcripts or translations of items disclosed to the defence before 28 March 2008: namely items 1-9 of the list of disclosed materials.²⁷
16. The defence further contended that its acceptance of disclosed items does not constitute a concession that these items can be used at trial.

²³ ICC-01/04-01/06-1321, page 6.

²⁴ *Ibid.*, paragraph 5.

²⁵ *Ibid.*, paragraphs 6-10.

²⁶ *Ibid.*, paragraph 12.

²⁷ *Ibid.*, paragraph 12; ICC-01/04-01/06-1287, Annex.

Furthermore, the defence argued that the fact that the prosecution disclosed the material after the 28 March deadline is prejudicial to the accused, as it reduces his time to analyse and verify the information.²⁸

17. Finally the defence emphasised that the prosecution should clarify why it was unable to abide by the 28 March deadline.²⁹

III. RELEVANT PROVISIONS

18. In coming to its decision, and in accordance with Article 21 of the Rome Statute ("Statute") the Trial Chamber has considered the following statutory provisions.

19. Article 67, paragraph 1 (a) and (b) of the Statute on the "Rights of the Accused" provides that:

1 In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;
- (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;
- [...]

20. Article 69, paragraph 4 of the Statute, on "Evidence" states that:

[...]
4. The Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.

21. Rule 76 of the Rules of Procedure and Evidence ("Rules") provides the following as to "Pre-Trial disclosure relating to prosecution witnesses":

1. The Prosecutor shall provide the defence with the names of witnesses whom the Prosecutor intends to call to testify and copies of any prior statements made by those witnesses. This shall be done sufficiently in advance to enable the adequate preparation of the defence.

²⁸ ICC-01/04-01/06-1321, paragraphs 14-15.

²⁹ *Ibid.*, paragraph 16.

2. The Prosecutor shall subsequently advise the defence of the names of any additional prosecution witnesses and provide copies of their statements when the decision is made to call those witnesses.
3. The statements of prosecution witnesses shall be made available in original and in a language which the accused fully understands and speaks.
4. This rule is subject to the protection and privacy of victims and witnesses and the protection of confidential information as provided for in the Statute and rules 81 and 82.

22. Rule 77 of the Rules on "Inspection of material in possession or control of the Prosecutor" states that:

The Prosecutor shall, subject to the restrictions on disclosure as provided for in the Statute and in rules 81 and 82, permit the defence to inspect any books, documents, photographs and other tangible objects in the possession or control of the Prosecutor, which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.

IV. ANALYSIS AND CONCLUSIONS

23. It is important first to note that in the Trial Chamber's "Decision regarding the timing and manner of disclosure and the date of trial" issued on 9 November 2007, the prosecution was ordered to serve the entirety of its evidence by 16.00 on 14 December 2007.³⁰ The Chamber also ruled that the defence and the victims' representatives would be given 12 weeks to prepare for trial, and it set the trial date for 31 March 2008.³¹ On 13 December 2007, the Chamber extended the 14 December deadline to 31 January 2008.³² As difficulties in relation to disclosure emerged, in particular on the issue of the protection of witnesses, in its decision of 30 January 2008, the Trial Chamber suspended the 31 January deadline.³³
24. During the Status Conference on 12 and 13 March 2008, the Chamber set new dates for the final disclosure of evidence and the commencement of the trial. The prosecution was granted until Friday 28 March 2008 to serve

³⁰ ICC-01/04-01/06-1019, paragraph 25; see also paragraphs 27-28.

³¹ *Ibid.*, paragraph 29.

³² ICC-01/04-01/06-T-65-ENG, page 10, line 21

³³ *Ibid.*, paragraph 4; see also ICC-01/04-01/06-T-76-CONF-EXP-ENG, page 16, line 23 to page 17, line 15

its evidence in full, save to the extent that redactions had been approved in advance by the Chamber.³⁴

25. In its 24 April 2008 "Decision on Disclosure Issues, Responsibilities for Protective Measures and other Procedural Matters", the Trial Chamber emphasised that any request to add evidence will be resolved on its merits and decisions would be made within the context of the history and the requirements of this case. The Trial Chamber underlined that the "prosecution may not add witnesses or documents to its trial evidence without the leave of the Chamber, and given the length of time afforded to the prosecution to investigate these alleged crimes, the delays to date and the requirement of guaranteeing the accused a fair trial, any request to add evidence hereafter will be scrutinised with great care".³⁵
26. As regards the present applications, the Chamber notes with considerable concern that they refer to 69 items (amounting to 1501 pages) that the prosecution has failed to disclose to the defence by the deadline of 28 March 2008. The Chamber further notes that although some of these items were disclosed prior to 15 April 2008 (that is two weeks after the deadline established by the Chamber), apparently other materials have not been disclosed to the defence to date, less than 4 weeks before the date set for the commencement of the trial. The Chamber has taken into account that in some instances these documents have not been disclosed as the defence refused to accept them.
27. Moreover, the Trial Chamber observes that the prosecution based its applications on an apparent oversight on its part, without providing any legal or other factual basis for its applications. A mere statement that

³⁴ ICC-01/04-01/06-T-79-ENG, page 10, lines 3-5.

³⁵ ICC-01/04-01/06-1311, paragraph 86; ICC-01/04-01/06-T-79-ENG, page 10, lines 3-13.

disclosure was not effected due to an "oversight", standing alone, is unacceptable reasoning for this breach of the 28 March 2008 deadline set by the Trial Chamber, given the history summarised above. Bearing in mind the imminence of the trial and the length of time that has been afforded to the prosecution to serve its evidence, the Trial Chamber indicates that hereafter a failure by the Office of the Prosecutor to fulfil its disclosure obligations due to "oversight" is highly likely to lead to the exclusion of any relevant evidence.

28. The Trial Chamber accepts the submission of the defence that its agreement to "receive" material after the deadline of 28 March 2008 does not constitute a concession that the evidence may be relied on at trial. This reflects the Trial Chamber's decision of 24 April 2008, as summarised in paragraph 25 above. Although the prosecution's applications refer to a limited number of items disclosed (or which the prosecution sought to disclose) on 15 and 24 April 2008, the Trial Chamber has considered all the material, referred to in the applications, which has been presented to the defence after the deadline of 28 March 2008.

29. The Trial Chamber considers that the addition of a limited number of items to the list of evidence to be presented by the prosecution, which are directly related to material previously disclosed and which do not contain new evidence (such as transcripts of interviews and translations of transcripts) do not unduly prejudice the accused; indeed, to a significant extent, access to this material will assist the accused in his preparation for trial, as it clarifies the information already disclosed by the prosecution before 28 March 2008. Similarly, authorisation to rely on items which appear to be of a procedural nature does not prejudice the defence so long as the defence is given adequate time to prepare for trial.

30. The prosecution has not provided information which would enable the Chamber to reach a decision on a limited number of materials: in relation to these items, the Chamber therefore requests additional relevant information from the prosecution, as set out below.
31. The present decision only addresses the issue of whether the prosecution may add certain items to the list of evidence it proposes to rely on at trial. If requested, the Trial Chamber will address the issue of the admissibility of these materials, along with all other evidence which the prosecution proposes to rely on during trial, in due course.
32. As regards the **prosecution's first application** the Chamber decides as follows:
 - a) The Chamber **authorises** the prosecution to rely on the portions of the transcripts of the taped interview of witness DRC-OTP-WWWW-0187 (items DRC-OTP-0182-0453, DRC-OTP-0182-0478, DRC-OTP-0182-0507, DRC-OTP-0182-0534, DRC-OTP-0182-0560, DRC-OTP-0182-0587, DRC-OTP-0182-0615, DRC-OTP-0182-0631, DRC-OTP-0182-0665, and DRC-OTP-0182-0697) and the translation of one portion of the transcripts of the interview of the same witness (item DRC-OTP-0192-0340), given the disclosure of these documents to the defence was completed on 15 April 2008, and the prosecution does not anticipate calling this witness to testify during the first half of the trial.
 - b) The Chamber **authorises** the prosecution to rely on one audio tape (item DRC-OTP-0113-0047) and four video tapes (items DRC-OTP-0192-0323, DRC-OTP-0192-0324, DRC-OTP-0192-0325, DRC-OTP-0192-0326) of the interview of witness DRC-OTP-

WWWW-0055 and one investigator's report (item DRC-OTP-0113-0234) and interview notes of the same witness (item DRC-OTP-0192-0189), since, in the main, these materials are almost exclusively procedural in nature and amount to 16 pages in total, and that disclosure took place on 15 April 2008.

c) As regards item DRC-OTP-0192-0369 (item 56 of the List of disclosed material), the Chamber **instructs** the prosecution to provide an explanation as to the nature of this item, the reasons for late disclosure, its relevance to the prosecution's presentation of evidence of this item, and the manner in which it is proposed it will be entered into evidence, by 10 June 2008. Any response by the defence shall be filed 7 days thereafter.

d) Furthermore, the Chamber **instructs** the prosecution to file an application seeking authorisation to rely on the material listed as items 47-50, 13-45 and 47-51 of the List of disclosed materials if it intends to rely on any of them as incriminatory evidence at trial, stating the reasons for the late disclosure, the relevance to the prosecution's presentation of evidence of these items, and the manner in which it is proposed they will be tendered into evidence, by 10 June 2008. Any response by the defence shall be filed 7 days thereafter.

33. As regards the **prosecution's second application**, the Chamber decides as follows:

a) The Chamber **authorises** the prosecution to rely on the French translations of 9 transcripts of the interview of witness DRC-OTP-WWWW-0187 (DRC-OTP-0192-0378, DRC-OTP-0192-0408, DRC-

OTP-0192-0437, DRC-OTP-0192-0464, DRC-OTP-0192-0492, DRC-OTP-0192-0522, DRC-OTP-0192-0540, DRC-OTP-0192-0575, and DRC-OTP-0192-0609), since these documents were disclosed to the defence on 24 April 2008 and are related to items disclosed to the defence on 29 February 2008, and therefore the contents of the material is not new to the defence team. The Chamber also notes that the defence consented to the disclosure of these 9 items and thus the accused will have had these translations sufficiently in advance of the trial.

- b) The Chamber provisionally **rejects** the prosecution's request to add as evidence for trial four portions of the transcripts of a recording (items DRC-OTP-0192-0643, DRC-OTP-0192-0652, DRC-OTP-0192-0664, DRC-OTP-0192-0680) and the "statement of limited use" related to witness DRC-OTP-WWWW-0055, on the grounds that although the material could be considered as containing only procedural rather than substantive information, and amounts to 42 pages in total, the prosecution has to date not disclosed the material to the defence (since the defence refused its delayed disclosure) and thus the Chamber is unable to review this material. The Chamber instructs the prosecution to submit the items in a filing, along with the reasons for the late disclosure, the relevance to the prosecution's presentation of evidence of these items, and the manner in which it is proposed they will be entered into evidence by 10 June 2008. Any response by the defence shall be filed 7 days thereafter.

- c) The Trial Chamber **authorises** the prosecution to add as evidence to be relied on during trial two audio tapes of witness DRC-OTP-WWWW-0017 (items DRC-OTP-0141-0002, DRC-OTP-0141-0003),

given these materials relate to evidence disclosed to the defence on 31 October 2007 and on 9 November 2007 and the contents of these items are, therefore, not new. However, since the prosecution did not specify when disclosure took place, if at all, and only envisages disclosing the French translation of this item by about 15 May 2008, the Chamber hereby **orders** the prosecution to disclose in full the aforesaid items no later than 5 days after the notification of the present decision.

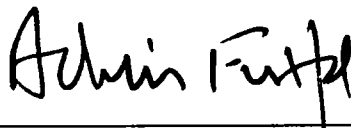
- d) The Trial Chamber **authorises** the prosecution to add as evidence to be relied on during trial four audio tapes of witness DRC-OTP-WWWW-0038 (items DRC-OTP-0149-0056, DRC-OTP-0149-0057, DRC-OTP-0149-0058, DRC-OTP-0149-0059), given these materials are related to evidence disclosed to the defence on 29 February 2008 and the contents of these items are not new. However, given that the prosecution did not specify when disclosure took place, if at all, the Chamber hereby **orders** the prosecution to disclose in full the aforesaid items no later than 5 days after the notification of the present decision.

- e) The Chamber **authorises** the prosecution to add as evidence to be relied on during trial the note from a member of the prosecution related to witness DRC-OTP-WWWW-0294, given this is a one-paragraph note that concerns the chain of custody of evidence and does not relate to the substance of the testimony to be given by the witness. It is, therefore, unlikely to cause any identifiable prejudice. However, the prosecution has not as yet disclosed this item to the defence and has not provided an indication as to when this will take place, and therefore the Chamber **orders** the

prosecution to disclose this item no later than 5 days after the notification of the present decision.

- f) As regards the French translations of an investigator's note related to witness DRC-OTP-WWWW-0157 and an investigator's note related to witness DRC-OTP-WWWW-0116, the Chamber **authorises** the prosecution to add these items as evidence to be relied on during trial, given these materials relate to evidence disclosed to the defence on 17 December 2007 and 22 February 2008 and the contents of these items will not be new to the defence. However, given that the prosecution did not specify when disclosure took place, if at all, the Chamber hereby **orders** the prosecution to disclose in full the aforesaid items no later than 5 days after the notification of the present decision.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 4 June 2008

At The Hague, The Netherlands