



ICTR-98-42-T
(23-9-2004
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr Adama Dieng

Date: 23 September 2004

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The PROSECUTOR v. Elie NDAYAMBAJE
The PROSECUTOR v. Joseph KANYABASHI
The PROSECUTOR v. Pauline NYIRAMASUHUKO & Arsène Shamba NTAHOBALI
The PROSECUTOR v. Sylvain NSABIMANA & Alphonse NTEZIRYAYO

(Joint Case No. ICTR-98-42-T)

DECISION ON PROSECUTOR'S MOTION FOR SITE VISITS IN THE REPUBLIC OF RWANDA UNDER RULES 4 AND 73 OF THE RULES OF PROCEDURE AND EVIDENCE

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Defence Counsel for Ntahobali:

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (The "Tribunal");

SITTING as Trial Chamber II, composed of Judges William H. Sekule, Presiding, Arlette Ramaroson and Solomy Balungi Bossa (the "Chamber");

BEING SEIZED of the "Prosecutor's Motion for Site Visits in the Republic of Rwanda under Rules 4 and 73 of the Rules of the Procedure and Evidence", filed on 25 May 2004 (the "Motion");

NOTING:

- a) The "*Réponse d'Alphonse Nteziryayo à "Prosecutor's Motion for Site Visits in the Republic of Rwanda"*", filed on 28 May 2004, ("Nteziryayo's Response");
- b) The "*Réponse de Ndayambaje à la requête du Procureur intitulée Prosecutor's Motion for Site Visits in the Republic of Rwanda under Rules 4 and 73 of the Rules of Procedure and Evidence"*", filed on 31 May 2004, ("Ndayambaje's Response");
- c) The "*Réponse de Kanyabashi à la requête du Procureur demandant de visiter les sites au Rwanda"*", filed on 1 June 2004, ("Kanyabashi's Response");
- d) The "*Réponse de Nsabimana à la requête du Procureur aux fins d'une visite des lieux en République Rwandaise conformément aux articles 4 et 73 du Règlement de Procédure et de Preuve"*", filed on 1 June 2004, ("Nsabimana's Response");
- e) The "Prosecutor's Response to the Replies of Joseph Kanyabashi, Sylvain Nsabimana, Elie Ndayambaje and Alphonse Nteziryayo to the Motion for Site Visits in the Republic of Rwanda under Rules and 73 of the Rules of Procedure and Evidence", filed on 4 June 2004, ("Prosecution's Reply");
- f) The "*Dupliche d'Alphonse Nteziryayo au Prosecutor's Motion for Site Visits in the Republic of Rwanda"*", filed on 11 June 2004, ("Nteziryayo's Rejoinder");
- g) The "Prosecutor's Response to the Reply of Alphonse Nteziryayo to the Motion for Site Visits in the Republic of Rwanda", filed on 16 June 2004, ("Prosecution's Surrejoinder to Nteziryayo");
- h) The "Registrar's Submissions under Rule 33 B of the Rules of Procedure and Evidence regarding the Prosecutor's Motion for Site Visits in the Republic of Rwanda", filed on 5 July 2004, ("Registrar's Submission");

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules"), particularly Rules 4 and 73;

NOW CONSIDERS the Motion based solely on the written briefs filed by the Parties, pursuant to Rule 73 (A) of the Rules.

ARGUMENTS OF THE PARTIES

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The Prosecution

1. The Prosecution requests that the Trial Chamber conduct site visits in the Republic of Rwanda at the places identified in Annex A of the motion and such other places as the Chamber may deem appropriate.¹ Furthermore, it requests the Trial Chamber to seek the relevant authorization from the President of the Tribunal to permit it to sit away from the Seat of the Tribunal.
2. The Prosecution submits that such visits will assist the Trial Chamber in fully and properly evaluating witness testimonies arising from the complex nature of the serious crimes committed in Rwanda between January 1994 and 31 December 1994. Indeed, urged the Prosecution, the Judges, together with Counsel from both sides, will be able to visit Rwanda and see places described by witnesses in their testimonies.
3. The Prosecution submits that site visits would form part of the evidentiary mechanisms available to the Trial Chamber. In support of its motion, the Prosecution relies specifically on the *Bagilishema* case in which an on-site visit requested by the Defence was granted and for which the Trial Chamber indicated its relevancy in its judgment of 7 June 2001.² It refers also to the *Kupreskic* case regarding the mechanisms of the visit.³

The Defence

4. Counsel for Nteziryayo does not object to the proposed site visit. However, Counsel argues that the current Prosecution's motion lacks precision regarding, *inter alia*, the necessity of the visit, the time period when it will be conducted as well as its duration. According to Counsel for Nteziryayo, the Prosecution should furthermore specify the manner in which it intends to conduct the visit pertaining to the evidence that has been heard thus far.
5. Counsel for Ndayambaje is in favour of an on-site visit but notes that the Motion is vague relating to the same issues as raised by Counsel for Nteziryayo. Accordingly, Counsel for Ndayambaje requests that the Prosecution adduce further information.
6. Counsel for Kanyabashi does not oppose the site visit but adopts each of the arguments raised by Counsel for Nteziryayo in his submission. Counsel for Kanyabashi points out

¹ Annex A of the Motion lists twenty sites: Kabuye Hill, Muganza *Commune* including the Catholic Church, Mugombwa Church, Kabakwobwa Hill in Sahera *secteur*, Kibaye *Commune*, Nyaruhangeri *Commune*, Rango forest, Butare *Préfecture* Office in Butare *Ville* and surrounding areas, Butare University Hospital, Dispensary of *Notre Dame de la Route* (Matyazo clinic), EER including position of Roadblock, the Site of the House of Pauline Nyiramasuhuko including the location of the mosque described by Q1 in his testimony from 23-25 March 2004, Ngoma *Commune* including Ngoma Parish, Hotel Ibis/ *Faucon* Hotel, Mugusa *Commune*, Muyaga *Commune*, Mbazi *Commune*, *Groupe Scolaire*, MRND Place and Arab *Quartier*.

² See *The Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Judgment, 7 June 2001, para.10.

³ *The Prosecutor v. Kupreskic et al.* It-95-16-PT, Authorization by the President of an On-Site Visit Pursuant to Rule 4 of the Rules of Procedure and Evidence, 29 September 1998; Confidential Order on On-Site Visit, dated 13 October 1998.

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that all the sites mentioned by witnesses should be visited, which includes those sites from where witnesses allegedly saw or heard the events about which they have testified.

7. Counsel for Nsabimana does not object to the motion but submits that said visit should be carried out as soon as possible in order not to delay the procedure. Counsel requests that the date of the visit, the number of sites to visit and the itinerary are to be set up after consultation with all Parties.

Prosecution Reply

8. The Prosecution contends that the Motion is complete and meets the requirements of Rules 4 and 73 of the Rules. It reiterates that the Motion's aims is essentially to assist the Trial Chamber and relevant Parties to better appreciate and properly evaluate witness testimonies adduced and arising from the serious crimes committed in Rwanda between January 1994 and 31 December 1994.
9. The Prosecution further stresses that the objective of the Motion is not to revisit the testimonies of witnesses or gather additional evidence, but for the Trial Chamber to have an overview of principal places in Butare *Préfecture*, where crimes were committed during the events occurring in 1994.
10. The Prosecution submits that the visit could be concluded in one day, exclusive travel time, subject to any additional sites that may be added by the Trial Chamber, as most of the sites are in close proximity of one another. It adds that visiting all the sites mentioned by all witnesses is unfeasible. The sites mentioned in the Motion are sites the Prosecution considers to be of significance in line with testimonies given before the Trial Chamber so far. Nonetheless, the list of sites suggested is subject to review by the Trial Chamber, which should make the final determination of sites to be visited, the itinerary and the schedule.

Defence Rejoinder

11. Counsel for Nteziryayo reiterates that the Prosecution should show the utility of its Motion and explain how it chose the alleged sites to be visited. Therefore, the Defence prays that, first, the Prosecution's Motion be orally pleaded for the Prosecution to explain how it intends to proceed and for all Parties to be allowed to debate on the mechanisms as well as on the determination of the sites to be visited; otherwise the Chamber should dismiss the Motion.

Registrar's Submission

12. The Registrar makes his submission for the Trial Chamber's consideration pursuant to Rule 33(B) of the Rules.
13. The Registrar estimates the total cost of the visits will be at least U.S. \$54,483.74 if the Defence teams send six representatives or at least U.S. \$72,429.74 if the Defence teams send twelve representatives. The Registrar concludes that finding such funds would be very difficult.⁴

⁴ The Registrar attached to his submission a "Financial Evaluation Report on the Prosecutor's Motion for Site Visits in the Republic of Rwanda."

DELIBERATION

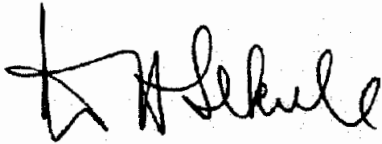
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14. The Chamber is of the view that, even if such visits were to have been made, it is desirable that they be made at the end of the presentation of the cases of both Parties.
15. The Parties may wish to make such a request at the end of the presentation of cases of both Parties.

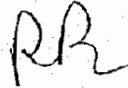
FOR THE ABOVE REASON, THE TRIBUNAL

DENIES the Prosecution request in its entirety.

Arusha, 23 September 2004



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



Solomy B. Bossa
Judge

