

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/04-02/06**
Date: **24 February 2017**

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

**Decision on Defence's request to conduct a
site visit before the presentation of the case for the Defence**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon
Mr Christopher Gosnell

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of 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

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64, 69 and 74 of the Rome Statute ('Statute'), issues the following 'Decision on Defence's request to conduct a site visit before the presentation of the case for the Defence'.

I. Procedural history and submissions

1. The parties and participants made submissions on the possibility of a judicial site visit being conducted before the commencement of the trial, prior to and during the status conference held on 2 December 2014.¹
2. During the status conference on 22 April 2015, the Chamber indicated that it did not intend to undertake a judicial site visit prior to the commencement of trial, and indicated that (i) a 'judicial site visit should be conducted only where it would serve a specific purpose in relation to facts in issue'; (ii) 'the parties should, in making any application for a site visit, keep in mind this guidance'; and (iii) 'the need for a site visit may be reassessed [...] at the end of the presentation of evidence by the Prosecution, and again after the closing of the Defence case'.²
3. On 24 November 2015, the Prosecution renewed its request for the Chamber to conduct a site visit to relevant locations in the Ituri district of the DRC 'at the earliest possible opportunity during the initial phase of trial and, in any event, well before the end of the Prosecution case'.³ The Legal Representatives of Victims ('Legal Representatives') supported this request,⁴ while the Defence

¹ Transcript of hearing on 2 December 2014, ICC-01/04-02/06-T-17-CONF-ENG ET, pages 23-28. See also, Prosecution submissions on conducting part of the trial *in situ*, 28 November 2014, ICC-01/04-02/06-409-Conf-Exp, paras 3, 44 and 46. A confidential redacted version and a public redacted version were filed on 1 December 2014, ICC-01/04-02/06-409-Conf-Red and ICC-01/04-02/06-409-Red2.

² Transcript of hearing on 22 April 2015, ICC-01/04-02/06-T-19-ENG ET WT, page 9, lines 1-7.

³ Prosecution's request for the Chamber to conduct a judicial site visit, ICC-01/04-02/06-1033, paras 1 and 29.

⁴ Common Legal Representatives' joint response to the "Prosecution's request for the Chamber to conduct a judicial site visit", 15 December 2015, ICC-01/04-02/06-1055.

opposed it, arguing that for the site visit ‘to be meaningful and materially assist the Chamber in its understanding of the disputed issues at trial ... [it] should be envisaged at the end of the case’.⁵

4. On 20 January 2016, the Chamber rejected the Prosecution’s request on the basis that the Prosecution had failed to identify any concrete disputed facts or issues arising from the evidence adduced at trial which would require verification *in situ*, and, more generally, that it had failed to present any new or specific arguments which comported with the Chamber’s previous guidance. The Chamber stated, however, that it remained open to conducting a site visit at a later stage of the proceedings.⁶
5. On 19 October 2016, the Chamber issued an order scheduling the final evidentiary block of the Prosecution case to conclude on 3 March 2017.⁷ On 30 January 2017, the Chamber indicated its intention that the Defence case should commence within one month of the Defence’s final disclosure deadline of 26 April 2017.⁸
6. On 8 February 2017, the Defence submitted a request for the Chamber to conduct a site visit to relevant locations in the Ituri district of the DRC after the Prosecution case and before the presentation of the case for the Defence (‘Request’).⁹ The basis for the Request is the alleged failure by the Prosecution to ‘adduce sufficiently detailed evidence [to allow] the Chamber to gain the required minimum knowledge and understanding of locations referred to by

⁵ Response on behalf of Mr Ntaganda to “Prosecution’s request for the Chamber to conduct a judicial site visit”, 16 December 2015, ICC-01/04-02/06-1056, para. 14.

⁶ Decision on Prosecution’s request to conduct a site visit, ICC-01/04-02/06-1096, para. 9.

⁷ Order setting certain deadlines related to the end of the presentation of evidence by the Prosecution, ICC-01/04-02/06-1588, para. 16. A corrigendum was filed on 12 December 2016, ICC-01/04-02/06-1588-Corr.

⁸ Decision supplementing the Decision on the Conduct of Proceedings (ICC-01/04-02/06-619) and providing directions related to preparations for the presentation of evidence by the Defence, ICC-01/04-02/06-1757, paras 14 and 16.

⁹ Request on behalf of Mr Ntaganda seeking the conduct of a judicial site visit before the presentation of the case for the Defence, ICC-01/04-02/06-1777, paras 2 and 46.

Prosecution witnesses during their testimony’ and which are relevant to the charges in these proceedings.¹⁰ The Defence submits that conducting the site visit would allow the Chamber to acquire this required ‘minimum’ knowledge and understanding about those locations which, it submits, are directly related to nine areas of facts and issues in dispute between the parties identified in the Request.¹¹

7. Should the Chamber be minded to grant the Request, the Defence suggests adopting a protocol for the site visit in consultation with the parties and the Legal Representatives and states that it would not request the accused to be present during the site visit.¹²
8. Responses to the Request were received from both the Prosecution and the Legal Representatives on 17 February 2017.¹³ The Prosecution is, in principle, not opposed to the site visit, on the condition that it does not delay the start of the Defence case.¹⁴ It disagrees, however, with the Defence’s grounds for the Request, stating that the Prosecution has elicited probative and reliable evidence about relevant locations in which the charged crimes occurred.¹⁵ It also asserts that the Defence has changed its previous position that the site visit should come at the end of the case,¹⁶ given its present position that a site visit is required before presentation of the Defence case.¹⁷ The Prosecution

¹⁰ Request, ICC-01/04-02/06-1777, para. 23. See also paras 1-2, and 24-30.

¹¹ Request, ICC-01/04-02/06-1777, paras 3, 34-35 and 46. The areas of purported facts in issue are identified in para. 33.

¹² Request, ICC-01/04-02/06-1777, paras 42-45.

¹³ Prosecution’s response to the “Request on behalf of Mr Ntaganda seeking the conduct of a judicial site visit before the presentation of the case for the Defence”, ICC-01/04-02/06-1777, ICC-01/04-02/06-1789 (‘Prosecution Response’) and Common Legal Representatives’ joint response to the “Request on behalf of Mr Ntaganda seeking the conduct of a judicial site visit before the presentation of the case for the Defence”, ICC-01/04-02/06-1792 (‘Legal Representatives Response’).

¹⁴ Prosecution Response, ICC-01/04-02/06-1789, paras 1, 10, 19-20 and 25.

¹⁵ Prosecution Response, ICC-01/04-02/06-1789, paras 11-18.

¹⁶ ICC-01/04-02/06-1056, para. 14.

¹⁷ Prosecution Response, ICC-01/04-02/06-1789, paras 2 and 23.

supports the Defence's request for a protocol regulating the site visit, in the event the Request is granted.¹⁸

9. The Legal Representatives similarly do not object to the conduct of a site visit to locations where crimes charged are alleged to have been committed, but submit that such a visit should take place at the end of the Defence case 'to enable the Chamber to appreciate the practical ramifications of certain aspects of the case before it in their totality'.¹⁹ Should the Request nevertheless be granted, they also request authorisation to participate in the planning process and the visit itself.²⁰

II. Analysis

10. The Chamber recalls its position, as set out in previous decisions,²¹ that a judicial site visit should be conducted only if 'it would serve a specific purpose in relation to facts in issue', and that any application for the Chamber to conduct a site visit should be made in light of this guidance.²²
11. The Defence has identified nine purported areas of facts in issue between the parties, in respect of which it submits that the site visit would serve the specific purpose of allowing the Chamber to acquire the 'required minimum knowledge and understanding' about locations directly related to those facts. These include the layout and topography of a number of municipalities, distances and other relevant features, distances between specific locations, 'road conditions' between certain locations, and two specific regions.²³

¹⁸ Prosecution Response, ICC-01/04-02/06-1789, para. 22.

¹⁹ Legal Representatives Response, ICC-01/04-02/06-1792, paras 2 and 13.

²⁰ Legal Representatives Response, ICC-01/04-02/06-1792, paras 3 and 14.

²¹ ICC-01/04-02/06-T-19-ENG ET WT, page 9, lines 2-4; ICC-01/04-02/06-1096, para. 8.

²² ICC-01/04-02/06-T-19-ENG ET WT, page 9, lines 5-7.

²³ Request, ICC-01/04-02/06-1777, para. 33.

12. Notwithstanding the identification of these nine categories, the Chamber is of the view that the Defence has not identified with a sufficient level of specificity the concrete disputed facts or issues arising from the evidence at trial. The Defence also has not clearly demonstrated how the site visit would be of benefit to the Chamber in assessing specific facts and issues. In this regard, the Chamber considers that not all of the facts identified by the Defence in the Request are in dispute, or the Defence has failed to demonstrate how they materially relate to the crimes charged. Even if some of those facts or issues were considered to be relevant or and in dispute, the Chamber is not convinced, at this stage, that a site visit would assist the Chamber in assessing them.²⁴ Furthermore, with regard to the timing of such visit, the Chamber considers that the Defence has not demonstrated why a site visit is necessary at this stage. In this regard the Chamber is not persuaded as to how the site visit, in the form currently requested by the Defence, would allow for a more focussed and possibly shorter Defence case.

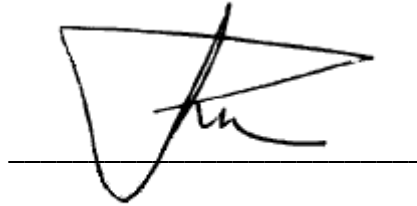
13. In light of the above, the Defence has failed to establish - and the Chamber cannot determine - any specific purpose which would be served by conducting a site visit in the form proposed by the Defence. The Chamber reiterates that it is open to conducting a site visit when it becomes clear that a site visit would serve a specific purpose in relation to facts in issue.

²⁴ See also, in particular, Prosecution Response, ICC-01/04-02/06-1789, paras 11-18, and Legal Representatives Response, ICC-01/04-02/06-1792, paras 10-11.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request.

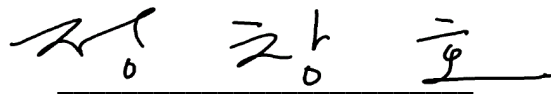
Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by 'remr', written over a horizontal line.

Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, appearing to be 'Kuniko Ozaki', written over a horizontal line.

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of Korean characters '정창호', written over a horizontal line.

Judge Chang-ho Chung

Dated this 24 February 2017

At The Hague, The Netherlands