



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations  
of International Humanitarian Law  
Committed in the Territory of the  
former Yugoslavia since 1991

Case No.: IT-95-5/18-T

Date: 17 June 2010

Original: English

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**IN THE TRIAL CHAMBER**

**Before:** Judge O-Gon Kwon, Presiding Judge  
Judge Howard Morrison  
Judge Melville Baird  
Judge Flavia Lattanzi, Reserve Judge

**Registrar:** Mr. John Hocking

**Decision of:** 17 June 2010

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

*Public*

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**DECISION ON ACCUSED'S SECOND MOTION FOR FINDING DISCLOSURE  
VIOLATION AND FOR REMEDIAL MEASURES**

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**Office of the Prosecutor**

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**The Accused**

Mr. Radovan Karadžić

**Standby Counsel**

Mr. Richard Harvey

**THIS TRIAL CHAMBER** of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of the Accused’s “Second Motion for Finding of Disclosure Violation and for Remedial Measures”, filed publicly with a Confidential Annex on 14 May 2010 (“Motion”), and hereby issues this decision thereon.

### I. Background and Submissions

1. On 6 April 2009, the Chamber issued its “Order Following Status Conference and Appended Work Plan” ordering the Office of the Prosecutor (“Prosecution”) to disclose, no later than 7 May 2009, its witness statements pursuant to Rule 66(A)(ii) of the Tribunal’s Rules of Procedure and Evidence (“Rules”).<sup>1</sup>

2. On 9 September 2009, the Accused filed the “Motion to Set Deadlines for Disclosure”, requesting the Chamber to issue an order setting deadlines for the Prosecution to *inter alia* complete its disclosure of evidence pursuant to Rule 66(A)(ii).<sup>2</sup> On 1 October 2009, the Chamber issued its “Decision on Accused’s Motion to Set Deadlines for Disclosure” (“Decision on Deadlines for Disclosure”), finding *inter alia* that “disclosure of material falling under [Rule 66(A)(ii)] should now be complete, with the exception of statements from witnesses who the Prosecution might seek to add to its witness list in the future, and any witness statements that remain subject to delayed disclosure.”<sup>3</sup> The Chamber stressed that any disclosure of Rule 66(A)(ii) material that occurs after the deadlines set by the Chamber should be exceptional and only for reasons such as those set out by the Chamber.<sup>4</sup>

3. On 26 February 2010, the Chamber issued its “Decision on the Accused’s Motion for Postponement of Trial” (“Decision on Postponement of Trial”), in which it dealt with *inter alia* further late Rule 66(A)(ii) disclosure by the Prosecution, and reiterated its finding in the Decision on Deadlines for Disclosure regarding the exceptional nature of any late Rule 66(A)(ii) disclosure.<sup>5</sup> The Chamber then expressed its concern that material not falling into the categories referred to in

<sup>1</sup> Order Following Status Conference, 6 April 2009, para. 7(1). The Prosecution was granted an extension of time of approximately two months (until 10 July 2009) to disclose audio files. *See* Status Conference, T. 187–189 (6 May 2009); Status Conference, T. 266 (3 June 2009); Status Conference, T. 325–326 (1 July 2009).

<sup>2</sup> Motion to Set Deadlines for Disclosure, 9 September 2009, paras. 2–3.

<sup>3</sup> Decision on Deadlines for Disclosure, para. 15.

<sup>4</sup> The Chamber then provided examples of circumstances in which late disclosure of Rule 66(A)(ii) may be deemed, exceptionally, to be appropriate, such as disclosure of (a) witness statements subject to delayed disclosure; (b) statements provided to the Prosecution, or transcripts of testimony given, after the deadline for disclosure of Rule 66(A)(ii) material; and (c) materials relating to witnesses added to the Prosecution’s witness list after the deadline for disclosure of Rule 66(A)(ii) material. *See* Decision on Deadlines for Disclosure, para. 14.

<sup>5</sup> Decision on Postponement of Trial, para. 29.

the Decision on Deadlines for Disclosure (i.e. material in the possession of the Prosecution prior to 7 May 2009) was not disclosed in a timely matter, because of a “clerical oversight” by the Prosecution.<sup>6</sup> However, it ultimately recognised that the number of items falling under Rule 66(A)(ii) which had not been disclosed on time was “small”,<sup>7</sup> and that such late disclosure was largely unavoidable, as it primarily related to the Prosecution’s necessary ongoing obligation of disclosure of Rule 66(A)(ii) material pertaining to delayed disclosure witnesses or subject to Rule 70 provider consent, or of recently received items.<sup>8</sup>

4. In the Motion, the Accused requests the Chamber to find the Prosecution in violation of its disclosure obligations under Rule 66(A)(ii) as it failed to disclose a total of 14 witness statements or transcripts of prior testimony of 12 witnesses (“affected witnesses”),<sup>9</sup> within the 7 May 2009 deadline prescribed by the Chamber.<sup>10</sup> The Accused argues that all of these items were in existence on 7 May 2009, but that they were disclosed almost one year later by the Prosecution solely on the ground that they were “recently discovered”.<sup>11</sup> To support his claim, the Accused provides the Chamber with copies of the letters containing lists of items being disclosed that accompanied four disclosure batches given to the Accused between end of March and mid-May 2010.<sup>12</sup>

5. The Accused further submits that he recognises that due to the volume of documents in the case disclosure represents a challenge to the Prosecution; however, the pattern of late disclosure demonstrates that the Prosecution is falling short of meeting its disclosure obligations.<sup>13</sup> He then adds that if the Chamber continues to fail to provide a remedy for such violations, “it creates a kind of impunity”.<sup>14</sup> Therefore, in addition to the Chamber making a finding of a violation under Rule 66(A)(ii), the Accused requests the Chamber to impose a sanction which would serve to deter such violations in the future. According to the Accused, such a sanction “may include exclusion of

<sup>6</sup> Decision on Postponement of Trial, paras. 30–31.

<sup>7</sup> Decision on Postponement of Trial, para. 31.

<sup>8</sup> Decision on Postponement of Trial, paras. 30, 38.

<sup>9</sup> The Chamber refers to the 12 items listed in para. 1 of the Motion, and the two additional items highlighted in the Confidential Annex to the Motion, which are not referred to in para. 1 of the Motion and which pertain to an additional witness to those listed in such paragraph.

<sup>10</sup> Motion, paras. 1–2.

<sup>11</sup> Motion, para. 2.

<sup>12</sup> See Confidential Annex to the Motion containing a copy of the Prosecution’s letters for “Disclosure Batch 227: Disclosure of witness materials pursuant to Rule 66(A)(ii), including materials related to witnesses”, dated 31 March 2010 (“Disclosure Batch 227”), the “Disclosure Batch 245: Disclosure of witness materials pursuant to Rule 66(A)(ii), including materials related to witnesses and materials for potential future Prosecution witnesses”, dated 22 April 2010 (“Disclosure Batch 245”), the “Disclosure Batch 246: Disclosure of witness materials”, dated 23 April 2010 (“Disclosure Batch 246”), and the “Disclosure Batch 259: Disclosure of witness materials pursuant to Rule 66(A)(ii), including materials related to witnesses and materials for potential future Prosecution witnesses”, dated 10 May 2010 (“Disclosure Batch 259”), altogether “Disclosure Batches”.

<sup>13</sup> Motion, para. 5.

<sup>14</sup> Motion, para. 6.

the testimony of some or all of the affected witnesses, or an order requiring the [Prosecution] to personally certify that [it has] verified that Rule 66(A)(ii) has now been complied with as to all remaining witnesses”.<sup>15</sup>

6. On 19 May 2010, the Prosecution filed the “Prosecution’s Response to Karadžić’s Second Motion for Finding of Disclosure Violation and for Remedial Measures” (“Response”), in which it argues that the Accused’s submissions concerning Rule 66(A)(ii) are partially misleading because they include references to five items which do not fall within the meaning of the Rule.<sup>16</sup> It adds that the number of items falling within Rule 66(A)(ii) which were disclosed late due to oversight is limited, and that it disclosed them immediately after it became aware of them.<sup>17</sup> Furthermore, according to the Prosecution, this oversight is very limited in the context of the Prosecution’s “massive disclosure obligations”, and has caused no prejudice to the Accused, given that all the materials relate to witnesses who are not scheduled to testify for months.<sup>18</sup> For these reasons, as well as that it has complied with its disclosure obligations diligently, the Prosecution also submits that the relief sought by the Accused to exclude the testimony of the affected witnesses is “unnecessary and disproportionate”.<sup>19</sup> The Prosecution then argues that the exclusion of witness testimony was considered and dismissed as premature by the Chamber on two occasions, and that any blanket exclusion of relevant and probative evidence would be premature, disproportionate, and contrary to the interests of justice.<sup>20</sup> Finally, the Prosecution states that requiring the Prosecution to certify full compliance of its Rule 66(A)(ii) obligation is not workable, and provides examples of situations illustrating why this is the case.<sup>21</sup>

## **II. Applicable Law**

7. Rules 65 *ter*, 66, and 68 of the Rules establish certain disclosure obligations of the Prosecution *vis-à-vis* the Accused, and are fundamental to a fair trial.<sup>22</sup> Among these, Rule 66(A)(ii) provides that the Prosecution shall “make available to the defence” (a) copies of all statements of the witnesses whom it intends to call to testify at trial; and (b) copies of all transcripts and written statements taken in accordance with Rule 92 *bis*, Rule 92 *ter*, and Rule 92 *quater*, within the time-limit prescribed by the Trial Chamber or pre-trial judge.

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<sup>15</sup> Motion, para. 6.

<sup>16</sup> Response, para. 2.

<sup>17</sup> Response, para. 4.

<sup>18</sup> Response, paras. 4–5.

<sup>19</sup> Response, paras. 6–7.

<sup>20</sup> Response, para. 10.

<sup>21</sup> *See* Response, para. 11.

<sup>22</sup> *Prosecutor v. Lukić et al.*, Case No. IT-98-32/1-T, Decision on Milan Lukić’s Motion to Suppress Testimony for Failure of Timely Disclosure with Confidential Annexes A and B, 3 November 2008 (“*Lukić Decision*”), para. 15.

8. The obligations on the Prosecution established by Rule 66 are central for ensuring, *inter alia*, that the Accused has adequate time and resources to examine all relevant material, and to prepare its case.<sup>23</sup> Thus, it is an essential element of Rule 66(A)(ii) that the disclosure of material falling under this Rule must occur within a specific time limit.<sup>24</sup>

### III. Discussion

9. The Accused challenges the late disclosure by the Prosecution of 14 items falling within Rule 66(A)(ii) in the period 31 March to 10 May 2010. The Chamber, upon review of the letters that accompanied the Disclosure Batches,<sup>25</sup> notes the following:

- 43 documents relating to 33 Prosecution witnesses were disclosed to the Accused in Disclosure Batch 227. The Accused is concerned about ten of these documents, which relate to nine witnesses.
- 13 documents relating to seven Prosecution witnesses were disclosed to the Accused in Disclosure Batch 245. The Accused is concerned about two of these documents, which relate to one witness.
- One document relating to one witness was disclosed to the Accused in Disclosure Batch 246, and this is the subject of the Accused's complaint.
- 11 documents relating to four Prosecution witnesses were disclosed to the Accused in Disclosure Batch 259. The Accused is concerned about one of these documents.

10. Thus, the 14 items that are the subject of the Motion represent approximately 20 per cent of the total number of items disclosed to the Accused through the Disclosure Batches. The documents date from February 1998 to April 2009, and consist of an affidavit, "OTP Post Interview Notes", two OTP Investigator's Information Reports, a supplemental information sheet, six witness statements, and three transcripts of prior testimony.<sup>26</sup> According to the Prosecution, one of the reports, dated 1998, is "recently produced material relating to the witness".<sup>27</sup> The affidavit, Post Interview Notes, and the report dated 2003, are described in the letters accompanying the relevant

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<sup>23</sup> See *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-PT, Decision on Prosecution's Motion to Amend Rule 65 *ter* Witness List and on Related Submissions, 22 April 2008 ("Second *Lukić* Decision"), para. 16, adding that "[t]his is particularly important in order to ensure equality of arms as the only way in which the Defence can properly prepare for trial is by having notice in advance of the material on which the Prosecution intends to rely."

<sup>24</sup> See Decision on Deadlines for Disclosure, para. 13.

<sup>25</sup> Motion, Confidential Annex, Disclosure Batches.

<sup>26</sup> Motion, Confidential Annex, Disclosure Batches.

<sup>27</sup> See Motion, Confidential Annex, Disclosure Batch 259.

disclosure batches as “material relating to the witness”.<sup>28</sup> The only reasons provided by the Prosecution for the late disclosure of the remaining ten items (i.e. the witness statements and transcripts of prior testimony) are the recent discovery of the statement, the recent discovery of additional testimony of a witness,<sup>29</sup> or the fact that the items have only been “recently identified”.<sup>30</sup>

11. The Prosecution argues that five of the 14 items do not fall within Rule 66(A)(ii) as they are witness materials which have been identified as potentially relevant to the Accused’s preparation, and have only been disclosed to “assist the Accused by grouping witness-specific disclosure”, and thus it cannot have violated its Rule 66(A)(ii) obligations by recently disclosing them.<sup>31</sup> While this indeed may be the case for some of the items, namely the affidavit, the OTP Post Interview Notes, and the two OTP Investigator’s Information Reports,<sup>32</sup> the Chamber considers that the supplemental information sheet is a “written statement” within the meaning of Rule 66(A)(ii). Thus, ten out of the 14 items that are the subject of the Motion fall within the meaning of Rule 66(A)(ii), and should, therefore, have been disclosed by the deadline imposed by the Chamber for disclosure of Rule 66(A)(ii) material, that is, 7 May 2009.

12. However, these ten items were disclosed to the Accused almost a year after the expiry of the 7 May 2009 disclosure deadline. All of them were in the possession of the Prosecution prior to 7 May 2009—one as early as March 1994 and the latest one since April 2009. While the Chamber has previously recognised that there may be instances where Rule 66(A)(ii) material was justifiably not disclosed by 7 May 2009, it does not view the “recent discovery” of a statement, the recent discovery of additional testimony of a witness, the “recent identification” of a particular item, or a simple “oversight” as appropriate justifications for the very late disclosure of material that was in the possession of the Prosecution before the 7 May 2009 deadline. Therefore, the Chamber considers that the Prosecution has violated its Rule 66(A)(ii) disclosure obligation with respect to ten of the items subject to the Motion.

13. The Chamber recalls that in both April and October 2009, it determined that imposing a “penalty” upon the Prosecution for its failure to meet the deadline for its disclosure of Rule 66(A)(ii) material was premature, but that it would consider imposing penalties if it became a

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<sup>28</sup> See Motion, Confidential Annex, Disclosure Batch 227.

<sup>29</sup> See Motion, Confidential Annex, Disclosure Batch 227.

<sup>30</sup> See Motion, Confidential Annex, Disclosure Batch 245, Disclosure Batch 246.

<sup>31</sup> Response, para. 2.

<sup>32</sup> This assumption is solely based on the description provided by the Prosecution in the Disclosure Batches, given that the Chamber has been unable to analyse at this point the content of these documents.

material issue.<sup>33</sup> In that regard, the Chamber also stated that it could not rule out the possibility of precluding the admission into evidence of all or part of the testimony in relation to a witness whose statement or prior testimony had not yet been disclosed at the same time as the relevant Rule 66(A)(ii) material, absent the showing of good cause, which would be decided if the issue arose, and after considering all the relevant circumstances.<sup>34</sup> The Chamber remains of the same view.

14. In this regard, the Chamber considers that the Motion should be viewed in the greater context of the fulfilment of the Prosecution's disclosure obligations pursuant to Rule 66(A)(ii) in the present case, and in particular as of 7 May 2009. The Chamber recognises that the Prosecution has generally shown good faith in making all reasonable efforts to comply with its Rule 66(A)(ii) disclosure obligations in a timely matter. However, it remains greatly concerned about the amount of Rule 66(A)(ii) material which has continued to be disclosed every month, after the expiration of the 7 May 2009 deadline. Specifically, from the Prosecution Periodic Disclosure Reports filed as of 15 June 2009, it appears that after 7 May 2009 the Prosecution has disclosed almost 2,300 Rule 66(A)(ii) items to the Accused, amounting to more than 35,000 pages.<sup>35</sup>

15. The Prosecution, while claiming to have complied with the 7 May 2009 deadline, has given various reasons for this late disclosure, such as the fact that the items were recently received by the Prosecution, or that they were subject to delayed disclosure protective measures or to Rule 70 restrictions.<sup>36</sup> The Chamber considers some of these reasons to be justified and valid, and recognises that there are various circumstances which might prevent the timely disclosure of Rule 66(A)(ii) material. Furthermore, the Chamber has acknowledged that errors are inevitable, particularly when considering the vast amount of disclosure in this case. However, it expresses considerable concern about the quantity of errors that appear to have been made with regard to the disclosure of Rule 66(A)(ii) material, and is of the view that late disclosure due to oversights (which appears to have been a constant in this case) is unjustified. The Chamber therefore expects

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<sup>33</sup> See Decision on Deadlines for Disclosure, para. 15; Decision on Motion on Modalities of Rule 66(A)(ii) Disclosure, 27 April 2009, para. 9.

<sup>34</sup> See Decision on Deadlines for Disclosure, para. 15.

<sup>35</sup> See Prosecution Periodic Disclosure Report, 15 June 2009; Prosecution Periodic Disclosure Report, 15 July 2009; Prosecution Periodic Disclosure Report, 17 August 2009; Prosecution Periodic Disclosure Report, 15 September 2009; Prosecution Periodic Disclosure Report, 15 October 2009; Prosecution Periodic Disclosure Report, 16 November 2009; Prosecution Periodic Disclosure Report, 15 December 2009; Prosecution Periodic Disclosure Report, 15 January 2010; Prosecution Periodic Disclosure Report, 15 February 2010; Prosecution Periodic Disclosure Report, 15 March 2010; Prosecution Periodic Disclosure Report, 15 April 2010; Prosecution Periodic Disclosure Report, 14 May 2010; Prosecution Periodic Disclosure Report, 15 June 2010 (together "Disclosure Reports").

<sup>36</sup> See Decision on Postponement of Trial, para. 28, referring to the "Prosecution's Further Response to Karadžić's Motion for the Postponement of Trial Pursuant to Trial Chamber's Order of 3 February 2010 with Confidential Appendices A-F", 9 February 2010.

that the Prosecution will put in place additional mechanisms to help it overcome the difficulties it is apparently facing.

16. When considering whether remedial action is required with regard to the late disclosure of the ten items subject to the Motion for which the Chamber has found the Prosecution be in violation of its disclosure obligations, the Chamber is mindful of the Prosecution's duty to present the available evidence to prove its case,<sup>37</sup> and of the fact that excluding witness testimony is an exceptional measure which should only be used in order to prevent prejudice to the Accused.<sup>38</sup> In that regard, the Appeals Chamber has stated that the "general practice of the [...] Tribunal is to respect the Prosecution's function in the administration of justice, and the Prosecution's execution of that function in good faith".<sup>39</sup> Indeed, "even when the Defence satisfies the Chamber that the Prosecution has failed to comply with its [disclosure] obligations, the Chamber will still examine whether the Defence has actually been prejudiced by such failure before considering whether a remedy is appropriate."<sup>40</sup> The Chamber should exclude evidence only if its probative value is *substantially* outweighed by its prejudicial impact.<sup>41</sup>

17. The Chamber notes that the first affected witnesses are numbers 26 and 38 in the Prosecution's tentative witness order, and both will testify after the summer recess, and the remaining ten affected witnesses will not be testifying for months after that.<sup>42</sup> Thus, the Chamber is satisfied that the Accused will have enough time to review the relevant material and prepare his cross-examination prior to the witnesses testifying. Additionally, given the vast amount of disclosure of Rule 66(A)(ii) material in the case overall, the Chamber considers that the ten items

<sup>37</sup> See Second *Lukić* Decision, para. 10, citing to *Prosecutor v. Rasim Delić*, Case No. IT-04-83-PT, confidential Decision on Motion for Leave to Amend the Prosecution's Witness and Exhibits Lists, 9 July 2007, p. 6.

<sup>38</sup> See *The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-2000-61-T, Decision on Defence Motion for Exclusion of Evidence and Delineation of the Defence Case, 26 March 2010, para. 9; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Defence Motions to Exclude Testimony of Professor Andre Guichaoua, 20 April 2006, para. 8.

<sup>39</sup> *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-A, Decision on Motions for Access to *Ex Parte* Portions of the Record on Appeal and For Disclosure of Mitigating Material, 30 August 2006, para. 31 ("*Bralo* Appeal Decision") (citing *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Appeal Judgement, 17 December 2004, para. 183 (footnotes omitted); *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on the Appellant's Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings, 26 September 2000, paras. 32, 45.

<sup>40</sup> *Bralo* Appeal Decision, para. 31 (citing *Prosecutor v. Jevénal Kajelijeli*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 262; *Prosecutor v. Radislac Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004, para. 153).

<sup>41</sup> See Rule 89 of the Rules ("A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial."). See also *Prosecutor v. Milan Martić*, Case No. IT-95-11-AR73.2, Decision on Appeal against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, 14 September 2006, para. 14 stating that "when tasked with the decision of whether to exclude evidence, the Trial Chamber is bound more particularly by Rule 89(D) to determine whether the probative value of the evidence is substantially outweighed by the need to ensure a fair trial."

<sup>42</sup> See Confidential Letter from the Prosecution to the Accused "Re: Sarajevo component – notice of tentative calling order for remaining witness", 3 June 2010.



represent only a small part of the total amount of material disclosed by the Prosecution. Therefore, the Chamber is satisfied that the Accused will suffer no prejudice due to the Prosecution's oversight in the late disclosure of the ten items subject to the Motion. Consequently, in the circumstances of the present case, and despite its serious concerns regarding the Prosecution's compliance with its disclosure obligations, the Chamber is not satisfied that the Accused has suffered prejudiced as a result of the untimely disclosure by the Prosecution of the ten items, and considers that the exclusion of the evidence of the affected witnesses is unwarranted in the present instance. However, the Chamber notes that if it finds the Prosecution to be in violation of its Rule 66(A)(ii) disclosure obligations in the future, and if the circumstances are such that such a remedy is justified in the interest of justice, it will consider the exclusion of all or part of a witness's testimony, or similar sanctions.

18. Turning to the Accused's alternative request to require the Prosecution to "personally certify" that it has verified that its Rule 66(A)(ii) disclosure obligations have now been complied with as to all remaining witnesses in the case, as the Prosecution has explained, there are many circumstances which would entitle it to disclose Rule 66(A)(ii) material at a later stage of the proceedings,<sup>43</sup> and which make its disclosure obligations ongoing. Thus, given that the Prosecution is entitled to disclose Rule 66(A)(ii) material throughout the proceedings in specific instances,<sup>44</sup> it is unreasonable to presume that the disclosure of Rule 66(A)(ii) material has been fully met as of the date of this decision. For these reasons, the Chamber is of the view, as it has been in the past, that it is not feasible to set a deadline for the completion of Rule 66(A)(ii) disclosure by the Prosecution. Furthermore, the Chamber considers that ordering the Prosecution to certify that it has verified that its Rule 66(A)(ii) disclosure obligations have now been complied in relation to all remaining witnesses in this case is not an effective and practical remedy.

19. Notwithstanding its findings in this Decision, the Chamber reiterates both its concern about the late disclosure of Rule 66(A)(ii) material which has been in the possession of the Prosecution prior to 7 May 2009, and the Prosecution's obligation to comply with the provision of that Rule. It therefore expects the Prosecution to use all the resources available to it to ensure that the oversights made to date are avoided at all costs in the future.

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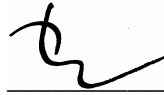
<sup>43</sup> For example, a witness who provides testimony at a later stage in the proceedings in a different case, an unavailable witness who becomes available, a witness who is at present unwilling to testify but who decides to testify at a later stage, etc; *see* Response para. 11.

<sup>44</sup> *See* Decision on Postponement of Trial, para. 29.

**IV. Disposition**

20. Accordingly, the Trial Chamber, pursuant to Rules 54 and 66(A)(ii) of the Rules, hereby **DENIES** the Motion.

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



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Judge O-Gon Kwon  
Presiding

Dated this seventeenth day of June 2010  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**