

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

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

Date: 20 February 2008

**TRIAL CHAMBER I**

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

**Registrar:** Mr Bruno Cathala

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

**Public  
Decision on agreements between the parties**

**Office of the Prosecutor**

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Ms Catherine Mabilie  
Mr Jean-Marie Biju-Duval

**Legal Representatives of Victims**

a/0001/06 to a/0003/06 and a/0105/06

Mr Luc Walley  
Mr Franck Mulenda  
Ms Carine Bapita Buyangandu

Trial Chamber I ("Trial Chamber" or "Chamber") of the International Criminal Court ("Court"), in the case of the Prosecutor v. Thomas Lubanga Dyilo, following the Status Conferences on 10 January and 13 February 2008, delivers the following decision on the issue of agreements on facts and evidence:

## I) Procedural Background

1. On 13 December 2007, the Trial Chamber issued an "Order setting out the schedule for submissions and hearing on further subjects which require determination prior to trial," inviting submissions on, *inter alia*, agreements on facts and evidence, in particular on the "procedure to be adopted for agreement by the parties on facts or evidence pursuant to Rule 69 and whether such an agreement has an impact on the Chamber's duty to determine the truth in accordance with Article 69(3)".<sup>1</sup>
2. On 5 January 2008, the legal representative of victim a/0105/06 filed her submissions,<sup>2</sup> followed on 7 January 2008 by the legal representatives for victims a/0001/06 to a/0003/06,<sup>3</sup> the Office of the Prosecutor ("prosecution")<sup>4</sup> and the defence.<sup>5</sup>
3. Further submissions were made by the parties and participants at the Status Conference of 10 January 2008.<sup>6</sup> The parties were requested to file a joint submission updating the Chamber on consultations between the prosecution

<sup>1</sup> ICC-01/04-01/06-1083, paragraph 1F.

<sup>2</sup> CONCLUSION DU REPRESENTANT LEGAL DE LA VICTIME a/0105/06 SUR "ORDER SETTING OUT THE SCHEDULE FOR SUBMISSIONS AND HEARING ON FURTHER SUBJECTS WHICH REQUIRE DETERMINATION PRIOR TO TRIAL," ICC-01/04-01/06-1106.

<sup>3</sup> Conclusions des Représentants légaux des victimes a/0001/06 à a/0003/06 sur d'autres questions à déterminer avant le procès, ICC-01/04-01/06-1107.

<sup>4</sup> Prosecution's Submissions for the Status Conference on 9 January 2008, ICC-01/04-01/06-1109.

<sup>5</sup> Conclusions de la Défense relatives à l' "Order setting out the schedule for submissions and hearing on further subjects which require determination prior to trial," ICC-01/04-01/06-1110.

<sup>6</sup> Transcript of hearing on 10 January 2008, ICC-01/04-01/06-T-69-ENG, page 33, line 2 to page 39, line 7.

and the defence on agreements within 3 weeks.<sup>7</sup> The parties informed the Chamber by email on 1 February 2008 that the discussions were ongoing.<sup>8</sup>

4. During the Status Conference on 13 February 2008, a realistic date for the parties to reach an agreement on facts and matters that may be the subject of admissions was discussed with the parties.<sup>9</sup>

## II) Relevant Provisions

5. Article 69(3) of the Rome Statute provides:

The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth

Rule 69 of the Rules of Procedure and Evidence ("Rules") states:

The Prosecutor and the defence may agree that an alleged fact, which is contained in the charges, the contents of a document, the expected testimony of a witness or other evidence is not contested and, accordingly, a Chamber may consider such an alleged fact as being proven, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims.

Regulation 54 of the Regulations of the Court provides:

At a status conference, the Trial Chamber may, in accordance with the Statute and the Rules, issue any order in the interests of justice for the purposes of the proceedings on, inter alia, the following issues:

[...]

(n) Evidence to be introduced under rule 69 as regards agreed facts.

## III) Submissions

6. In its written submissions, the prosecution expressed the view that the parties may submit any agreed facts to the Chamber in a document prior to the commencement of or during the trial, maintaining the possibility that as the presentation of facts and issues evolve in the course of the trial, the parties

<sup>7</sup> ICC-01/04-01/06-T-69-ENG, page 37, line 14 to page 38, line 5.

<sup>8</sup> Transcript of hearing on 13 February 2008, ICC-01/04-01/06-T-75-ENG, page 40, line 5.

<sup>9</sup> ICC-01/04-01/06-T-75-ENG, page 39, line 19 to page 41, line 7.

may wish to agree upon additional matters.<sup>10</sup> The prosecution in its oral submissions indicated that the Chamber may, pursuant to Regulation 54(n), impose a deadline for the submission of details as to any agreements of evidence, and accepted the Bench's suggestion that a status conference should be held one month prior to the beginning of the trial to consider such agreements.<sup>11</sup>

7. The prosecution acknowledged that the Chamber has the discretion pursuant to Rule 69 to decide whether the facts agreed upon are to be taken as proven, or whether a more complete presentation of evidence on these facts is required.<sup>12</sup> The Chamber was informed that "very initial" consultations between the prosecution and the defence on agreements had started.<sup>13</sup> During the Status Conference on 13 February 2008, the prosecution agreed that the fixing of a date in late April would facilitate the reaching of agreement with the defence.<sup>14</sup>
8. The defence submitted in its written submissions that whenever there is agreement between the parties on a question of fact or evidence this should be reflected as soon as possible after the agreement is reached in a joint filing, detailing the content of the agreement. It similarly recognised that the Chamber may order a more complete presentation of the facts agreed upon if it considers this is required in the interests of justice, in particular in the interests of victims.<sup>15</sup>
9. At the Status Conference on 10 January 2008, however, the defence drew the attention of the Chamber to its concerns arising from the possibility of further charges being brought against Thomas Lubanga Dyilo at some stage in the future, and the implications that facts or evidence agreed in this trial may

<sup>10</sup> ICC-01/04-01/06-1109, paragraph 24.

<sup>11</sup> ICC-01/04-01/06-T-69-ENG, page 34, lines 18 to 24 and page 35, lines 7-11.

<sup>12</sup> ICC-01/04-01/06-1109, paragraph 24 and ICC-01/04-01/06-T-69-ENG, page 34, line 25 to page 35, line 6.

<sup>13</sup> ICC-01/04-01/06-T-69-ENG, page 34, lines 11-14.

<sup>14</sup> ICC-01/04-01/06-T-75-ENG, page 41, lines 2-4.

<sup>15</sup> ICC-01/04-01/06-1110, paragraphs 51-53.

have for later trials. The defence sought to reserve its response to the Bench's suggestion that this problem could be avoided by an undertaking by the prosecution that agreements as to facts or evidence would be for the purposes of this case only.<sup>16</sup> On 13 February 2008, the defence did not object to a deadline in late April for the parties to reach an agreement.<sup>17</sup>

10. The legal representatives of victims a/0001/06 to a/0003/06 and of a/0105/06 in their respective submissions<sup>18</sup> emphasised that since, according to Rule 69 of the Rules, the Chamber must take into account in particular the interests of victims in deciding whether a more complete presentation of alleged facts is required, the legal representatives should be able to express their views and concerns as to these agreements, whenever the interests of particular victims are affected.

#### IV) Analysis and conclusions

11. Considering that the trial is likely to commence in June 2008,<sup>19</sup> the Chamber considers that it is a reasonable expectation that by 25 April 2008, approximately eight weeks prior to the start of the trial, the facts and issues not in dispute should have been revealed *inter partes*. In order effectively to exercise its case-management powers under Regulation 54(n) of the Regulations of the Court and, in particular, to ensure that witnesses are not needlessly brought to court when their evidence is not in dispute, the Chamber orders the parties to prepare a draft schedule of agreed facts to be considered by the Chamber eight weeks before the commencement of the trial. The draft schedule is to be served on participating victims.

<sup>16</sup> ICC-01/04-01/06-T-69-ENG, page 35, line 14 to page 37, line 1.

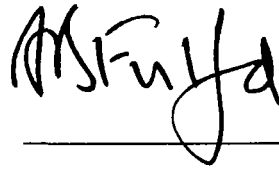
<sup>17</sup> ICC-01/04-01/06-T-75-ENG, page 41 line 7.

<sup>18</sup> ICC-01/04-01/06-1107, paragraph 22 and ICC-01/04-01/06-1106, paragraph 26.

<sup>19</sup> ICC-01/04-01/06-T-75-ENG, page 4 lines 12-13.

12. If the defence considers that it is unable to comply with this order, *inter alia* because of the suggested concerns over ongoing investigations, the Chamber is to be notified in a filing by 15 April 2008.
13. To the extent that the views and concerns of participating victims are affected by agreements as to evidence, they may file submissions not later than two weeks before the start of the trial.

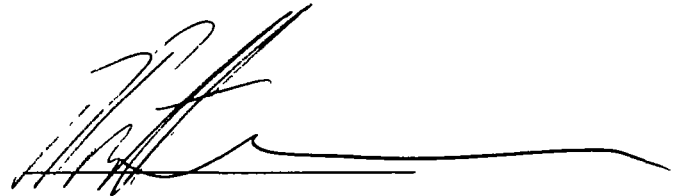
Done in both English and French, the English version being authoritative.



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 20 February 2008

At The Hague, The Netherlands