

**Cour
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**International
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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***

Confidential

**Common Legal Representatives' joint response to the
"Prosecution's request for the Chamber to conduct a judicial site visit"**

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") herewith submit their joint response to the "Prosecution's request for the Chamber to conduct a judicial site visit" (the "Prosecution Request"),¹ which they support in its entirety.

2. The Legal Representatives further request that, should the Prosecution Request be granted, they be authorised 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 general itinerary of the said visit, and to personally participate in the visit.

II. PROCEDURAL BACKGROUND

3. During the status conference held on 17 October 2014, Trial Chamber VI (the "Chamber"), *inter alia*, requested the parties and participants to provide observations on the possibility of conducting part of the proceedings *in situ*.²

4. On 28 November 2014, the parties filed their observations, supporting the proposition that part of the hearings be held *in situ*.³ The same day, the Legal Representatives filed their joint observations, contending that holding part of the

¹ 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 (the "Prosecution Request").

² See the transcript of the hearing held on 17 October 2014, No. ICC-01/04-02/06-T-15-ENG, p. 19, lines 3-12.

³ See the "Prosecution submissions on conducting part of the trial *in situ*", No. ICC-01/04-02/06-409-Red2, 1 December 2014. See also the "Observations on behalf of Mr Ntaganda on the Possibility of Holding Part of the Trial in the DRC or Some Nearby Location", No. ICC-01/04-02/06-408-Conf, 28 November 2015, para. 1.

proceedings *in situ* was both in the interests of justice and very likely to provide maximum access to the public and victims.⁴

5. At the status conference held on 2 December 2014, the Prosecution, Defence, and Legal Representatives reiterated their support for holding a part of the proceedings *in situ*.⁵

6. On 19 March 2015, the Chamber recommended to the Presidency that part of the trial be held in Bunia in the Democratic Republic of the Congo (the "DRC").⁶

7. On 22 April 2015, the Presiding Judge stated during a status conference that the Chamber would not undertake a judicial site visit prior to the commencement of the trial.⁷

8. During said status conference, the Legal Representative of the Former Child Soldiers expressed security concerns raised by her clients. Indeed, since the location of the *in situ* hearing had been made public, they expressed their fear in relation to the possibility of holding the opening statements in Bunia in the presence of the accused, insisting on the presence in the region of a large group of persons supporting Mr Ntaganda.⁸

9. At a subsequent status conference held on 2 June 2015, the Common Legal Representative of the Victims of the Attacks conveyed to the Chamber that, since the location of the *in situ* hearing had been made public, the victims still living in the

⁴ See the "Joint Submissions of the Common Legal Representatives on the possibility to hold a part of trial proceedings *in situ*", No. ICC-01/04-02/06-407-Conf, 28 November 2014, para. 8.

⁵ See the transcript of the hearing held on 2 December, No. ICC-01/04-02/06-T-17-CONF-ENG, pp. 23-27.

⁶ See the "Recommendation to the Presidency on holding part of the trial in the State concerned" (Trial Chamber VI), No. ICC-01/04-02/06-526, 19 March 2015.

⁷ See the transcript of the hearing held on 22 April 2015, No. ICC-01/04-02/06-T-19-ENG, p. 9.

⁸ *Idem*, p. 57.

affected areas had expressed fear for their own security and concerns about heightened ethnic tension the accused's return to the region could cause.⁹

10. On 15 June 2015, the Presidency decided that the opening statements ought to be held at the seat of the Court in The Hague, rather than in Bunia.¹⁰

11. The opening statements were held on 2 and 3 September 2015, respectively and were, to date, followed by the first and second evidentiary blocks.

12. On 24 November 2015, the Prosecution filed its Request, 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”.¹¹ 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”.¹²

III. SUBMISSIONS

13. The Legal Representatives fully support the Prosecution Request for a judicial site visit to be conducted. Such a site visit would significantly contribute to the full understanding of the testimony of witnesses, as well as the evidence presented, and thus to the establishment of the truth in the current proceedings.

14. The purpose of a judicial site visit should be to allow the Chamber to observe certain locations relevant to the case and referred to by witnesses in order to gain a

⁹ See the transcript of the hearing held on 2 June 2015, No. ICC-01/04-02/06-T-20-CONF-ENG, pp. 13-16.

¹⁰ See the “Decision on the recommendation to the Presidency on holding part of the trial in the State concerned” (Presidency), No. ICC-01/04-02/06-645-Red, 15 June 2015, paras. 7 and 27.

¹¹ See the Prosecution Request, *supra* note 1, para. 3.

¹² *Idem*.

better understanding of the facts at issue. Thus, the site visit would enable the Chamber to gain first-hand impressions of these sites, including the topography of the relevant areas, distances, travel and flight routes. As was stated by Trial Chamber II in the *Katanga and Ngudjolo Chui* case, a site visit of relevant locations is “[useful] [...] in order for the Chamber to be able to appreciate the practical ramifications of certain aspects of the case before it”.¹³

15. Furthermore, as was for instance acknowledged by the Trial Chamber in the *Hadžić* case before the International Criminal Tribunal for the Former Yugoslavia (the “ICTY”), which *proprio motu* decided to conduct a site visit of relevant sites prior to the end of the Prosecution case, the insight the Trial Chamber would gain during the site visit “would significantly benefit the Trial Chamber in its analysis of the evidence and its ultimate determination of the charges against [the Accused]”.¹⁴ The ICTY Trial Chamber in the *Perišić* case even decided to conduct a site visit to all sites referred to in the Indictment against the Accused,¹⁵ and in the earlier *Kupreškić et al.* case, the President of the Tribunal even authorised the site visit to a single village in order for the chamber to “obtain first-hand knowledge and [sic] estimation of the topography of the region”.¹⁶

16. Moreover, the Legal Representatives reiterate their previous submissions that any effort to bring the work of the Court closer to the victims is of paramount importance, not only for the latter but also for the work of the Court as a whole.¹⁷ The

¹³ 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, 18 November 2011, para. 9. This decision was rendered public by order of Trial Chamber II dated 27 January 2012.

¹⁴ See ICTY, *The Prosecutor v. Goran Hadžić*, IT-04-75-T, Decision on Site Visit, 4 June 2013, para. 6. This decision was rendered public by *The Prosecutor v. Goran Hadžić*, IT-04-75-T, Order Lifting Confidentiality of Filings In Relation To Site Visit, 2 October 2013.

¹⁵ See ICTY, *The Prosecutor v. Momčilo Perišić*, IT-04-81-T, Order on Site Visit with Annex Containing Rules of Procedure and Conduct During Site Visit, 21 May 2009, p. 1, rendered public by *The Prosecutor v. Momčilo Perišić*, IT-04-81-T, Order Lifting Confidentiality, 24 June 2009.

¹⁶ See ICTY, *The Prosecutor v. Zoran Kupreškić et al.*, IT-95-16-T, Authorisation by the President of an on-site Visit Pursuant to Rule 4 of the Rules of Procedure and Evidence, 29 September 1998, pp. 1, 2.

¹⁷ 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.

fact that the Judges themselves visited the affected locations would be extremely positively received by the victims who continue to reside in these areas. It would help the victims to understand that Justice is being done. Contrary to the previous plans to hold part of the proceedings in Bunia, a judicial site visit of specific locations is not likely to jeopardise the security situation in the region, not least because the Accused is not meant to be present during such a visit.

17. Lastly, the Legal Representatives submit that, as it is not suggested that any evidence gathering will be conducted during the site visit, the fact that the Accused will not be present during the site visit will not infringe upon his right to be tried in his presence. Furthermore, it is expected that, as was the case during Trial Chamber II's site visit to the DRC, representatives of the parties and participants will participate in the visit. Thus, the Accused would be represented by counsel who would provide additional guarantees that his rights will not be prejudiced as a result of the judicial site visit.

18. Finally, the Legal Representatives respectfully request, should the Prosecution Request be granted, to be authorised 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 general itinerary of the said visit, and to personally participate in the visit.

IV. CONFIDENTIALITY

19. Pursuant to regulations 23*bis*(1) and (2) of the Regulations of the Court, the present response is classified as "confidential" as it refers to documents marked with the same classification.

FOR THE FOREGOING REASONS the Legal Representatives respectfully request the Chamber to grant the Prosecution Request and, should the Prosecution Request be granted, to be authorised to subsequently 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 general itinerary of the said visit, and to personally participate in the visit.



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Victims of the Attacks



Sarah Pellet
Common Legal Representative of the
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Dated this 15th Day of December 2015

At The Hague, The Netherlands