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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:** 27 May 2008

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

JUDICIAL RECORDS ARCHIVE  
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**DECISION ON NZUWONEMEYE'S MOTION FOR ON-SITE VISIT**

**Office of the Prosecutor:**

Mr. Alphonse Van  
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**Counsel for the Defence:**

Mr. Gilles St-Laurent and Mr. Ronnie MacDonald for Augustin Bizimungu  
Mr. Christopher Black and Mr. Vincent Lurquin for Augustin Nindiliyimana  
Mr. Charles Taku and Ms. Beth Lyons for François-Xavier Nzuwonemeye  
Mr. Fabien Segatwa and Mr. Seydou Dombia for Innocent Sagahutu

## INTRODUCTION

1. The tenth trial session in this case commenced on 26 May 2008 with the continuation of the defence of the second Accused, Ndindiliyimana. The third Accused, Nzuwonemeye, will commence presenting his case at the end of Ndindiliyimana's case.

2. On 9 May 2008, the Defence for Nzuwonemeye filed a Motion requesting the Chamber to order site visits to various locations in Kigali including the military camp, the former home of the Prime Minister, the entrance to the CHK hospital, the Hotel Diplomat, Mount Jali, Remera y'Abagorongo and Kimisagara.<sup>1</sup> The Prosecution filed a Response on 13 May 2008 supporting the Defence request.<sup>2</sup> The Prosecution submits that should the Chamber be minded to grant the Defence request, it should order that the following sites in Ruhengeri *préfecture* be added to the list of sites to visit: Mukamira Camp, Lake Karago, and Ruhehe Hill.

## DISCUSSION

3. Rule 4 of the Rules of Procedure and Evidence provides that "[a] Chamber or Judge may exercise their functions away from the Seat of the Tribunal, if so authorised by the President in the interests of justice."

4. There is a rich and consistent body of jurisprudence at the Tribunal on the application of this provision to requests for a site visit.<sup>3</sup> 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.<sup>4</sup>

<sup>1</sup> Nzuwonemeye Motion for On-Site Visit, pursuant to Rules 4 and 89 (Rules of Procedure and Evidence), filed on 9 May 2008.

<sup>2</sup> Réponse du Procureur à "Nzuwonemeye Motion for On-Site Visit, pursuant to Rules 4 and 89 of the RPE", filed on 13 May 2008.

<sup>3</sup> *Prosecutor v. Ndayambaje et al.*, 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 (TC), 23 September 2004; *Prosecutor v. Bagasara 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; and *Prosecutor v. Kwamakuba*, Case No. ICTR-98-44C-T, Decision on Defence Motion for a View [of] *Locus in Quo* (TC), 16 December 2005.

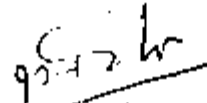
<sup>4</sup> *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Decision on the Defence Motion Requesting an Inspection of the Site and the Conduct of a Forensic Analysis (TC), 17 February 1998, para. 8. In *Prosecutor v. Ndayambaje et al.*, *supra*, para. 14, the Trial Chamber expressed the view that even 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 *Prosecutor v. Bagasara 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 *Prosecutor v. 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.

5. This Chamber has in the past denied a request for site visits to Rwanda in the course of the presentation of the Prosecution evidence.<sup>5</sup> In so doing, the Chamber reasoned that other sites and locations, which may also require a visit, may be mentioned in the remainder of the Prosecution case, or, during the Defence cases. The fact that the Chamber is now half-way through the presentation of the Defence evidence does not provide grounds for the Chamber to depart from its previous holding. Consequently, the Chamber finds that in the particular circumstances of this case, a site visit to Rwanda would be most appropriate at the end of the presentation of the evidence from all the Parties.

**FOR THE ABOVE REASONS, THE CHAMBER HEREBY**

**DENIES** the Defence Motion.

Arusha, 27 May 2008

  
Akoka de Silva  
Presiding Judge

  
  
Taghrid Hikmet  
Judge

  
Seon Ki Park  
Judge

[Seal of the Tribunal]

<sup>5</sup> *Prosecutor v. Ndindiliyimana et al*, Case No. ICTR-00-56-T, Decision on Sagahutu's Motion for a Site Visit (TC), 6 October 2006, para. 8.