

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 10 June 2008

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 Document

Prosecution's Submission pursuant to the Trial Chamber's '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'

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court*
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I. Background

1. On 21 April 2008, the 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 21 April 2008 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 8 May 2008 Application).²
3. On 4 June 2008, the Trial Chamber issued a decision on these two applications, authorizing the Prosecutor to rely on and disclose a number of items enumerated in the applications (the Decision).³ In the Decision, the Trial Chamber instructed the Prosecution to provide additional information in relation to three specific items or series of items from its two applications.⁴

II. Scope of the Present Submission

4. In its Decision, the Trial Chamber ordered the Prosecution to provide additional submissions by 10 June 2008 on the following items:
 - (i) With respect to item DRC-OTP-0192-0369, the Prosecution is instructed to file additional submissions on the nature of the item, the reasons for late disclosure, its relevance to the Prosecution's presentation of evidence of the item in question, and the manner in which it is proposed the item will be entered into evidence.

¹ ICC-01/04-01/06-1287, with Confidential, Prosecution and Defence Only Annex.

² ICC-01/04-01/06-1312, with Confidential, Prosecution and Defence Only Annex.

³ ICC-01/04-01/06-1377.

⁴ ICC-01/04-01/06-1377, paras. 32(c) and (d) and para. 33 (b).

- (ii) With respect to the items listed as 13-45 and 47-50 in the Annex to the Prosecution's 21 April 2008 Application, the Prosecution is instructed to file an application to rely on these materials at trial including the reasons for late disclosure, their relevance to the Prosecution's presentation of evidence, and the manner in which it is proposed they will be entered into evidence.
- (iii) With respect to items DRC-OTP-0192-0643, DRC-OTP-0192-0652, DRC-OTP-0192-0664, DRC-OTP-0192-0680 and DRC-OTP-0187-0029⁵, the Prosecution is instructed to submit the items in a filing along with the reasons for late disclosure, their relevance to the Prosecution's presentation of evidence, and the manner in which it is proposed they will be entered into evidence.

III. Prosecution's Submissions

(i) *Item DRC-OTP-0192-0369*

5. Item DRC-OTP-0192-0369 is a transcript of the corresponding audio recording (DRC-OTP-0113-0047) of the first part of the interview of witness DRC-OTP-WWWW-0055 which took place in March 2005. The Trial Chamber authorized the Prosecution to rely on the audio recording of this interview in the Decision at para. 32(b).
6. The reason for the Prosecution's late application for authorization to rely on this item is due to the fact that the audio file was missed when relevant items were designated for disclosure. This error stemmed from the manner in which items are processed for disclosure: first, items are registered by the evidence unit within the Office of the

⁵ The five items are attached hereto as Confidential, Prosecutor and Defence Only, Annexes 1-5.

Prosecutor (OTP). Where a media file (audio/visual) is at issue, the image must be registered and then the media must be uploaded into Ringtail, an electronic evidence management system. Another unit of the OTP, the knowledge base unit, is tasked with creating a pool of electronically linked items related to each trial witness in Ringtail, from which relevant items are assessed and marked for disclosure by the Prosecution. The pool of items is periodically updated as further items are identified as being connected to a given witness. This update entails the electronic linking of the further items.

7. The audio file at issue was not included in the pool of items related to this witness due to a gap in the OTP's notification systems. The audio file was registered but not uploaded into Ringtail until 28 January 2008. The linking of this audio recording to the pool of items related to this witness did not occur before the disclosure deadline of 28 March 2008, and as a result, it was not tagged for disclosure. Once the OTP discovered this error, it took steps to transcribe the recording and to seek to rely on it as evidence at trial.
8. As submitted by the Prosecution in its application dated 21 April 2008⁶, the first attempt to interview this witness in March 2005 did not continue beyond the brief recording of approximately 12 minutes. As acknowledged by the Trial Chamber at paragraph 32(b) of the Decision, the issues discussed with the witness were almost exclusively procedural but for details on the witness' professional and military career. The information contained in item DRC-OTP-0192-0369 is relevant as it is a portion of the totality of the interview of a witness who will be called by the Prosecution. The Prosecution does not anticipate that the transcript will be tendered into evidence, save in exceptional circumstances if it becomes necessary to refresh a witness'

⁶ ICC-01/04-01/06-1287 at paragraph 8.

memory on the stand. Rather, the witness will be present to testify on relevant matters contained therein. The transcript is a complement to the original evidence, namely the audio file, intended to facilitate the review of the original evidence.

(ii) Items 13-45 and 47-50

9. The items listed as items **13-45** in the Annex to the Prosecution's 21 April 2008 Application are transcripts of the corresponding audio/video recordings of the interview of witness DRC-OTP-WWWW-0055. The interview was conducted in January and March 2008. The items listed as items **47-50** in the Annex are transcripts of the corresponding audio/video recordings of the interview of witness DRC-OTP-WWWW-0297. The interview was conducted on 15 March 2008.
10. The reason for the Prosecution's application to rely on these materials at this stage is due to the time required to prepare the transcriptions of the audio/video recordings of the interview, which were conducted into March 2008. The interview of witness DRC-OTP-WWWW-0055 was commenced on 27 January 2008 and was completed on 10 March 2008. The audio/video recordings of the interviews were disclosed by 28 March 2008.
11. The interview of witness DRC-OTP-WWWW-0297 was completed on 15 March 2008. The transcripts were generated immediately thereafter but were not ready prior to the disclosure deadline of 28 March 2008. The audio/video recordings were, however, disclosed on 28 March 2008.
12. The Prosecution submits that the disclosure of the audio/ video recording of the interviews satisfies its disclosure obligations and

allows the Defence and the Accused to prepare for trial, thereby eliminating any prejudice by the later disclosure of the transcripts.

13. The transcripts of the interviews are nonetheless relevant to the Prosecution's case insofar as they record the content of substantive interviews with witnesses who will be testifying at trial. The transcripts facilitate the review of these audio files should it be necessary to refer to the content of the interview. The Prosecution does not anticipate that the transcripts will be tendered into evidence, save in exceptional circumstances if it becomes necessary to refresh a witness' memory on the stand. Rather, the witness will be present to testify on relevant matters contained therein.

(iii) Items DRC-OTP-0192-0643, DRC-OTP-0192-0652, DRC-OTP-0192-0664, DRC-OTP-0192-0680 and DRC-OTP-0187-0029

14. The items at DRC-OTP-0192-0643, DRC-OTP-0192-0652, DRC-OTP-0192-0664 and DRC-OTP-0192-0680 are four sections of the transcripts of the audio/video recording of the interview of witness DRC-OTP-WWWW-0055 conducted in November 2005. The item at DRC-OTP-0187-0029 is a statement of limited use written in Swahili and signed by the witness in relation to his interview in January and March 2008, pursuant to Article 54(3)(d) of the Rome Statute.⁷

15. As instructed by the Trial Chamber, attached hereto as 'Confidential – Prosecution and Defence Only' are five Annexes containing these items. The statement of limited use was read into the recording of the witness' interview in January 2008 and was disclosed in this form to the Defence by the disclosure deadline of 28 March 2008. Accordingly,

⁷ The Swahili statement of limited use has been translated into French and was disclosed to the Defence under Rule 77 on 16 May 2008 (DRC-OTP-0193-0144). The Prosecution has sought to rely on this document as evidence during the trial in its application ICC-01/04-01/06-1344 dated 21 May 2008 at paragraph 9. It is attached hereto as Annex 6 for ease of reference in order to permit the Trial Chamber to read its contents.

the Prosecution submits that there is no prejudice to the Defence in receiving the signed version of the item now, the content of which they have had since 28 March 2008.

16. The Trial Chamber has authorized the addition as evidence and disclosure of the four audio/video recordings from which the four transcripts mentioned above were generated.⁸

17. The reason for the Prosecution's application for authorization to rely on these items at this stage is due to the fact that the material had not been uploaded into Ringtail and this omission was not noted before the disclosure deadline of 28 March 2008. In this case, the audio/video recordings were inadvertently left unregistered until 10 April 2008, although they were in the custody of the OTP. Accordingly, the Prosecution's searches to identify all items related to witness DRC-OTP-WWWW-0055 that needed to be disclosed could not capture these items. The four transcripts at issue were generated from these audio/video recordings of the interview immediately following registration of these files.

18. The transcripts are relevant to the Prosecution's case insofar as they record the content of the second attempt to interview the witness. The interview recording primarily captures discussions relating to the possibility of entering into a statement of limited use for the purpose of the interview. The witness will be testifying at trial. The items contain information that is relevant as part of the totality of the interview of a witness who will be called by the Prosecution and of discussions held at the time to discuss the parameters of the use of such evidence by the Office of the Prosecutor. The Prosecution does not anticipate that the transcripts or the statement of limited use will be tendered into

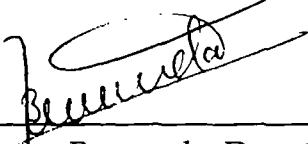
⁸ Decision, paragraph 32(b).

evidence, save in exceptional circumstances if it becomes necessary to refresh the witness' memory on the stand. The transcripts facilitate the review of these audio files should it be necessary to refer to the content of the interview. Rather, the witness will be present to testify on relevant matters contained therein.

Relief Requested

19. For the foregoing reasons, the Prosecution requests that the Trial Chamber authorize it to add as evidence to be relied upon during trial and to disclose the following items:

- (i) Item DRC-OTP-0192-0369;
- (ii) Items 13-45 and 47-50; and
- (iii) Items DRC-OTP-0192-0643, DRC-OTP-0192-0652, DRC-OTP-0192-0664, DRC-OTP-0192-0680 and DRC-OTP-0187-0029.



Fatou Bensouda, Deputy Prosecutor
on behalf of
Luis Moreno-Ocampo, Prosecutor

Dated this 10th day of June 2008
At The Hague, The Netherlands