



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-98-42-T  
26-02-2009  
(13286-13280)

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OR: ENG

**TRIAL CHAMBER II**

Before: Judge William H. Sekule, Presiding  
Judge Arlette Ramaroson  
Judge Solomy Balungi Bossa

Registrar: Mr. Adama Dieng

Date: 26 February 2009

JUDICIAL RECORDS ARCHIVES  
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**The PROSECUTOR v. Pauline NYIRAMASUHUKO & Arsène Shalom NTAHOBAZI**

Case No. ICTR-97-21-T

**The PROSECUTOR v. Sylvain NSABIMANA & Alphonse NTEZIRYAYO**

Case No. ICTR-97-29A&B-T

**The PROSECUTOR v. Joseph KANYABASHI**

Case No. ICTR-96-15-T

**The PROSECUTOR v. Élie NDAYAMBAJE**

Case No. ICTR-96-8-T

*Joint Case No. ICTR-98-42-T*

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

*Rules 4 and 73 of the Rules of Procedure and Evidence*

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

**SITTING** as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramaroson and Solomy Balungi Bossa (the "Chamber");

**BEING SEIZED** of the "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 26 June 2008 (the "Prosecution Motion")

**CONSIDERING** the

- (i) "*Réponse de Arsène Shalom Ntahobali à la Requête du Procureur intitulée 'the 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 30 June 2008 ("Ntahobali's Response");
- (ii) "*Réponse d'Élie Ndayambaje à '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 30 June 2008 ("Ndayambaje's Response");
- (iii) "*Réponse de Sylvain Nsabimana à la Requête du Procureur intitulée 'the Prosecutor's Motion for Site Visits in the Republic of Rwanda under Rules 4 and 73 of the Rules of Procedure and Evidence'*", filed confidentially on 1 July 2008 ("Nsabimana's Response");
- (iv) "*Réponse de Alphonse Nteziryayo à la '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 1 July 2008 ("Nteziryayo's Response");
- (v) "*Réponse de Joseph Kanyabashi à la Requête du Procureur afin de visiter les lieux au Rwanda en vertu des articles 4 et 73 du Règlement*", filed on 1 July 2008 ("Kanyabashi's Response");
- (vi) "*Réponse de l'accusée Pauline Nyiramasuhuko à la 'Prosecution Motion for site visit in the Republic of Rwanda under Rules 4 and 73 of the Rules of Procedure and Evidence' et Requête de Pauline Nyiramasuhuko pour ajouter des sites à ceux proposés par le Procureur*", filed on 1 July 2008 ("Nyiramasuhuko's Response");

**NOTING** the Scheduling Order of 26 September 2008 and considering the

- (i) "*Réponse d'Élie Ndayambaje au Scheduling Order rendu par la Chambre le 26 septembre 2008*", filed on 29 September 2008 ("Ndayambaje's Response to the Scheduling Order");
- (ii) "*Réponse de Sylvain Nsabimana au Scheduling Order du 26 septembre 2008*", filed on 30 September 2008 ("Nsabimana's Response to the Scheduling Order");



- (iii) “*Liste de sites proposés par Joseph Kanyabashi conformément au Scheduling Order du 26 septembre 2008*”, filed on 30 September 2008 (“Kanyabashi’s Response to the Scheduling Order”);

**CONSIDERING** the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

**NOW DECIDES** the Motion pursuant to Rules 4 and 73 (A) of the Rules, on the basis of the written briefs filed by the Parties.

## INTRODUCTION

1. On 23 September 2004<sup>1</sup>, the Chamber denied the Prosecution Motion for site visits in the Republic of Rwanda holding that the Parties may make such request at the end of the presentation of all evidence. On 26 June 2008, the Prosecution filed the current Motion. On 26 September 2008, the Chamber ordered the Defence for Nsabimana, Kanyabashi and Ndayambaje to complete their pleadings with regard to the locations of sites they wished to be visited.

## SUBMISSIONS OF THE PARTIES

### *Prosecution Motion*

2. Pursuant to Rules 4 and 73 of the Rules, the Prosecution requests the Trial Chamber to conduct site visits in the Republic of Rwanda. Referring to the Chamber’s Decision of 23 September 2004, the Prosecution suggests that this Motion is not premature as the presentation of evidence of the last Accused has already begun.

3. In support of its request, the Prosecution cites case law indicating that “the need for a site visit must be assessed in view of the particular circumstances of [the] case. A request to carry out a site visit should be granted when the visit will be instrumental to the discovery of the truth and determination of the matter before the Chamber. [...] The number of sites to be visited and their importance should also be taken into account. Chambers of this Tribunal have granted site visits at different stages of the proceedings, such as at the end of the Prosecution and Defence cases, and during the presentation of evidence by the Defence.”<sup>2</sup>

4. The Prosecution submits that the conduct of site visits is one of the evidentiary mechanisms available to the Trial Chamber. The Prosecution further submits that owing to the complexity of the case and the serious crimes alleged, the visits to Butare as well as the places described during testimonial evidence would be of considerable assistance for the

<sup>1</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Prosecutor’s Motion for Site Visits in the Republic of Rwanda under Rule 4 and Rule 73 of the Rules of Evidence and Procedure, 23 September 2004.

<sup>2</sup> *Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, 19 June 2007; *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, Judgement (TC), 7 June 2001; also referred to in *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 at para. 4; *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; *Prosecutor v. Rwamakuba*, Case No. ICTR-98-44C-T, Decision on Defence Motion for a View Locus in Quo, 16 December 2005 at para. 6;



Judges and Counsel. In Annex A to the Motion, the Prosecution lists sites requested for the visit.<sup>3</sup>

***Ntahobali's Response***

5. The Defence for Ntahobali supports the Motion. Referring to the *Zigiranyirazo* Decision of 3 October 2006, the Defence submits that all Parties should be able to add locations to the sites suggested. It states that the sites listed by the Prosecution are incomplete and requests to add some sites.

6. The Defence submits that strict rules need to be followed by all Parties during each site visit; the visits must be executed in silence, no Party or ICTR member should be allowed to make comments to the Judges; two members of each Defence team must take part in each site visit; the Chamber must set out the rules regarding the procedure of the site visits before its visit.

***Ndayambaje's Responses***

7. The Defence for Ndayambaje submits that the Motion is premature given that Ndayambaje's case is still ongoing. According to the Decision of 23 September 2004, such motion should be filed at the end of the presentation of all the evidence. Therefore, the Defence is not yet in a position to argue on the merits of the Motion. If the Chamber intends to adjudicate the Motion before the end of Ndayambaje's case, the Defence seeks leave to file a provisional list of sites to be visited and requests that the modalities of the visits be orally discussed in court.

8. In its Response to the Scheduling Order, the Defence submits that it has serious reservations about the utility of a site visit 14 years after the events in question, when the configuration of the sites (i.e.: vegetation, new construction, renovation of buildings, roads, etc.) is no longer the same.

9. Nonetheless the Defence informs the Chamber that the Accused Ndayambaje wishes to be present with his counsel during the site visits and lists sites it requests to be visited.

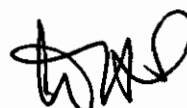
***Nsabimana's Responses***

10. The Defence opposes the Motion and submits that the request for site visits in Rwanda is premature as Ndayambaje's case is still ongoing. In its Decision of 23 September 2004, the Chamber reserved the possibility of visiting sites for the end of the presentation of the evidence by the Parties. To order a visit at this stage would not allow the Chamber to determine the different relevant locations.

11. The Defence submits that the formalities to be observed by the Parties will need to be defined prior to the visits. It questions the relevance of visiting all the sites mentioned by the Prosecution, and asserts that the sites listed by the Prosecution are insufficient. The Defence argues that in determining which sites should be visited, a special hearing must be held during which the Parties should propose potential locations to be visited by the Chamber as well as the formalities that should govern the visits. It also lists some sites to be visited.

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<sup>3</sup> Annex A to the Prosecution Motion.



12. If the Chamber schedules a hearing, the Chamber should allow the Defence to present an exhaustive list of locations it proposes to visit. Further, the Chamber should decide the formalities of the visits as argued in Ntahobali's Response of 30 June 2008. In its Response to the Scheduling Order, the Defence submits an additional list of sites to be visited.

***Nteziryayo's Response***

13. The Defence for Nteziryayo submits that the Motion is premature and should be denied. However, if the Chamber decides to rule on the Motion before the end of the presentation of all the evidence, the modalities of such visits should be debated in open session and sites should be added to the Prosecution list.

***Kanyabashi's Responses***

14. The Defence for Kanyabashi does not oppose the Motion provided that certain conditions are met and joins Nteziryayo's Response of 31 May 2004. Referring to the *Kupreskic* Decision of 13 October 1998, the Defence submits that the formalities to be observed during the visits have to be thoroughly defined. As such, the Defence submits that the site visits are official sessions of this trial; no informal talks between the Judges and the Parties should be allowed during the visits; transcripts and video recordings should be made for each visit, to enable the accused to take account of the site visits and to help the Parties prepare their closing briefs; a mechanism should be established to ensure that the sites visited are those described by the witnesses regarding the period between 6 April and 3 July 1994; during the visits, the Parties should address the Chamber only when permitted and in the presence of the other Parties. In its Response to the Scheduling Order, the Defence lists additional sites.

***Nyiramasuhuko's Response***

15. The Defence for Nyiramasuhuko supports the Motion, requests the addition of sites and suggests a status conference to determine the modalities of the site visits.

16. All in all, the Parties request the Chamber to visit more than 50 sites.

**DELIBERATIONS**

17. The Chamber recalls its Decision of 23 September 2004 that any requests for site visits shall be made at the end of the presentation of all of the evidence.<sup>4</sup> The need for a site visit may be assessed comprehensively only after the presentation of all evidence.<sup>5</sup> In light of the current stage of the proceedings, the Motion can be determined.

18. Although site visits are not expressly provided for in the Statute or Rules of Procedure and Evidence, Rule 4 empowers "[a] Chamber or a Judge [to] exercise their functions away from the Seat of the Tribunal, if so authorized by the President in the interests

<sup>4</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR - 98-42-T, Decision on Prosecutor's Motion for Site Visits in the Republic of Rwanda under Rule 4 and Rule 73 of the Rules of Evidence and Procedure, 23 September 2004.

<sup>5</sup> *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Defence Request for Site Visits in Rwanda (TC), 31 January 2005 at para. 3.



of justice.” Under the purview of this rule, the President may authorise site visits if such visits are in the interests of justice, safely and quickly completed or supported by all Parties to the case.<sup>6</sup>

19. “The need for a site visit must be assessed in view of the particular circumstances of [the] case. A request to carry out a site visit should be granted when the visit will be instrumental to the discovery of the truth and determination of the matters before the Chamber. [...] the number of sites to be visited and their importance should also be taken into account. Chambers of this Tribunal have granted site visits at different stages of the proceedings, such as at the end of the Prosecution and Defence cases, and during the presentation of evidence by the Defence.”<sup>7</sup>

20. In determining whether a site visit will be “instrumental in the discovery of the truth and determination of the matters before the Chamber”, the Trial Chamber examines if some of the “disputed issues at trial are relative to physical attributes of various sites” relevant to the case.<sup>8</sup> A site visit can assist the Chamber in its assessment of issues of visibility, layout of buildings, distances between locations and correlative proximity of places. Thus, a first hand familiarisation with the relevant locations can assist in the fair and expeditious determination of the case.<sup>9</sup> Furthermore, the ease of logistical planning, the costs of the visits to the Tribunal, and the number of days required for a proper site visit are to be considered by the Chamber,<sup>10</sup> and detailed records of the proceedings should be kept.<sup>11</sup>

21. The Chamber considers that the Prosecution may have given valid reasons for the request for site visits. However the Chamber considers that the visits are no longer necessary for the following reasons. Firstly, a considerable number of photographs, sketches and maps have been tendered as exhibits to assist the Chamber’s familiarisation with relevant locations testified upon by the witnesses and to assist in the determination of truth. Secondly, the Chamber considers that after over 14 years, it is likely that most of the sites to be visited will no longer be in the same state as they were in 1994 and that visiting them may not help much in the discovery of the truth or in the fair determination of the matters before the Chamber. In addition, the sites proposed by the Parties are too numerous and may have extraordinary logistical and cost implications for the Tribunal and may not be completed in a short period of time.

<sup>6</sup> *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 at para. 1.

<sup>7</sup> *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, Judgment (TC), 7 June 2001; also referred to in *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 at para. 4; *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; *Prosecutor v. Rwamakuba*, Case No. ICTR-98-44C-T, Decision on Defence Motion for a View Locus in Quo, 16 December 2005 at para. 6; *Prosecutor v. Mpambara*, Case No. ICTR-2001-65-T, Decision on the Prosecution Motion for a Site Visit (TC), 10 February 2006 at para. 4; *Prosecutor v. Seromba*, Décision écrite relative à la requête du Procureur pour une visite de sites au Rwanda, 24 March 2006 and *Prosecutor v. Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Prosecution’s Motion for a View of the Locus in Quo, 19 June 2007 at para. 3.

<sup>8</sup> *Prosecutor v. Mpambara*, *idem*, at para. 5; *Prosecutor v. Rwamakuba*, *idem* at para. 8; *Prosecutor v. Karera*, Case No. ICTR-01-74-T, Decision on Site Visit to Rwanda (TC), 1 September 2006 at para. 3; *Prosecutor v. Bagosora et al.*, *idem* at para. 3.

<sup>9</sup> *Prosecutor v. Karera*, *supra* *idem* at para. 1.

<sup>10</sup> *Prosecutor v. Mpambara*, *idem*, at para. 5; *Prosecutor v. Rwamakuba*, *supra* *idem*, at para. 8

<sup>11</sup> *Prosecutor v. Karera*, Case No. ICTR-01-74-T (AC) Judgement, para 50.



**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the Motion in its entirety.

Arusha 26 February 2009



William H. Sekule  
Presiding Judge



Arlette Ramaroson  
Judge



Solomy Balungi Bossa  
Judge

[Seal of the Tribunal]

