

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06
Date: 2 December 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 the use of visual aids

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
 Ms Fatou Bensouda, Deputy Prosecutor
 Mr Ekkerhard Withopf, Senior Trial
 Lawyer

Counsel for the Defence

Ms Catherine Mabile
 Mr Jean-Marie Biju Duval

Legal Representatives of the Victims

Mr Luc Walley
 Mr Franck Mulenda
 Ms Carine Bapita Buyangandu

Legal Representatives of the Applicants

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 (“Decision”):

I. BACKGROUND AND SUBMISSIONS

1. During the Status Conference on 12 March 2008, the Office of the Prosecutor (“prosecution”) drew the attention of the Chamber to its intention to use visual aids in the presentation of its evidence during the trial. The prosecution requested the Chamber to consider the following matters:¹
 - a. the definition of “visual aids”;
 - b. whether the material covered by the visual aids needs to come from the body of evidence provided to the Chamber and disclosed to the defence; and
 - c. whether the visual aids need to be disclosed to the defence, and if so, when.
2. The Chamber invited the prosecution to discuss these matters with the defence and the participants in order to reach an agreement on the matter; alternatively to ensure that any objections were raised with the Chamber sufficiently in advance of the trial.²
3. On 21 May 2008 the Chamber instructed the parties to file written submissions no later than 3 June 2008 if they wished to be heard on the matter.³
4. On 3 June 2008 the “Prosecution’s Submission on the Use of Visual Aids” was filed.⁴

¹ Transcript of hearing on 12 March 2008, ICC-01/04-01/06-T-78-CONF-ENG, page 83, lines 24-25; page 84, lines 1-8.

² *Ibid*, page 84, lines 14-25.

³ Agenda for Status Conference on 28 May 2008 and scheduling order, 21 May 2008, ICC-01/04-01/06-1343, paragraph 8.

⁴ Prosecution’s Submission on the Use of Visual Aids, 3 June 2008, ICC-01/04-01/06-1371.

Prosecution

5. The prosecution provided the Chamber with an explanation of what is meant by “visual aids”, defining them as “any original visual display that is used to explain previously disclosed evidence whether it be documentary evidence, video evidence or witness statements”. The prosecution further asserted that visual aids will be “generated solely from disclosed evidence and manipulated thereafter by the Parties, *inter alia*, by adding directional symbols, employing presentational techniques or utilising other explanatory devices.”⁵ The prosecution gave examples of possible visual aids, such as info-graphics, charts, slide-shows, animations or other similar graphic devices.⁶
6. The prosecution informed the Chamber that it foresees using visual aids during opening statements, the presentation of witness testimony and closing statements.⁷
7. As regards its opening statement, the prosecution informed the Chamber that it intends to use two visual aids. First, the prosecution proposes to utilise a computer-generated info-graphic map of Ituri region, indicating where attacks by various armed groups occurred within particular timeframes and at particular locations. Second, the prosecution intends to use a similar map depicting the movements of alleged child soldiers, which will include the location of camps and other places where hostilities occurred, and where the accused visited. The prosecution informed the Chamber that the various sources of these two visual aids have been disclosed to the defence.⁸

⁵ ICC-01/04-01/06-1371, paragraph 3

⁶ *Ibid*

⁷ *Ibid*, paragraph 4

⁸ *Ibid*, paragraph 5.

8. The prosecution informed the Chamber that it has agreed with the defence that both parties will disclose any visual aids 7 days before their use at trial.⁹
9. The prosecution has agreed not to make reference to the ERN (evidence reference numbers) or other similar citations in the catalogued investigative material. However, the prosecution submitted that it reserves the right to reveal such information in its two visual aids in order to specify, during its opening statement, which evidence will be adduced at trial, and to assist the Chamber in understanding the contextual, objective elements of the crimes alleged.¹⁰
10. The prosecution has not yet identified other visual aids that it may use during the proceedings.¹¹ In consequence, the prosecution submitted that a decision on the use of visual aids generally during the presentation of evidence is not currently possible.¹²
11. The prosecution also referred to international jurisprudence, in which, it submitted, it is recognised that the use of visual aids is helpful in order to understand evidence more clearly, if the aids are disclosed in a timely manner.¹³

Defence

12. The defence did not file any submissions, although the prosecution referred to the views of the defence in its filing. The Chamber assumes that these views were expressed during the discussions between the parties and that they are accurately reflected.¹⁴

⁹ *Ibid.*, paragraphs 6-7.

¹⁰ *Ibid.*, paragraph 11.

¹¹ *Ibid.*, paragraphs 6-7

¹² *Ibid.*, paragraph 12.

¹³ *Ibid.*, paragraph 14.

¹⁴ *Ibid.*, paragraphs 8-10.

13. The Chamber has been informed that the defence agrees that visual aids should be used during the opening statements, and that reference can be made to ERN (evidence reference numbers), identifying specific documents or witness statements, and the defence may use the “two-info graphics” during trial. The defence also agrees to notify the prosecution seven days in advance if they intend to use any other visual aid at trial¹⁵

III. RELEVANT PROVISIONS

14. Article 64, paragraph 3 (a) and (c) of the Rome Statute (“Statute”) on “Functions and powers of the Trial Chamber”:

3. Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall:

(a) Confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;

[..]

(c) Subject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed, sufficiently in advance of the commencement of the trial to enable adequate preparation for trial.

15. Article 67, paragraph 1(b) of the Statute, on the “Rights of the Accused”:

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:

[...]

(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;

16. Article 69, paragraph 4 of the Statute on “Evidence”:

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

¹⁵ *Ibid*

trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.

17. Regulation 52, paragraphs 1 and 2 of the Regulations of the Registry on “Presentation of evidence during a hearing”:

1. During a hearing, evidence shall be presented in electronic format
2. For the purpose of the presentation, participants shall provide to the court officer, in electronic version whenever possible, the evidence they intend to use at the hearing at least three full working days before the scheduled hearing.

IV. ANALYSIS AND CONCLUSIONS

18. The Chamber does not consider it necessary at this juncture to provide an exact definition of “visual aids” as requested by the prosecution. However, it agrees with the prosecution’s submissions that any visual aid to be used by a party or participant shall explain, and be restricted to, previously disclosed evidence. The Chamber considers this requirement guarantees the rights of the accused to a fair trial, and particularly to afford him adequate time for the preparation of his case in accordance with Article 67(b) of the Statute.

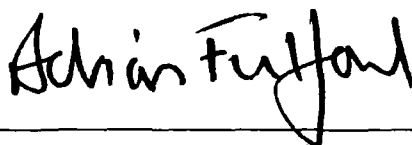
19. In consequence, the Chamber endorses the parties’ agreement that there shall be disclosure to the other party and the participants of any visual aids, 7 days prior to their use at trial, in order to ensure adequate preparation time. Furthermore, in accordance with Regulation 52 of the Regulations of the Registry, the party intending to use the visual aid shall provide the Registry with it, where possible in electronic format, at least 3 days before its use in trial.

20. The Chamber authorises the use of visual aids by the parties and participants during opening statements, the presentation of witness testimony and closing statements insofar as it enhances the presentation of previously disclosed evidence. The Chamber agrees with the prosecution that a more detailed decision

on the use of visual aids during evidence is unnecessary at this stage. As a result, the Chamber will decide on a case-by-case basis the specific requests of the parties and the participants for leave to use visual aids during the trial.

21. As regards the prosecution's request to use two visual aids during its opening statement, and bearing in mind that the defence is in agreement with the suggestion, the Chamber authorises their use, provided that the sources of the visual aids, and any other related evidence, have been disclosed to the defence.
22. The Chamber endorses the general agreement of the parties not to make reference to the ERN (evidence reference numbers). However, it accepts the prosecution's submission that in order to assist the Chamber in understanding the elements of the crimes contained in the charges against the accused, the prosecution may indicate the ERN numbers orally in the course of its opening statement, and including while using the visual aids.
23. The Chamber understands that the parties cannot at this stage identify all the visual aids that they may use at the various stages of the proceedings. However, in order to obtain authorisation from the Chamber for their use in trial, the parties and participants are instructed to make an application no later than 14 days before their intended use at trial. Moreover, the use of these additional visual aids shall be subject to the 7-day disclosure deadline in paragraph 19 above.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 2 December 2008

At The Hague, The Netherlands