



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

ORIGINAL: ENGLISH

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 27 February 2008

THE PROSECUTOR

v.

Hormisdas NSENGIMANA

Case No. ICTR-2001-69-I

DECISION ON SITE VISIT TO RWANDA
Rule 4 of the Rules of Procedure and Evidence

The Prosecution

Wallace Kapaya
Sylver Ntukamazina
Charity Kagwi-Ndungu
Brian Wallace
Iskandar Ismail
Jane Mukangira

The Defence

Emmanuel Altit
David Hooper

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED OF the Defence Motion for a Site Visit, filed on 8 February 2008;

CONSIDERING the Prosecution Response, filed on 12 February 2008, and the Defence Reply, filed on 15 February 2008;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Prosecution closed its case on 7 February 2008. The Defence case is scheduled from 2 June to 11 July 2008. Both parties submit that a site visit to Nyanza, Rwanda, will assist the Chamber in a full and fair determination of the factual issues in the case. The Defence requests that the visit take place as soon as possible, whereas the Prosecution argues that it should occur after the close of the Defence case.¹

DELIBERATIONS

2. 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”. In accordance with the jurisprudence of the Tribunal, the Chamber must assess the request for a site visit on the basis of the particular circumstances in each case. A decision to carry out such a visit should preferably be made when the site visit will be instrumental in the discovery of the truth and determination of the matter before the Chamber.²

3. The Chamber agrees with the parties’ submissions that several of the disputed issues relate to specific physical attributes of various locations in Nyanza, in particular the College of Christ Roi and its various buildings. It finds that the particular circumstances in this case warrant a site visit. The Prosecution supports visiting the places suggested in Annex A of the Defence Motion. The Chamber is satisfied that these sites are relevant to the charges against the Accused and the evidence adduced at trial. As for the Prosecution additional suggestions, the Chamber notes that there is agreement also to visit the ESPANYA School, the offices of commanders Barahira and Birikunzira, and the sub-prefecture offices. Based on the evidence heard so far, the Chamber is not convinced that there is any need to see the other locations proposed by the Prosecution.

4. In the Chamber’s view, the site visit will require a maximum of three days, including travel between Arusha and Kigali, and does not involve difficult logistical planning or significant costs to the Tribunal. The visit should occur after the presentation of the

¹ Motion, para. 5; Response, para. 4.

² *Prosecutor v. Mpambara*, Decision on the Prosecution Motion for a Site Visit (TC), 10 February 2006; *Prosecutor v. Simba*, Decision on Defence Renewed Request for Site Visits to Rwanda (TC), 4 May 2005; *Prosecutor v. Bagosora*, Decision on Prosecutor’s Motion for Site Visits in the Republic of Rwanda (TC), 29 September 2004, para. 4.

Prosecution and Defence cases.³ This will allow the assessment of all available evidence, including the testimonies of the witnesses led by both parties. The visit should therefore take place from Monday 14 July to Wednesday 16 July 2008.

FOR THE ABOVE REASONS, THE CHAMBER

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

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

Arusha, 27 February 2008

Erik Møse
Presiding Judge

Sergei Alekseevich Egorov
Judge

Florence Rita Arrey
Judge

[Seal of the Tribunal]

³ *Prosecutor v. Ndayambaje*, Decision on Prosecutor's Motion for Site Visits (TC), 23 September 2004, para. 15; *Prosecutor v. Bagosora*, Decision on Prosecutor's Motion for Site Visits (TC), 29 September 2004, para. 4; *Prosecutor v. Mpambara*, Decision on the Prosecution Motion for a Site Visit, 10 February 2006, para. 6; *Prosecutor v. Karera*, Decision on Site Visit to Rwanda, 1 September 2006, para. 2.