

ICTR-98-41-T  
29-09-2004  
(21973-21971)

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER I**

**Before:** Judge Erik Møse, presiding  
Judge Jai Ram Reddy  
Judge Sergei Alekseevich Egorov

**Registrar:** Adama Dieng

**Date:** 29 September 2004

**THE PROSECUTOR**

v.

**Théoneste BAGOSORA  
Gratien KABILIGI  
Aloys NTABAKUZE  
Anatole NSENGIYUMVA**

*Case No. ICTR-98-41-T*

JUDICIAL RECORDS/ARCHIVES  
ICTR  
2004 SEP 29 P 5:16:1

**DECISION ON PROSECUTOR'S MOTION FOR SITE VISITS IN THE REPUBLIC OF  
RWANDA**

**Office of the Prosecutor:**

Barbara Mulvaney  
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**Counsel for the Defence**

Raphaël Constant  
Paul Skolnik  
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Kennedy Ogetto  
Gershon Otachi Bw'omanwa

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (“the Tribunal”);

**SITTING** as Trial Chamber I, composed of Judge Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

**BEING SEIZED OF** the Prosecution’s “Motion for Site Visits in the Republic of Rwanda Under Rules 4 and 73 of the Rules of Procedure and Evidence”, filed on 26 June 2003;

**CONSIDERING** the Joint Defence Response, filed on 15 July 2003;

**HEREBY DECIDES** the motion.

**SUBMISSIONS**

- 1. The Prosecution requests that the Chamber conduct site visits in Rwanda at locations listed in Annex A of the motion, and seek authorization to sit away from the Seat of the Tribunal pursuant to Rule 4 of the Rules. A site visit would enable the Chamber to fully and properly evaluate witness testimony. It is submitted that such a visit can be authorized where it is in the interests of justice, can be safely and quickly completed, and is supported by all parties.
- 2. In the joint response, the Defence raises no objections to the motion, but proposes additional sites to be visited in Annexes to the response. The Defence submits that all Counsel should be able to participate in the visits, which should take place as soon as possible.

**DELIBERATIONS**

3. Rule 4 of the Rules provides that “[a] Chamber or a Judge may exercise their functions away from the Seat of the Tribunal, if so authorized by the President in the interests of justice”. In *Prosecutor v. Bagilishema*, the Chamber visited sites in Kibuye Prefecture in Rwanda, which were relevant to the allegations in the case, in order “to better appreciate the evidence to be adduced during the trial”. The visit was at the request of the Defence and the Prosecution did not object.<sup>1</sup> In *Akayesu*, the Chamber, after considering the relevant circumstances in that case, decided that an on-site inspection would be informative but not instrumental in discovering the truth or in determining the case.<sup>2</sup> More recently, in *Ndayambaje et al.*, the Chamber denied the Prosecution motion for a site visit, holding that even if such visits are ordered, they should take place at the end of the presentation of both the Prosecution and Defence cases.<sup>3</sup> In *Kupreskic et al.*, the President of the ICTY authorized an on-site visit at the request of the Chamber, as it was

<sup>1</sup> *Bagilishema*, Judgement (TC), 7 June 2001, para. 10.

<sup>2</sup> *Akayesu*, Decision on the Defence Motion Requesting an Inspection of the Site and the Conduct of a Forensic Analysis (TC), 17 February 1998, para. 8.

<sup>3</sup> *Ndayambaje et al.*, 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 (TC), 23 September 2004, paras. 14-15.

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in the interests of justice to obtain a first-hand knowledge of the area, and the events were contained in a small village which could be visited in one day.<sup>4</sup>

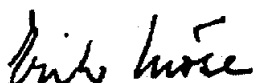
4. The need for a site visit has to be assessed in view of the particular circumstances of each trial. In *Bagilishema*, the site visit took place before presentation of the evidence. The Chamber in *Ndayambaje et al.* expressed the view that site visits should ideally take place at the close of presentation of the Prosecution and Defence cases. In the present case, the parties have proposed that the Chamber should visit a large number of locations in Rwanda. The Chamber notes that since the lists of sites were submitted, a considerable number of photographs, sketches and maps have been tendered as exhibits. As the trial proceeds, it is expected that more evidence will shed light on the relevant locations. This may further reduce the need for site visits. In view of the logistics and costs involved, a decision to carry out a site visit should preferably be made when the visit will be instrumental in the discovery of the truth and determination of the matter before the Chamber.<sup>5</sup> At present, the Chamber is not persuaded that this will be the case. At any rate, the number of locations proposed by the parties is too high.

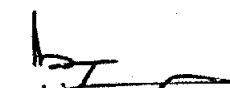
5. The Chamber does not exclude that it may be feasible, at a later stage, to visit some places in Rwanda that are relevant to the present trial. The parties are at liberty to renew their requests, if required.

**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the motion.

Arusha, 29 September 2004

  
Erik Mose  
Presiding Judge

  
Jai Ram Reddy  
Judge

  
Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]



<sup>4</sup> *Kupreskic et al.*, Authorization by the President of an On-Site Visit Pursuant to Rule 4 of the Rules of Procedure and Evidence (TC), 29 September 1998; Confidential Order on On-Site Visit (TC), 13 October 1998. The visit was ultimately not carried out due to security concerns.

<sup>5</sup> *Akayesu*, Decision on the Defence Motion Requesting an Inspection of the Site and the Conduct of a Forensic Analysis (TC), 17 February 1998, para. 8.