

**Cour
Pénale
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**International
Criminal
Court**

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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

**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"**

Source: Office of Public Council for Victims

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

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I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks and the Common Legal Representative of the Former Child Soldiers (the “Legal Representatives”) hereby submit their 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” (the “Request”).¹

2. The Legal Representatives do not, in principle, object to the conduct of a site visit to locations where the crimes charged are alleged to have been committed. However, it is submitted that such a visit shall take place at the end of the Defence case. Only then can the Chamber identify with a sufficient degree of specificity (1) the main factual issues in dispute between the parties; (2) the purpose and benefit of any such visit; and (3) the precise locations that are of particular relevance to the determination of the merits of the case.

3. Nonetheless, should the Chamber decide that a judicial visit is necessary at this stage, the Legal Representatives request to take part in the consultations concerning the applicable operational protocol, the selection of locations and the general itinerary, and to personally participate in the visit.

II. PROCEDURAL BACKGROUND

4. On 24 November 2015, the Prosecution filed “Prosecution’s request for the Chamber to conduct a judicial site visit”, arguing in particular that “[c]onducting a judicial site visit as soon as possible would provide the Chamber with a more complete appreciation of the evidence, which is being presented during the course of the trial”.²

¹ See the “Request on behalf of Mr Ntaganda seeking the conduct of a judicial site visit before the presentation of the case for the Defence”, No. ICC-01/04-02/06-1777, 9 February 2017 (the “Request”).

² See the “Prosecution’s request for the Chamber to conduct a judicial site visit”, No. ICC-01/04-02/06-1033-Conf, 24 November 2015 (reclassified as public on 21 January 2016), para. 3.

Furthermore, the Prosecution submitted that conducting the site visit during the early phase of the trial and before the end of the Prosecution case “*will better place the Chamber to assess witnesses’ testimony and to ask the witnesses questions whilst they are still present*”.³

5. On 20 January 2016, the Chamber rendered its “Decision on Prosecution’s request to conduct a site visit”, rejecting the request but indicated that it “*remains open to conducting a site visit at a later stage of proceedings*”.⁴

6. On 8 February 2017, the Defence filed the “Request on behalf of Mr Ntaganda seeking the conduct of a judicial site visit before the presentation of the case for the Defence”.⁵

III. SUBMISSIONS

7. At the start of trial proceedings, the Legal Representatives supported a request by the Prosecution to conduct a judicial site visit⁶ aiming at “*better place the Chamber to assess witnesses’ testimony and to ask the witnesses questions whilst they are still present*”.⁷ They continue to believe that in the context of this case it would be in the interest of the Chamber, the parties and participants to organise such a visit. Several crucial facts alleged in this case are inherently linked to specific locations, areas and places. Several counts of the Updated Document Containing the Charges (the “UDCC”) are precisely described and defined in space, with references to specific landmarks, towns and villages. Moreover, throughout the Prosecution’s presentation of evidence various local, landscape and climatic factors have been discussed. It would therefore

³ *Idem*.

⁴ See the “Decision on Prosecution’s request to conduct a site visit” (Trial Chamber VI), No. ICC-01/04-02/06-1096, 20 January 2016, para. 9.

⁵ See the Request, *supra* note 1.

⁶ See the “Common Legal Representatives’ joint response to the “Prosecution’s request for the Chamber to conduct a judicial site visit”, No. ICC-01/04-02/06-1055 (reclassified as public on 21 January 2016), 15 December 2015.

⁷ See the “Prosecution’s request for the Chamber to conduct a judicial site visit”, *supra* note 2, para. 3.

appear important and relevant to have a full and concrete understanding of these aspects, including through organising a site visit. There is no doubt that such a step would enhance the Chamber's ability to establish the truth, and facilitate the review and assessment of testimonial and documentary evidence adduced during trial, hence constituting a meaningful contribution to the fact-finding process.

8. Another important benefit of a judicial visit is that it would bring the work of the Court closer to the victims, which reinforces the sense of justice and retribution.⁸ The participation of Judges and Court officials, and their presence in the affected localities would be extremely positively received by the victims. Meanwhile, this presence is unlikely to pose any risk to the safety and security of the victims, as it is assumed that the Accused will not be present during such a visit.

9. Notwithstanding, the Legal Representatives do not share the Defence's view that it is necessary to conduct such a visit before the start of the Defence case. While the main justification for a judicial visit before the start of trial proceedings was to enable the Chamber to get first-hand impression and understanding of the locations, and of the general geography and topography of the areas, this is no longer the case at the end of the Prosecution presentation of evidence.

10. At this fairly advanced stage of trial proceedings, the main benefit of a site visit is to facilitate the Chamber's analysis of the evidence for the purpose of its ultimate determination of the charges. The Defence argues that the visit would help addressing the "*specific facts in issue*" at trial,⁹ and assist the Chamber in assessing the reliability and credibility of the Prosecution witnesses.¹⁰ However, the relevance and significance of these facts to the Chamber's determination may only be definitely established after all parties and participants have had the opportunity to adduce

⁸ See the "Joint submissions of the Common Legal Representatives on the possibility to hold part of the trial proceedings *in situ*", No. ICC-01/04-02/06-407-Conf, 28 November 2014, para. 10.

⁹ See the Request, *supra* note 1, para. 33.

¹⁰ *Idem*, para. 21.

their evidence and present their case. This course of action would enable the Chamber to have an overall and comprehensive view of the evidence admitted. It would also allow the Chamber, with the assistance of the parties and participants, to identify and select the precise locations for which a judicial visit is required. Incidentally, this was also, in essence, the position of the Defence at the time when arguing that “[i]n this instant case, for a site visit to be meaningful and materially assist the Chamber in its understanding of the disputed issues at trial, the Defence respectfully submits that such a visit should be envisaged at the end of the case”.¹¹ Moreover, contrary to the Defence’s assertion, it is for the latter to prove its case, should it deems that the Prosecution failed to adduce relevant evidence regarding the relevant locations and this cannot be achieve through a site visit.¹²

11. In addition, the Defence fails to identify any compelling reason as to why a judicial visit is required at this particular stage of the proceedings. In particular, more than 13 years after the events, “*the layout and topography*” of the localities as specified in the Request¹³ and the distances referred to therein,¹⁴ are not going to vary between now and the end of the presentation of its case by the Defence. Moreover, the testing of the road conditions¹⁵ does not serve any purpose unless tested in similar conditions, be it in terms of weather conditions or of means of transportation.

12. Moreover, the organization of a site visit requires careful security planning to ensure the safety of the Chamber, the parties and participants and the staff of the Court. The timing proposed in the Request may cause delay to the start of the presentation by the Defense case. Indeed, the planning for the practicalities of the

¹¹ See the “Response on behalf of Mr Ntaganda to ‘Prosecution’s request for the Chamber to conduct a judicial site visit’”, No. ICC-01/04-02/06-1056-Conf, 16 December 2015 (reclassified public on 21 January 2016), para. 14.

¹² See the Request, *supra* note 1, *inter alia*, paras. 24-28.

¹³ *Idem*, paras. a., b., c., f., and g.

¹⁴ *Ibid.*, paras. 33 d. and g.

¹⁵ *Ibid.*, para. 33 e.

visit and the discussions regarding the adoption of a protocol is a time-consuming process, let alone a meaningful evaluation of the security constraints thereof.

13. Accordingly, the benefit and added-value of a site visit is contingent upon being conducted at “*an appropriate stage of the proceedings*”.¹⁶ The Legal Representatives submit that the site visit shall take place at a later stage so as to enable the Chamber to test the evidence to be tendered during the presentation of the Defence case and to enable the Chamber to appreciate the practical ramifications of certain aspects of the case before it in their totality and not just limited, as put forward by the Defence, to gain a minimum knowledge and understanding of the locations relevant to the UDCC.

14. Nonetheless, should the Chamber decide that a judicial visit is necessary at this stage of the proceedings, the Legal Representatives respectfully request to be authorised to participate in the consultation process concerning the protocol to be adopted for such visit, to take part in the selection of locations, and to personally participate in the visit.

Respectfully submitted,



Dmytro Suprun
Common Legal Representative of the
Victims of the Attacks



Sarah Pellet
Common Legal Representative of the
Former Child Soldiers

Dated this 17th Day of February 2017

At The Hague, The Netherlands

¹⁶ See the “Decision on a judicial site visit to the Democratic Republic of the Congo” (Trial Chamber II), No. ICC-01/04-01/07-3203-tENG, 27 January 2012, para. 2.