

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 20 January 2016

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 Prosecution's request to conduct a site visit

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
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Counsel for Bosco Ntaganda

Mr Stéphane Bourgon
Mr Luc Boutin

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 Prosecution's request to conduct a site visit'.

I. Procedural history and submissions

1. Prior to and during the status conference held on 2 December 2014, the parties and participants made submissions on the possibility of a site visit being conducted.¹ In particular, the Office of the Prosecutor ('Prosecution') submitted that a judicial site visit to the Ituri district of the Democratic Republic of the Congo ('DRC') before the commencement of the trial would be beneficial to the Chamber for a greater appreciation of the evidence to be adduced at trial.² The defence team for Mr Ntaganda ('Defence') also indicated that a site visit 'might very well be necessary in order [...] for the Trial Chamber to see the area where the alleged crimes were committed'.³
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 stated that a 'judicial site visit should be conducted only where it would serve a specific purpose in relation to facts in issue'. The Chamber indicated further that 'the parties should, in making any application for a site visit, keep in mind this guidance', and that 'the need for a site visit may be

¹ Transcript of hearing on 2 December 2014, ICC-01/04-02/06-T-17-CONF-ENG ET, pages 23-28, and transcript of hearing on 22 April 2015, ICC-01/04-02/06-T-19-ENG ET, pages 8-9.

² 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. See also, Transcript of hearing on 2 December 2014, ICC-01/04-02/06-T-17-CONF-ENG ET, pages 23-24. On 15 April 2015, by way of e-mail, the Prosecution enquired whether the Chamber was contemplating a judicial site visit to Ituri (e-mail from Prosecution to the Chamber on 15 April 2015 at 17:31).

³ ICC-01/04-02/06-T-17-CONF-ENG ET, page 27.

reassessed [...] at the end of the presentation of evidence by the Prosecution, and again after the closing of the Defence case'.⁴

3. On 24 November 2015, the Prosecution 'renewe[d]' its request for the Chamber to conduct a judicial site visit to relevant locations in the Ituri district of the DRC 'at the earliest possible opportunity and, in any event, well before the end of the Prosecution's case' ('Request').⁵ The Prosecution submits that a site visit would permit the Chamber to physically see the area where it is alleged the charged crimes occurred and provide the Chamber a greater understanding of the context in which the evidence is being presented.⁶ While noting that the Chamber had indicated that it does not intend to undertake such a visit at this stage of the proceedings, the Prosecution considers it important to 'reiterate' the need for a site visit as early as possible, 'particularly in light of the Presidency's decision not to hold the opening statements *in situ*'.⁷ It submits that conducting a judicial site visit during the early phase of the trial and before the end of the Prosecution's case would provide the Chamber with a more complete appreciation of the evidence being presented during the course of trial, and in particular allow the Chamber to better assess witnesses' testimony and to ask witnesses questions while they are testifying.⁸ Should the Chamber be minded to grant the Request, the Prosecution suggests that the parties and participants be invited to make submissions on relevant locations for the site visit and on the terms of a protocol to govern the rules and procedures for that visit.⁹

⁴ Transcript of hearing on 22 April 2015, ICC-01/04-02/06-T-19-ENG ET, page 9, lines 1-7.

⁵ Prosecution's request for the Chamber to conduct a judicial site visit, 24 November 2015, ICC-01/04-02/06-1033-Conf, paras 1 and 29.

⁶ Request, ICC-01/04-02/06-1033-Conf, paras 3 and 13.

⁷ Request, ICC-01/04-02/06-1033-Conf, para. 2.

⁸ Request, ICC-01/04-02/06-1033-Conf, paras 3 and 19.

⁹ Request, ICC-01/04-02/06-1033-Conf, para. 29.

4. The Prosecution also emphasises that the risks associated with *in situ* hearings would not be present in relation to a site visit,¹⁰ and argues that the accused is not required to be present.¹¹
5. On 15 December 2015, the legal representatives of victims ('LRVs') filed their joint response.¹² They support the Request and, should it be granted, seek authorisation to participate in the consultation process for the purpose of drafting the protocol to be adopted for the site visit, as well as the selection of locations and itinerary and to participate in the visit.¹³ The LRVs agree that the accused would not be required to be present.¹⁴
6. On 16 December 2015, the Defence filed its response,¹⁵ arguing the Request is 'an impermissible attempt' to seek reconsideration of the Chamber's ruling of 22 April 2015, without providing any ground showing a clear error of reasoning on the part of the Chamber or establishing that it is necessary to do so in order to prevent an injustice.¹⁶ The Defence submits that, should the Chamber deem it appropriate to entertain the merits of the Request, while the Defence supports the principle of a site visit to the Ituri district, it objects to such a visit taking place at this stage and submits that the interests of justice would be best served by the conduct of a site visit at the end of the case.¹⁷ It further submits that, in the event the Chamber is inclined to consider conducting a site visit at this point in time, the modalities of such a visit should be the object of *inter partes* consultations with a view to submitting a

¹⁰ Request, ICC-01/04-02/06-1033-Conf, paras 20-24.

¹¹ Request, ICC-01/04-02/06-1033-Conf, paras 25-28.

¹² 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-Conf ('LRVs Joint Response').

¹³ LRVs Joint Response, ICC-01/04-02/06-1055-Conf, paras 13-18 and page 8.

¹⁴ LRVs Joint Response, ICC-01/04-02/06-1055-Conf, para. 17.

¹⁵ 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-Conf ('Defence Response').

¹⁶ Defence Response, ICC-01/04-02/06-1056-Conf, paras 2, 5-7.

¹⁷ Defence Response, ICC-01/04-02/06-1056-Conf, paras 3, 8-14.

joint proposed protocol for the Chamber's consideration.¹⁸ The Defence does not object to the accused not being present during any site visit ordered.¹⁹

II. Analysis

7. As a preliminary matter, the Chamber notes that the parties and participants filed their respective submissions as 'confidential'. It takes note of the parties' and LRVs' justifications as to the level of classification. However, the Chamber does not consider that at this stage the information contained in these filings requires a confidential classification. Accordingly, it orders the Prosecution, the Defence and the LRVs to file public versions of their respective filings, with limited redactions if necessary, or request reclassification thereof.
8. Turning to the substance of the Request, the Chamber recalls that on 22 April 2015, it already expressed its position on the possibility of conducting a site visit in the present case. It indicated, *inter alia*, that a judicial site visit should be conducted only if 'it would serve a specific purpose in relation to facts in issue',²⁰ that any application for the Chamber to conduct a site visit should be made in light of this 'guidance', and that '[t]he need for a site visit may be reassessed, either *proprio motu* or upon application, at the end of the presentation of evidence by the Prosecution, and again after the closing of the Defence case'.²¹
9. The Chamber notes that in its Request the Prosecution reiterates the need for a site visit 'to relevant locations in the Ituri district of the DRC', without identifying any concrete disputed facts or issues arising from the evidence adduced at trial which would require verification *in situ*. With regard to the timing of such a visit, while acknowledging the position of the Chamber as set

¹⁸ Defence Response, ICC-01/04-02/06-1056-Conf, paras 4, 15-16.

¹⁹ Defence Response, ICC-01/04-02/06-1056-Conf, para. 17.

²⁰ ICC-01/04-02/06-T-19-ENG ET, page 9, lines 3-4.

²¹ ICC-01/04-02/06-T-19-ENG ET, page 9, lines 4-7.

out on 22 April 2015, the Prosecution reiterates that it would be more beneficial for such a visit to take place during the early phase of the trial and before the end of the Prosecution's case, without advancing any new argument, except for reference to the Presidency's decision not to hold the opening statements *in situ*.²² In the present circumstances, the Prosecution's Request does not follow the guidance provided by the Chamber on 22 April 2015. While the Chamber remains open to conducting a site visit at a later stage of proceedings, in the absence of any new or specific arguments presented by the Prosecution, the Chamber does not see any reason to depart from its previous position.

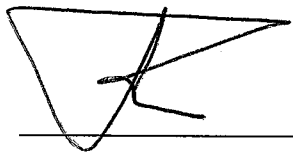
²² Request, ICC-01/04-02/06-1033-Conf, para. 2.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

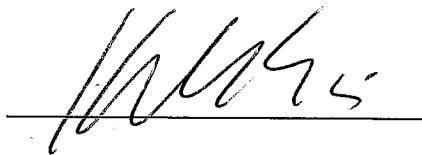
REJECTS the Request; and

DIRECTS the Prosecution, the Defence and the LRVs to file public redacted versions of their respective filings, or request reclassification thereof, by 5 February 2016.

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



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated this 20 January 2016

At The Hague, The Netherlands