



UNITED NATIONS
NATIONS UNIES

ICTR-98-44C-T
19-12-2005
(1846-1844)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Karin Hökberg
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 16 December 2005

THE PROSECUTOR

v.

André RWAMAKUBA
Case No. ICTR-98-44C-T

2005 DEC 19 A 11:15
C.H. Hony
1078

DECISION ON DEFENCE MOTION FOR A VIEW *LOCUS IN QUO*
Rule 4 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
Dior Fall
Adama Niane
Iain Morley
Tamara Cummings-John

Defence Counsel
David Hooper
Andreas O'Shea

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal"),

SITTING as Trial Chamber III, composed of Judges Dennis C. M. Byron, Presiding, Karin Hökberg and Gustave Gberdao Kam ("Chamber");

BEING SEIZED of the "Defence Motion for a View of *Locus in Quo*" filed on 29 November 2005 ("Defence Motion");

HEREBY DECIDES the Motion pursuant to Rule 73 of the Rules of Procedure and Evidence ("Rules").

INTRODUCTION

1. André Rwamakuba ("Accused") is currently charged with genocide or, alternatively, complicity in genocide pursuant to Article 2 of the Statute of the Tribunal ("Statute"), and extermination and murder, as crimes against humanity pursuant to Article 3 of the Statute. These charges are alleged with respect to events which took place mainly in Gikomero Commune, at Kayanga Health Center and at Butare Hospital.
2. The trial against the Accused commenced on 9 June 2005 with the presentation of the Prosecution's evidence. The Defence started the presentation of its case on 7 November 2005. The third trial session in the instant case is scheduled to start in January 2006.
3. The Defence now moves the Chamber to visit sites and places in Rwanda relevant to the determination of the facts of this case.

DELIBERATIONS

4. Relying upon Rules 4 and 89 of the Rules and the practice of *both* ad hoc Tribunals, the Defence contends that a site visit in this case is in the interests of justice and of the Accused. It is submitted that many of the issues are disputed and rely to an extent on the physical aspects of the area where the particular offence is alleged to have been committed. The Prosecution does not oppose the Motion but submits a few additional places to be viewed by the Chamber.¹
5. Rule 4 of the Rules of Procedure and Evidence 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".
6. In accordance with the jurisprudence of the Tribunal, the Chamber considers that the need for a site visit must be assessed in view of the particular circumstances of each case.² 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.³ In that decision, the number of sites to be visited and their importance should also be taken into account.
7. The Chamber has reviewed the itinerary suggested by both parties. It is satisfied that the proposed site visits are relevant to the charges against the Accused and will be instrumental in the discovery of the truth and determination of the matter before the

¹ T. 15 December 2005 and email sent to the attention of the Chamber by Lead Counsel for Prosecution on 15 December 2005.

² *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, Judgement (TC), 7 June 2001; *Prosecutor v. Bagosora et al*, Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for Site Visits in the Republic of Rwanda (TC), 29 September 2004; *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Defence Request for Site Visits in Rwanda (TC), 31 January 2005; *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on Defence Renewed Request for Site Visits in Rwanda (TC), 4 May 2005.

³ *Ibidem*.

Chamber. In addition, the Chamber notes that these places could be visited in two to three days and therefore do not involve difficult logistical planning or high costs for the Tribunal.


8. While photographs, sketches and maps have been tendered as exhibits regarding these locations, the Chamber is of the view that, in the particular circumstances of this case a first-hand knowledge of the area will be in the interests of justice.

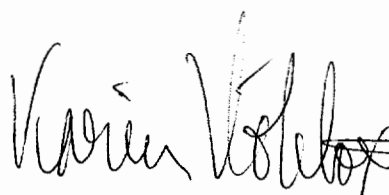
FOR THE ABOVE REASONS, THE CHAMBER

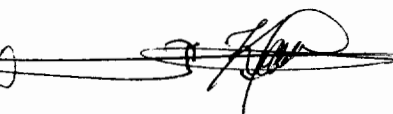
I. REQUESTS the President to authorize the Chamber's exercise of its function away from the Seat of the Tribunal, pursuant to Rule 4 of the Rules; and if such authorization is granted;

II. REQUESTS the Registry to make all the necessary arrangements, in liaison with the Chamber, to facilitate the implementation of this decision.

Arusha, 16 December 2005, done in English.

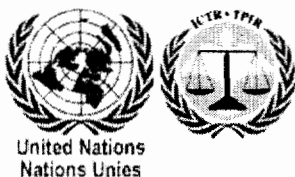

Dennis C. M. Byron
Presiding Judge


Karin Hökberg
Judge


Gberdao Gustave Kam
Judge

[Seal of the Tribunal]





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input checked="" type="checkbox"/> Chamber Julie Greenspoon (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Andre RWAMAKUBA			Case Number: ICTR-98-44C-T
Dates:	Transmitted: 19 December 2005		Document's date: 16 December 2005	
No. of Pages:	3	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	DECISION ON DEFENCE MOTION FOR A VIEW LOCUS IN QUO			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties		
<input type="checkbox"/> Confidential		<input checked="" type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Submission from parties		
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars		
		<input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities		

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

☒ Filing Party hereby submits only the original, and **will not submit** any translated version.

☐ Reference material is provided in annex to facilitate translation.

Target Language(s):

☐ English ☐ French ☐ Kinyarwanda

CMS SHALL NOT take any action regarding translation.

☐ Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.

☐ Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

☐ English ☐ French ☐ Kinyarwanda

KINDLY FILL IN THE BOXES BELOW

<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
---	--

III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input checked="" type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines:



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie
Tel: 255 57 504207-11 504367-72 or 1 212 963 2850 Fax: 255 57 504000/504373 or 1 212 963 2848/49

**PROOF OF SERVICE – ARUSHA
PREUVE DE NOTIFICATION – ARUSHA**

Date: 19 December 2005	Case Name / Affaire: The Prosecutor vs. - André RWAMAKUBA		
Case No /Affaire No.: ICTR-98-44C-I			
To: A:	<input type="checkbox"/> TC1	received by / reçu par:	ALO: received by / reçu par
	<input type="checkbox"/> Judge E. Mose, President	<input type="checkbox"/>
	<input type="checkbox"/> Judge J. R. Reddy	<input type="checkbox"/>
	<input type="checkbox"/> Judge S. A. Egorov	<input type="checkbox"/>
	<input type="checkbox"/> Judge D. C. M. Byron (Simba)	<input type="checkbox"/>
	<input type="checkbox"/> E. Nahamya, Co-ordinator	<input type="checkbox"/>
	<input type="checkbox"/> TC2		
	<input type="checkbox"/> Judge W. H. Sekule	<input type="checkbox"/>
	<input type="checkbox"/> Judge A. Ramaroson	<input type="checkbox"/>
	<input type="checkbox"/> Judge K. R. Khan (Bizimungu et al.)	<input type="checkbox"/>
	<input type="checkbox"/> Judge A. J. N. de Silva	<input type="checkbox"/>
	<input type="checkbox"/> Judge S. B. Bossa (Nyiramasuhuku et al.)	<input type="checkbox"/>
	<input type="checkbox"/> Judge L. G. Muthoga (Bizimungu et al.)	<input type="checkbox"/>
	<input type="checkbox"/> Judge E. F. Short (Bizimungu et al.)	<input type="checkbox"/>
	<input type="checkbox"/> Judge T. Hikmat (Ndindiliyimana et al.)	<input type="checkbox"/>
	<input type="checkbox"/> Judge S. K. Park (Ndindiliyimana et al.)	<input type="checkbox"/>
	<input type="checkbox"/> C. Eboe-Osuji, SLO	<input type="checkbox"/>
	<input type="checkbox"/> A. Leroy, Co-ordinator	<input type="checkbox"/>
	<input checked="" type="checkbox"/> TC3		
	<input type="checkbox"/> Judge A. Vaz	<input type="checkbox"/>
	<input type="checkbox"/> Judge K. R. Khan	<input type="checkbox"/>
	<input checked="" type="checkbox"/> Judge D. C. M. Byron	<input type="checkbox"/>
	<input type="checkbox"/> Judge F. Lattanzi	<input type="checkbox"/>
	<input type="checkbox"/> Judge L. G. Muthoga (Muhimana)	<input type="checkbox"/>
	<input type="checkbox"/> Judge F. R. Arrey	<input type="checkbox"/>
<input type="checkbox"/> Judge E. F. Short (Muhimana)	<input type="checkbox"/>	
<input checked="" type="checkbox"/> Judge K. Hökberg (Seromba)	<input type="checkbox"/>	
<input checked="" type="checkbox"/> Judge G. G. Kam (Seromba)	<input type="checkbox"/>	
<input type="checkbox"/> E. O'Donnell, SLO	<input type="checkbox"/>	
<input type="checkbox"/> R. Adzovi, Co-ordinator	<input type="checkbox"/>	
<input type="checkbox"/> C. Denis, Co-ordinator (Kamukama et al.)	<input type="checkbox"/>	
<input type="checkbox"/> H. Gogo, Co-ordinator (Seromba)	<input type="checkbox"/>	
<input checked="" type="checkbox"/> OTP / BUREAU DU PROCUREUR			
<input type="checkbox"/> Trial Attorney in charge of case:	D. Fall Sow	received by	
<input checked="" type="checkbox"/> DEFENSE	<i>[Signature]</i> 19/12/05		
<input type="checkbox"/> Accused / Accusé: A. Rwamakuba		complete / remplir "CMS4 FORM"	
<input type="checkbox"/> Lead Counsel / Conseil Principal:.... D. Hooper			
<input type="checkbox"/> In / à Arusha Arusha(signature)	<input type="checkbox"/> by fax complete / remplir "CMS3bis FORM"	
<input type="checkbox"/> Co-Counsel / Conseil Adjoint:.... A. O'Shea			
<input checked="" type="checkbox"/> In / à Arusha Arusha(signature)	<input checked="" type="checkbox"/> by fax complete / remplir "CMS3bis FORM"	
All Decisions: <input type="checkbox"/> Appeals Chamber Unit, The Hague		<input type="checkbox"/> S. Chenault, Jurist Linguist	
All Decisions & Important Public Documents: <input type="checkbox"/> Press & Public Affairs		<input type="checkbox"/> Legal Library	
From: De:	<input type="checkbox"/> J.-P. Fomété (Chief, CMS) <input type="checkbox"/> N. Diallo (TC1) <input type="checkbox"/> R. Kouambo (TC2) <input checked="" type="checkbox"/> C. Hometovu (TC3) <input type="checkbox"/> F. A. Talon (Appeals)		
Cc:	<input type="checkbox"/> A. Dieng <input type="checkbox"/> A. Miller, OLA, NY <input checked="" type="checkbox"/> L. G. Munlo <input type="checkbox"/> S. Menon <input type="checkbox"/> M. Niang <input type="checkbox"/> S. van Driessche		
	<input type="checkbox"/> WVSS <input type="checkbox"/> R. Amoussouga <input type="checkbox"/> E. O'Donnell <input type="checkbox"/> DCDMS <input type="checkbox"/> P. Enow		
Subject Objet:	Kindly find attached the following document(s) / Veuillez trouver en annexe le(s) document(s) suivant(s):		

DECISION ON DEFENCE MOTION FOR A VIEW LOCUS IN QUO (RULE 4 OF PROCEDURE AND EVIDENCE)

Date Filed / Date enregistrée
19/12/2005

Pages
3