

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 February 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 Document

Decision on Agreements as to Evidence

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

Registrar

Ms Silvana Arbia

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”), pursuant to Articles 64 and 69 of the Rome Statute, Rule 69 of the Rules of Procedure and Evidence (“the Rules”) and Regulation 54(n) of the Regulations of the Court, decides as follows:

I. PROCEDURAL HISTORY

1. On 2 October 2009, the Chamber requested the parties to consult each other with a view to concluding as many agreements as to evidence in accordance with Rule 69 as possible.¹

2. During the month of October, the Office of the Prosecutor (“the Prosecution”) made a total of 149 proposals for such agreements and, on 23 October 2009, informed the Chamber that negotiations were still ongoing.² These negotiations continued,³ until on 25 January 2010 the Prosecution filed the final list of matters of agreement between it and the Defence.⁴ In total, the parties reached agreement about seven of the initial 149 proposals by the Prosecution. These are the following:

1. The Republic of Uganda established and exercised authority in Kibali, Ituri (a new province created in June 1999 by the commander of the Ugandan forces in the DRC, General KAZINI) as an occupying power until June 2003.

¹ Transcript of hearing on 2 October 2009, ICC-01/04-01/07-T-72-ENG ET, pp. 31 et seq.

² Mémoire de l’Accusation relatif aux accords en matière de preuve, 23 October 2009, ICC-01/04-01/07-1555-Conf.

³ Defence Observations Relative to Admissions, 28 October 2009, ICC-01/04-01/07-1570-Conf-Exp; Prosecution’s Observations on Agreements as to Evidence, 6 November 2009, ICC-01/04-01/07-1609.

⁴ Matters of agreement regarding evidence, 25 January 2010, ICC-01/04-01/07-1790-Conf.

2. Ugandan authorities played a direct role in political and administrative changes in Ituri from 1998 to 2003, stimulating new political parties and militia groups to form.
 3. On 9 August 2002, the UPC and the UPDF attacked RCD-K/ML APC forces and the Governor's residence in Bunia and the surrounding neighbourhood, known as the *sous-région*. The attackers used heavy weapons, including tanks. After a short battle, the RCD-K/ML and the APC forces were forced out of Bunia. Governor Jean-Pierre Molondo Lompondo and APC troops fled towards Beni.
 4. It was reported that in early 2003, the UPDF increased its military presence in Ituri, in particular in Bunia.
 5. FRPI is the acronym for "Force de Résistance Patriotique en Ituri".
 6. FNI is the acronym for "*Front des Nationalistes et Intégrationnistes*".
 7. Floribert NDJABU NGABU was President of the political party FNI.
3. In addition, the parties agreed to the admissibility of five cartographic exhibits, namely:
- DRC-OTP-1016-0224,
- DRC-OTP-0181-0516,
- DRC-OTP-1019-0446,
- DRC-OTP-1019-0447,
- DRC-OTP-1019-0448.

Since then, DRC-OTP-1016-0224 has been admitted into evidence as EVD-OTP-00058.⁵

4. On 20 January 2011, the Prosecution suggested that the Chamber assign an EVD number to the agreed facts listed in its filing of 25 January 2010.⁶

II. ANALYSIS

5. The Chamber takes note of the seven alleged facts that the Prosecution and the Defence agreed are not contested. Pursuant to Rule 69 of the Rules, the Chamber does not consider that a more complete presentation of such alleged facts is required, and accepts that the parties will not submit any further evidence in support thereof. Further, the Chamber considers that the assignment of an EVD number to agreed alleged facts under Rule 69 would constitute an unnecessary procedural step.

6. As mentioned during the latest status conference,⁷ the Chamber strongly encourages the parties to make further efforts to reach such agreements. In particular, noting that as of 6 November 2009, a number of proposed facts had been accepted by one of the defence teams without being explicitly rejected by the other,⁸ the Chamber is of the view that, at this stage of the proceedings, it might be worth entering into further *inter partes* consultations in this respect.

7. The Chamber further takes note of the agreements about the admissibility of the four remaining maps. As previously pointed out, “[a]lthough the Chamber is not bound to accept exhibits to which there are no objections, it will only

⁵ See Transcript of hearing on 30 March 2010, ICC-01/04-01/07-T-126-Red-ENG, p. 40.

⁶ Email communication from the Prosecution to the Chamber on 20 January 2011, referring to ICC-01/04-01/07-1790-Conf.

⁷ Transcript of hearing on 29 November 2010, ICC-01/04-01/07-T-224-ENG CT, p. 34.

⁸ See ICC-01/04-01/07-1609-Conf-Exp-AnxA and ICC-01/04-01/07-1609-Conf-Exp-AnxB.

decline such exhibits if there are compelling reasons for doing so.”⁹ There are no such reasons in this case.

⁹ Decision on the Prosecutor’s Bar Table Motions, 17 December 2010, ICC-01/04-01/07-2635, para. 8.

FOR THESE REASONS, THE CHAMBER

TAKES NOTE of the alleged facts listed in paragraph 2 above and **CONSIDERS** that a more complete presentation of those alleged facts is not required; and

ADMITS the following exhibits into evidence and **ORDERS** the Registry to attribute EVD numbers to them:

DRC-OTP-0181-0516,

DRC-OTP-1019-0446,

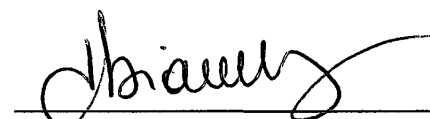
DRC-OTP-1019-0447,

DRC-OTP-1019-0448.

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 3 February 2011

At The Hague, The Netherlands