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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 6 October 2006

ICTR-00-56-T
06-10-2006
(23235-23235)

The PROSECUTOR
v.
Augustin BIZIMUNGU
Augustin NDINDILYIMANA
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

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DECISION ON SAGAHUTU'S MOTION FOR A SITE VISIT

Office of the Prosecutor:

Mr Ciré Aly Bá
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Ms Felistas Mushi
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Ms Anne Pauline Bodley

Counsel for the Defence:

Mr Gilles St-Laurent and Mr Ronnie MacDonald for Augustin Bizimungu
Mr Christopher Black and Mr Patrick De Wolf for Augustin Ndindiliyimana
Mr Charles Taku and Mr Hamuli Rety for François-Xavier Nzuwonemeye
Mr Fabien Segatwa and Mr Seydou Doumbia for Innocent Sagahutu

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

SITTING as Trial Chamber II, composed of Judge Asoka de Silva, Presiding, Judge Taghrid Hikmet and Judge Seon Ki Park (the "Chamber");

BEING SEISED OF "*Requête aux fins de la descente sur les lieux*",¹ filed by the Defence for Innocent Sagahutu on 20 September 2006;

HAVING RECEIVED AND CONSIDERED:

- i. the "*Réponse du Procureur à la requête d'Innocent Sagahutu sollicitant une descente sur les lieux*"² filed on 25 September 2006;
- ii. "*Soutien et complément à la 'requête aux fins de la descente sur les lieux' introduite par la défense d'Innocent Sagahutu*"³, filed by Nindiliyimana's Defence on 25 September 2006;
- iii. "Nzuwonomeye's Submission with respect to Sagahutu's Motion for an on-site Visit" filed on 26 September 2006; and
- iv. "*Réplique de la réponse du Procureur relative la requête aux fins d'une descente sur les lieux*"⁴, filed by the Defence for Sagahutu on 28 September 2006;

NOTING that the "*Réponse de la Défense d'Augustin Bizimungu au soutien de la Requête d'Innocent Sagahutu intitulée 'Requête aux fins de la descente sur les lieux'*"⁵ was filed out of time on 29 September 2006;

CONSIDERING the Statute of the Tribunal (the "Statute"), and the Rules of Procedure and Evidence (the "Rules"), in particular Rules 4 and 89 (D) of the Rules;

HEREBY DECIDES the Motion on the basis of the written submissions filed by the Parties pursuant to Rule 73(A) of the Rules.

SUBMISSIONS

1. The Defence for Innocent Sagahutu requests that the Chamber visit certain sites in Kigali that are identified in paragraph 4 of the Motion. It submits that a visit to these sites will enable the Chamber to understand the configuration of the crime sites mentioned by the Prosecution witnesses and, at the same time, assist the Chamber to better evaluate the evidence of those witnesses. Furthermore, the Defence argues that a visit to these sites will serve the interests of justice and its own case.

2. The Accused Nindiliyimana, Nzuwonomeye and Bizimungu each filed pleadings in support of Sagahutu's motion. In addition to the sites listed in Sagahutu's Motion, the Defence for Nindiliyimana requests the Chamber to visit several additional sites in Kigali, Gitarama, Gikongoro and Nyaruhengeri *préfectures*.

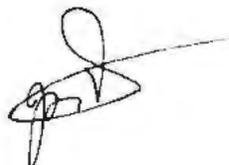
¹ "Motion for a Site Visit", Unofficial Translation.

² "Prosecutor's Response to Sagahutu's Motion for a Site visit", Unofficial Translation.

³ "Nindiliyimana's Motion in Support of Sagahutu's Motion for a Site Visit", Unofficial Translation.

⁴ "Sagahutu's Reply to the Prosecutor's Response to Sagahutu's Motion for a Site Visit", Unofficial Translation.

⁵ "Augustin Bizimungu's Response in Support of Sagahutu's Motion for a Site Visit", Unofficial Translation.



3. Nzunomeye's Defence indicated its intention to file further submissions relating to other sites that the Trial Chamber should visit, and with respect to the modalities of the visit. It requests a status conference for the latter purpose.

4. Bizimungu's Defence urged the Chamber to accept its late filing because it was pre-occupied with the cross-examination of a Prosecution expert witness. The Defence requests the Trial Chamber for an opportunity at the end of the Prosecution case, to provide a list of sites that the Chamber should visit in the interest of Bizimungu's defence, especially in the *préfectures* of Ruhengeri and Gitarama.

DELIBERATIONS

5. The Chamber notes that the Defence for Bizimungu has not shown good cause for its late filing. The Chamber expects all Parties to sufficiently organize their internal workings to enable them to respect timelines set for the filing of pleadings. Otherwise, the rights of the Accused to trial without undue delay would be violated.

6. The Chamber notes Rule 4 of the Rules which 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."

7. Pursuant to this provision, this Tribunal has considered the issue of site visits to various locations in the Republic of Rwanda.⁶ The jurisprudence establishes that the need for a site visit must be considered in light of the particular circumstances of each case. With respect to the timing of such a visit, the jurisprudence holds that a site visit should be conducted at a time when it will be instrumental to the discovery of the truth and the determination of the matter before the Chamber.⁷

8. The Chamber notes that in this case, the Prosecution is approaching the end of the presentation of its evidence. The Chamber has heard evidence from many Prosecution witnesses about various sites in Rwanda, and received photographic and sketch images of some of these locations. As indicated in the various Defence submissions, other sites and locations are likely to be mentioned in the course of presentation of the remainder of the Prosecution case, or, during the Defence cases. Similarly, the Chamber may receive further

⁶ *The Prosecutor v. 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", filed on 23 September 2004; *The Prosecutor v. Bagosora et al.*, "Decision on Prosecutor's Motion for Site Visits in the Republic of Rwanda" filed on 29 September 2004; *The Prosecutor v. Aloys Simba*, "Decision on the Defence Request for Site Visits in Rwanda", filed on 31 January 2005; and *The Prosecutor v. A. Rwamakuba*, "Decision on Defence Motion for a View [of] Locus in Quo Rule 4 of the Rules of Procedure and Evidence, filed on 16 December 2005.

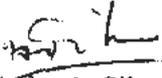
⁷ *The Prosecutor v. Jean-Paul Akayesu*, "Decision on the Defence Motion Requesting an Inspection of the Site and the Conduct of a Forensic Analysis", filed on 17 February 1998, para. 8. In *The Prosecutor v. Ndayambaje et al. supra*, para. 14, the Trial Chamber expressed the view that even if site visits were to be made, it would be desirable to hold them at the end of the presentation of evidence by all the Parties. In *The Prosecutor v. Bagosora et al. supra*, at para. 4, the Chamber considered the timing of the proposed site visit, the costs and logistics involved and concluded that a site visit in the circumstances of the case would not be instrumental in the discovery of the truth and the determination of the matter before the Chamber. Similarly, in *The Prosecutor v. Aloys Simba, supra*, para. 3, the Trial Chamber held that a site visit during the course of the presentation of the evidence was not appropriate in the circumstances of that case, and denied the Defence request without ruling out the possibility that the Defence could, if it thought fit, re-file the motion at a later stage of the proceedings.

evidence about the sites listed by the various Defence teams, thereby eliminating the need to visit those sites. In the circumstances of the present case therefore, it is the Chamber's view that a site visit to Rwanda at this stage of the proceedings would not be instrumental in the discovery of the truth and the determination of the matter before the Chamber.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence Motion.

Arusha, 6 October 2006.


Asoka de Silva
Presiding Judge



Taghrid Hikmet
Judge


Seon Ki Park
Judge

[Seal of the Tribunal]