

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **12 September 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 THE CONGO
IN THE CASE OF
THE PROSECUTOR
v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI**

Public Document

Prosecution's Observations Regarding a Judicial Site Visit

Source: Office of the Prosecutor

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

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1. Pursuant to Trial Chamber II's ("the Chamber") order dated 26 August 2011,¹ the Office of the Prosecutor ("the Prosecution") submits its observations regarding a judicial site visit.
2. The Prosecution contends that a judicial site visit to the relevant areas of the Democratic Republic of the Congo is, at this stage, unnecessary given that the evidence tendered by the Prosecution regarding the geographical features and landscape of Bogoro and surrounding areas is substantial, clear and uncontested. Furthermore, the defences advanced thus far by Germain Katanga and Mathieu Ngudjolo do not appear to contest the evidence regarding the geography and, in particular, that portion of the testimony of witnesses that addresses their descriptions of the area where the Bogoro attack occurred. The Prosecution also suggests that security concerns would be substantial and at this stage outweigh the need for a site visit.

Submission

3. The Prosecution submits that the evidence on record in relation to the landscape, elevation and geography of the areas of relevance is more than sufficient for the Chamber to appreciate and assess the testimony of the witnesses presented at trial. The additional benefits to the Chamber do not, in the Prosecution's submission, appear to be worth the significant time, expense and security that such a visit would entail.
4. The Prosecution tendered a substantial amount of evidence regarding the geography and landscape of Bogoro and its surroundings (*i.e.* the area at the heart of the Prosecution's case against the two Accused). The Prosecution recalls,

¹ ICC-01/04-01/07-3131, Order Inviting the Parties and Participants to Make Observations Regarding a Judicial Site Visit, dated 26 August 2011.

amongst other evidence, the testimony of Prosecution witnesses P-419, P-233 and P-166. Witness P-419 testified on the physical features of Bogoro and its immediate surroundings including the *Institut de Bogoro* and the elevation surrounding the *Institut*.² The Chamber was also able to visualise that about which the witness testified, with the aid of a 360 degrees photo presentation (“the 360° presentation”) that was also tendered into evidence.³ Witness P-233 commented and expanded upon the different frames/pictures of the 360° presentation, including by identifying the different areas in Bogoro and its surrounding landscape.⁴ Witness P-166 commented upon sketches he drew during his interview with the Prosecution which described the main buildings, schools, churches of the village of Bogoro⁵ and the surrounding roads, rivers, villages and mountains.⁶ The sketches were tendered into evidence. A map of Bogoro, which is also in evidence, was used during the testimony of Prosecution witnesses P-268 and P-323.⁷

5. In addition to this evidence, Witness P-250 described the landscape in the Zumbe area⁸ and commented on photographs depicting this area as presented to him by the Defence.⁹ The Prosecution also recalls that witness P-280 drew a sketch of Zumbe, including amongst other features its market, and that sketch was also tendered into evidence.¹⁰ Witnesses P-267 and P-219 depicted the location of relevant places of interest in the village of Aveba.¹¹

² See ICC-01/04-01/07-T-90-ENG.

³ EVD-OTP-00007.

⁴ See ICC-01/04-01/07-T-83-CONF-ENG, pp. 17-39.

⁵ EVD-D02-00099 and see ICC-01/04-01/07-T-226-CONF-ENG, pp. 33-44 and ICC-01/04-01/07-T-227-CONF-ENG, pp. 33-35.

⁶ EVD-D03-00074 and see ICC-01/04-01/07-T-226-CONF-ENG, pp. 67-70.

⁷ EVD-OTP-00051 is the clean version of this map. The version found at EVD-OTP-00043 was commented upon by witness P-268 and EVD-OTP-00052 by Witness P-323.

⁸ See ICC-01/04-01/07-T-91-CONF-ENG, pp. 42-45 and ICC-01/04-01/07-T-92-CONF-ENG, pp. 15-17.

⁹ See ICC-01/04-01/07-T-100-CONF-ENG, pp. 60-61 and pp. 66-72.

¹⁰ EVD-D03-00023 and see ICC-01/04-01/07-T-162-CONF-ENG, pp. 39-40.

¹¹ See respectively ICC-01/04-01/07-T-163-CONF-ENG, pp. 84-85 and ICC-01/04-01/07-T-205-CONF-ENG, pp. 23-24.

6. The Prosecution submits that in light of the evidence presented up until now by both Accused, as well as their line of cross-examination of Prosecution witnesses, the ability of the percipient witnesses to see the events from their particular vantage points and their descriptions do not appear to be controverted. The Defence has not sought to discredit the evidence on these grounds.¹² Thus far, the Defence pursued by both Germain Katanga and Mathieu Ngudjolo are predicated on the assertion that neither was implicated personally or through the militia forces responsible for the attack on Bogoro on 24 February 2003.

7. Finally, the Prosecution submits that if a site visit were contemplated, it would require careful security planning to ensure the safety of the Chamber and the court personnel.

Conclusion

8. For the foregoing reasons, the Prosecution submits that the benefits of a judicial site visit no longer outweigh the costs in time and resources or the risk.



Luis Moreno-Ocampo, Prosecutor

Dated this 12th day of September 2011

At The Hague, The Netherlands

¹² Apart from the location of Witness P-161 and P-268 during the attack, the Defence's cross-examination of the other Prosecution crime base witnesses did not challenge their geographical location during the attack.