

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-01/07

Date: 26 August 2011

**TRIAL CHAMBER II**

**Before:** Judge Bruno Cotte, Presiding Judge  
Judge Fatoumata Dembele Diarra  
Judge Christine Van den Wyngaert

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO**

**IN THE CASE OF**

***THE PROSECUTOR v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

**Public**

**Order Inviting the Parties and Participants to Make Observations  
Regarding a Judicial Site Visit**

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

**The Office of the Prosecutor**

Mr Luis Moreno-Ocampo

Mr Eric MacDonald

**Counsel for Germain Katanga**

Mr David Hooper

Mr Andreas O'Shea

**Counsel for Mathieu Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Jean-Pierre Fofé Djofia Malewa

**Legal Representatives of the Victims**

Mr Fidel Nsita Luvengika

Mr Jean-Louis Gilissen

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants**

(Participation/Reparation)

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

Mr. Marc Dubuisson

**Deputy Registrar**

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Trial Chamber II of the International Criminal Court (“the Chamber” and “the Court” respectively), pursuant to articles 63, 64 and 69 of the Rome Statute (“the Statute”) and rules 134, 137 and 141 of the Rules of Procedure and Evidence (“the Rules”), orders as follows:

1. By order issued on 13 November 2008, the Chamber requested the parties provide written observations regarding a potential judicial site visit to Bogoro.<sup>1</sup>
2. By written submissions dated 24 November 2008, the parties and participants responded to the 13 November 2008 order. The Defence for Mr. Katanga<sup>2</sup> indicated its strong support for the suggestion that the Chamber make a judicial site visit to Bogoro and suggested that a visit to other locations in Ituri might also be appropriate. The Defence for Mr. Katanga also argued a site visit would be useful at a later stage of the trial as this would allow the Chamber to identify issues which could be clarified through a site visit.<sup>3</sup> The Defence for Mr. Ngudjolo,<sup>4</sup> the Prosecution,<sup>5</sup> and two Victims’ Legal Representatives<sup>6</sup> submitted that a judicial site visit would be useful to gain a better understanding of the events relevant to the case. A third Victim’s Legal Representative argued that a judicial site visit would only be appropriate if specific measures were put in place to ensure the safety of the victims and their counsel.<sup>7</sup>

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<sup>1</sup> “Order Instructing the Participants and the Registry to Respond to Questions of Trial Chamber II for the Purpose of the Status Conference (article 64(3)(a) of the Statute)”, 13 November 2008, ICC-01/04-01/07-747-tENG, para. 13

<sup>2</sup> ICC-01/04-01/07-763, 24 November 2008, p. 7

<sup>3</sup> ICC-01/04-01/07-763, p. 7

<sup>4</sup> ICC-01/04-01/07-758, p. 19

<sup>5</sup> ICC-01/04-01/07-764, p. 16 and ICC-01/04-01/07-767, 24 November 2008, p. 5

<sup>6</sup> ICC-01/04-01/07-759, 24 November 2008, p. 3 and 4

<sup>7</sup> ICC-01/04-01/07-761, p. 5

3. At the Status Conference of 27 and 28 November 2008, the Legal Representatives of the Victims re-iterated their safety concerns with respect to both the victims and their legal representatives.<sup>8</sup>

4. On 29 January 2010, the Defence for Mr. Ngudjolo again indicated that it supported the possibility of a judicial site visit.<sup>9</sup>

5. During the Status Conference of 9 July 2010, the Defence for Mr. Katanga submitted that, as the trial progressed, it became more apparent that a judicial site visit was essential.<sup>10</sup> It further submitted that a judicial site visit would be necessary for the Chamber to view the configuration of certain sites, the distances between sites, as well as relevant infrastructure, airports and roads.<sup>11</sup>

6. At the same Status Conference, the Legal Representatives of the Victims supported the need for a judicial site visit. They indicated that the victims felt a judicial visit would enable the Chamber to attach greater consideration to their fate.<sup>12</sup>

7. In the course of the Status Conference of 29 November 2010, the Prosecution again submitted that the Chamber should make a judicial site visit. It argued such a visit would allow the Chamber to understand the layout of the land, as well as the geographical, cultural and social situations.<sup>13</sup> These factors would assist the Chamber to understand the context of some of the issues in the case.<sup>14</sup>

8. In response to the Prosecution's observation, the Chamber stated, "the Chamber will travel to the DRC so as to see where the facts in question took

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<sup>8</sup> ICC-01/04-01/07-T-52 ENG ET WT 27-11-2008 1-90 SZ T, page 86; ICC-01/04-01/07-T-53 ENG ET WT 28-11-2008 1-99 SZ T, page 9

<sup>9</sup> ICC-01/04-01/07-T-93-CONF-ENG ET 29-01-2010 1-76, p. 5, line 20

<sup>10</sup> ICC-01/04-01/07-T-168-ENG ET WT 09/07/2010, p. 36, line 9

<sup>11</sup> ICC-01/04-01/07-T-168-ENG ET WT 09/07/2010, p. 36, line 15

<sup>12</sup> ICC-01/04-01/07-T-168-ENG ET WT 09/07/2010, p. 37, line 18

<sup>13</sup> ICC-01/04-01/07-T-224-ENG ET WT 29-11-2010 1-64, p. 44, line 23

<sup>14</sup> ICC-01/04-01/07-T-224-ENG ET WT 29-11-2010 1-64, p. 44, line 24

place and to gain better knowledge of the situation which should enable us to clarify certain points that have been held in abeyance during the presentation” of the case.<sup>15</sup> The Defence for Mr. Ngudjolo submitted that the logical timing for a judicial site visit would be following the presentation of the defence cases, as this would allow the Chamber to have a better understanding and overview of the case.<sup>16</sup> The Prosecution agreed with this position.<sup>17</sup>

9. During the presentation of the Defence for Mr. Katanga’s case on 8 July 2011, references were made regarding locations in Bogoro which could be viewed by the Chamber during the judicial site visit.<sup>18</sup>

10. Considering the advanced phase of the trial that has now been reached and the need to plan a possible judicial site visit several months ahead, the Chamber invites the parties and participants to confirm that they still wish the Chamber to make such visit. If the answer is affirmative, they are instructed to submit detailed observations on the following issues:

1. If the Chamber were to conduct a judicial site visit, which specific locations would the parties request the Chamber visit?
2. At these locations, which precise points of interest should the Chamber visit?
3. For each point of interest, explain how visiting it may assist the Chamber in resolving an issue that is still contested in the case

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<sup>15</sup> ICC-01/04-01/07-T-224-ENG ET WT 29-11-2010 1-64, p. 45, line 7. Original French transcript reads: “Oui, la Chambre se déplacera en République démocratique du Congo afin de visualiser les lieux où se sont déroulés les faits et afin de pouvoir prendre connaissance sur place d’un certain nombre de points qui demeurent en suspens à la fin de la présentation de votre cause.” ICC-01/04-01/07-T-224-FRA ET WT 29-11-2010 1-60 RM T, p. 42, line 6

<sup>16</sup> ICC-01/04-01/07-T-224-ENG ET WT 29-11-2010 1-64, p. 46, line 7

<sup>17</sup> ICC-01/04-01/07-T-224-ENG ET WT 29-11-2010 1-64, p. 46, line 16

<sup>18</sup> ICC-01/04-01/07-T-288-ENG CT WT 08-07-2011 1-91 PV T. See p. 25, line 5 “Your Honour, the day you go to Bogoro, when you arrive at the small clump of orange cypress trees, you will see on your right another hill. That hill is called Ngida, and you just need to add an N before Gida and it will give you the name of that hill.” See also p. 26, line 17 “Just for perhaps future clarification for us on a visit there, is there -- is that to be distinguished from any antenna at Diguna, for example? Is that a separate antenna? I’m just unclear myself what you refer to?”

and indicate which evidence has already been admitted in regard to this issue.

4. When should a judicial site visit take place?
5. Any procedural matters to be addressed?

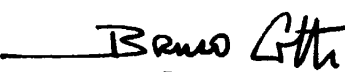
11. After receiving the parties' and participants' submissions, the Chamber will evaluate whether it is still required to go on a judicial site visit and, if so, which places will be visited. As a site visit can only be of limited duration and must make a meaningful contribution to the fact-finding process, the parties and participants are urged to be as specific and precise as possible in answering the above questions.

**FOR THESE REASONS,**

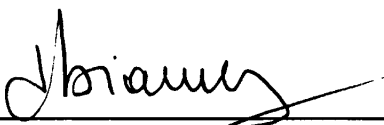
**THE CHAMBER,**

**INSTRUCTS** the parties and participants to file their observations no later than 11 September 2011 at 4:00 p.m.

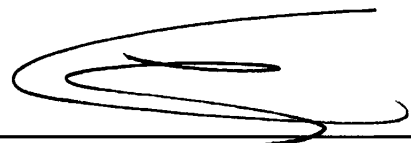
Done in both English and French, the English version being authoritative.



**Judge Bruno Cotte**  
**Presiding Judge**



**Judge Fatoumata Dembele Diarra**



**Judge Christine Van den Wyngaert**

Dated this 26 August 2011

At The Hague, The Netherlands