



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
09-03-2009
(28378 - 28369)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 9 March 2009

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

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DECISION ON LOCATIONS FOR THE SITE VISIT TO RWANDA

Office of the Prosecution:

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Mr Charles Taku and Ms Beth Lyons for **François-Xavier Nzuwonemeye**
Mr Fabien Segatwa and Mr Seydou Doumbia for **Innocent Sagahutu**

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INTRODUCTION

1. On 4 December 2008, the Chamber ordered a site visit to Rwanda and instructed the Parties to submit by 19 January 2009, a joint itinerary including reasons for visiting each proposed site.¹
2. The Defence teams for Nzuwonemeye and Sagahutu filed separate submissions on 16 January 2009.² On 19 January 2009, the Defence teams for Ndindiliyimana and Bizimungu each filed a separate submission.³ The Prosecution filed its submission on 28 January 2009, almost ten days after the deadline stipulated in the Chamber's Scheduling Order.⁴ The Chamber disapproves of the Prosecution's non-compliance with its Scheduling Order and reminds the Prosecution of its obligation of diligence towards the Trial Chamber. The Chamber will, however, consider the Prosecution's submissions in the interests of justice.
3. In their various submissions, the Parties proposed that the Chamber visit a large number of sites throughout Rwanda. They did not propose a joint itinerary.

DELIBERATIONS

4. Site visits are not expressly provided for in the Tribunal's Statute and Rules of Procedure and Evidence ("the Rules".) However, Rule 4 of the Rules empowers a Trial Chamber to exercise its functions away from the Seat of the Tribunal if so authorized by the President in the interests of justice.
5. 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. In addition, the number of sites to be visited and their importance should also be taken into account.⁵ Furthermore, the ease in 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.⁶

¹ Scheduling Order, 4 December 2008.

² Nzuwonemeye Defence Compliance with the Court Order in the Scheduling Order Issued on 4 December 2008 and Additional suggested Procedures, 16 January 2009; Sagahutu's *Requetes en identification des sites a visiter a Kigali et Demande de Modification du Calendrier pour Cette Visite*, 16 January 2009.

³ Ndindiliyimana Defence Proposed Site Visit Itinerary in Compliance with the Scheduling Order of 4 December 2008 with Additional Request to Alter the Date of the Ordered Site Visit, 19 January 2009; *Identification par la Défence du Général Augustin Bizimungu des sites à visiter au Rwanda et demande de Modification du Calendrier pour la tenue de telle visite*, 19 January 2009

⁴ *Requête du procureur aux fins d'être Relevé de la Forclusion et soumissions aux fins de se Conformer a L'ordonnance Portant Calendrier du 4 Décembre 2008*, 28 January 2009.

⁵ *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* ICTR-2001-73-T, Decision on the Prosecution's Motion for a View of the *Locus in Quo*, 19 June 2007 at para. 3.

⁶ *Prosecutor v. Mpambara*, *supra* note 5, at para. 5; *Prosecutor v. Rwamakuba*, *supra* note 5, at para. 8

6. 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 should consider whether some of the “disputed issues at trial are relative to physical attributes of various sites” relevant to the case.⁷ 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.⁸

Kigali

7. The Prosecution and the Defence teams for Nindiliyimana, Nzuwonemeye and Sagahutu propose that the Chamber visit several sites in Kigali. The Prosecution, Nzuwonemeye and Sagahutu all propose Camp Kigali, CHK, the residence of former Prime Minister Agathe Uwilingimana, and what they refer to as “Strategic Points” in Kigali including Radio Rwanda, Rwandatel, National Bank of Rwanda and the Office of the President.

8. The Chamber finds that based on the evidence before it, a site visit to the following locations in Kigali will assist it in the discovery of the truth and assessment of the evidence. (i) Camp Kigali including various points within it such as the RECCE headquarters, the armoury, and the site where the Belgian soldiers were killed; (ii) the residence of Prime Minister Agathe; (iii) ESM; (iv) CHK; (v) Hotel Diplomat. Similarly, the Chamber finds that visiting Radio Rwanda, Rwandatel, National Bank of Rwanda and the Office of the President will give it a first-hand understanding of the physical layout of these various locations and assist its evaluation of the evidence relating to troop movements and deployment of weapons on 6-7 April 1994. The Chamber also grants the Defence request to visit the *Milles Collines* junction, Paul VI Avenue, and *Avenue de L'Armée* so as to enable it to assess the distance between these various locations and the residence of the former Prime Minister as well as the position(s) manned by the elements of Squadron A of the Reconnaissance Battalion on 6 - 7 April 1994.

9. The Chamber denies the Prosecution's request to visit Kanombe international airport, CND, and the headquarters of the Presidential Guard and National Gendamerie. The Chamber finds that the Prosecution failed to demonstrate how a visit to these sites will assist the Chamber in understanding or assessing the evidence on record. Similarly, the Chamber denies Nzuwonemeye's request to visit Mount Jali, Remera, Gatyata, Kimisagara and Nzuwonemeye's itinerary on “7 April 1994, from his home to ESM, and [the] location where he met Captain Sagahutu on the road.”⁹ Nzuwonemeye argues that visiting these sites will familiarize the Chamber with their geographic positions and the distances between them. In the Defence's view, this is necessary to discredit various aspects of the evidence of Witness DCJ. The Chamber finds that there is an extensive amount of evidence on the record, including evidence elicited during cross-examination, upon which it can assess the credibility of this witness. A visit to the above sites will therefore not assist the Chamber any further.

10. The Defence for Nindiliyimana proposes that the Chamber visit Nindiliyimana's

⁷ *Prosecutor v. Mpambara*, supra note 3, at para. 5; *Prosecutor v. Rwamakuba*, supra note 3, 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.*, supra note 2 at para. 3.

⁸ *Prosecutor v. Karera*, supra note 4 at para. 1.

⁹ Nzuwonemeye Motion, para. 5 (e).

building that served as the headquarters of the MRND in Kigali. The Defence submits that because of the structure of the building, it was unlikely that anyone could observe a weapons cache from inside the gates of the compound as testified to by Witness Frank Claeys. The Defence adds that a site visit would be useful to the Chamber's assessment of the credibility of Prosecution Witnesses Claeys and ANC. The Chamber recalls that it has heard a considerable amount of evidence, including extensive cross-examination of both Prosecution Witnesses ANC and Frank Claeys on the issue of a weapons cache at the MRND Headquarters. The Chamber also admitted a large number of exhibits.¹⁰ In the circumstances, the Chamber doubts whether a visit to the former MRND headquarters will serve any useful purpose. Ndindiliyimana's request is therefore denied.

11. Ndindiliyimana also requests a visit to his former residence in Kiyuvu and notes that this is necessary to challenge Prosecution Witness ANC's credibility. The Defence maintains that Witness ANC, who claimed to be part of Ndindiliyimana's close protection unit, failed to identify the Accused's residence during his testimony before the Chamber. The Chamber notes that Witness ANC was asked both during his examination-in-chief and cross-examination to describe the physical location of Ndindiliyimana's residence in Kigali during 1994. The Witness' direct evidence was tested through rigorous cross-examination during which he was asked to locate Ndindiliyimana's house on a sketch plan.¹¹ In addition this evidence was directly challenged during the defence testimony of the Accused.¹² The Chamber therefore finds that it has sufficient information on the basis of which it can assess Witness ANC's credibility on this issue and make findings of fact.

12. Ndindiliyimana's Defence requests that the Chamber visit a place called Kinamba as well as Kacyiru gendamerie camp. The request to visit Kinamba is based on the Defence submission that contrary to Prosecution Witness KF's testimony, the *Interahamwe* operated a roadblock at Kinamba and not near the Kacyiru camp as alleged in paragraph 96 of the Indictment. The Defence adds that Kinamba is located at "a distance of some kilometers away" from Kacyiru camp. Taking into account the allegation in paragraph 96 of the Indictment and the evidence before it including the testimony of Defence Witness CBP56,¹³ the Chamber finds that a visit to Kacyiru camp and Kinamba will give it a better appreciation of the distance between an alleged *Interahamwe* roadblock and the gendamerie Camp. The Chamber therefore grants the Defence request to visit these two locations.

Rambura

13. Nzuwonemeye's Defence proposes that the Chamber visit the area of the former President's residence in Rwambura, where armoured vehicles were allegedly concealed in 1994. The Chamber finds that a site visit to that location will not add anything to the evidence currently on record.

Gitarama

14. The Prosecution proposes that the Chamber visit Murambi and *L'Hotel des Sports* in Gitarama. The Prosecution submits that a site visit to Murambi is necessary because it

¹⁰ See for example Exhibits D68 (A)-(F) admitted on 13 October 2005, p13.

¹¹ Witness ANC, T. 29 May 2006, p44; T. 30 May 2006, p56.

¹² Ndindiliyimana, T. 17 June 2008, pp13-14.

¹³ T. 1 February 2008, p16 where Defence Witness CBP 56 states that the Kinamba roadblock was 2 to 3 kilometres away from Kacyiru Camp.

was the seat of the interim government from where all military and political decisions were taken after 12 April 1994. It was at Murambi, the Prosecution argues, that the government failed to take a decision to stop the massacres. The Prosecution adds that *L'Hotel des Sports*, where Ndindiliyimana had a room for himself and also sheltered refugees, was not far from the seat of Government in Murambi. The Chamber is not convinced that visiting these locations will assist it any further than the evidence currently on record. The Prosecution's request is therefore denied.

15. Bizimungu proposes that based on the evidence of Witness GFD, the Chamber should visit Mugina Communal office and follow the route from there to Remera-Rukoma and the environment of the Taba Communal Office. Bizimungu adds that such a visit will demonstrate the unlikely nature of GFD's evidence that the dead body of a man was carried on foot from the communal office to Remera-Rukoma. The Chamber believes that the Defence submission relates to a general credibility issue which the Chamber can address on the basis of the evidence on record without necessarily visiting the said locations. The Defence submission is therefore denied.

Nyaruhengeri

16. The Prosecution and Ndindiliyimana both propose a visit to Ndindiliyimana's residence in Nyaruhengeri. The Prosecution submits that such a visit will assist the Chamber in its assessment of the distance between that residence and Kansi Parish. Ndindiliyimana suggests that visiting the residence will enable the Chamber familiarize itself with the topography of the area and discredit Prosecution Witness FAV's testimony. In addition, the Prosecution proposes that the Chamber visit Kansi Parish. The Chamber recalls that paragraph 73 alleges that several thousand Tutsi civilians were killed at Kansi Parish by gendarmes who were stationed at Ndindiliyimana's residence. The Chamber is satisfied that a visit to both Ndindiliyimana's residence and Kansi Parish will be useful to the discovery of the truth about the crimes allegedly committed in Nyaruhengeri. The Prosecution and Defence requests relating to the proposed sites in Nyaruhengeri are therefore granted.

17. The Prosecution also requests a visit to Nyaruhengeri Communal office and seeks to link this request with the murder allegations in paragraph 93 of the Indictment. The Chamber finds that the Prosecution has not shown how a visit to the Communal Office will aid the Chamber's analysis of the evidence relating to the murders alleged in paragraph 93. The Prosecution request is therefore denied.

Ruhengeri

18. The Prosecution requests the Chamber to visit the Court of Appeal and Hotel Muhabura; Mukamira military camp; and Ruhehe Hill. According to the Prosecution, Tutsi refugees were massacred by militiamen at the Court of Appeal on orders given to them by Bizimungu at a meeting held at Hotel Muhabura. The Prosecution also submits that Mukamira camp was Bizimungu's headquarters when the Accused served as Commander of Ruhengeri Operational Sector and that it became a centre for militia training. Finally, the Prosecution adds that Ruhehe Hill was an important weapons cache during the events. Based on the allegations in the Indictment and the evidence on record, the Chamber finds that it will benefit greatly from a first-hand view and understanding of the physical attributes and relative proximity of the Court of Appeal, Hotel Muhabura, and Mukamira Military Camp. The Prosecution's motion is therefore granted in respect

of those locations. However, the Chamber does not find that a visit to Ruhehe hill will add anything to the evidential record or otherwise enhance its understanding of the evidence.

19. Bizimungu's Defence requests the Chamber to visit various locations in Ruhengeri in order to discredit the evidence of Prosecution Witnesses GAP, AOE, and GFD. The Defence submits that a visit to Mukingo Communal Office, the residence of bourgmestre Harerimana and Nzirorera's mother's house, will enable the Chamber to see for itself that it was impossible or unlikely for Witness GAP to have traveled on foot from the Communal Office to Nzirorera's mother's house on the night of 6 April 1994 so as to attend a meeting. In addition, Bizimungu submits that a site visit will also demonstrate the unlikelihood of GAP leaving his post without informing the Bourgmestre who lived close to the Communal office. Furthermore, Bizimungu requests the Chamber to visit the residence of Witness GFA, in relation to Nzirorera's residence, Byangabo market and Nzirorera's mother's house. The Defence submits that such a visit will enable the Chamber to note that Witness GFA lived closer to Nzirorera's mother's residence than Witnesses GFV and GAP and therefore reveal the impossibility or unlikelihood of Witness GAP's evidence that he attended a meeting at that location on the night of 6 to 7 April 1994.

20. Bizimungu also invites the Chamber to visit Mubona and Nyamagumba in Kigombe Commune, Muhingo in Mukingo commune and Nkumba in Nkumba commune. The Defence submits that a visit to these places will challenge the credibility of Witness GFD's testimony that after his military training at Mukamira camp, he was deployed to those various locations within a few days.

21. Furthermore, Bizimungu invites the Chamber to reconstruct and take the journey allegedly made by Witness GFD from the Nkumba Communal office to Mukamira camp then to Gitarama through Nyakinama in Ruhengeri. The Defence submits that if the Chamber embarks on this journey, it will realize that it was unlikely for Witness GFD to take this route because a more appropriate route would have enabled the witness to reach Mukamira camp without passing through Ruhengeri. The Defence adds that a visit to these locations would further enable the Chamber to note that it was unlikely that on 17 May 1994, Witness GFD traveled on foot from Mukamira camp to the Nkuli Communal office to attend a meeting organized by Setako.

22. Bizimungu's request to visit the above Ruhengeri sites all seem to be directed towards challenging the credibility of specific witnesses. The Chamber has heard extensive testimony from Witnesses GAP, AOE, and GFD. Each of these witnesses was cross-examined in detail by the Defence. The Chamber therefore has adequate material upon which to assess their credibility and make findings of fact.¹⁴ Moreover, the Defence has not shown that the physical layout of these various locations has not changed from what it was in 1994. In the circumstances, the Chamber finds that a site visit to these locations will add little value to the Chamber's deliberation.

23. In addition, Bizimungu's Defence invites the Chamber to visit and travel from

¹⁴ *The Prosecutor v. Bagosora et al*, Case No. ICTR-98-41-T, Decision on Bagosora Motion for a Site Visit, 11 December 2006, para. 3; *The Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on Defence Renewed Request for Site Visits to Rwanda, 4 May 2005, para. 2.

Witness GFD's cellule at Mukamira Camp to Jenda, and then proceed to Kora. The Defence submits that according to Witness GFD's testimony, he left his commune in the morning of 8 April 1994 and traveled to Mukamira camp, then from Mukamira to Jenda by taxi, and on foot from Jenda to Kora where he attended a meeting near the Kora dispensary at 10.00 a.m. According to the Defence, a visit to these locations will show that it was materially impossible for the witness to have made that journey and arrive on time for the said meeting. In addition, the site visit will demonstrate that in 1994, Nkuli commune was not next to Mutara commune, and that the two were separated by Karago commune. The Chamber does not find that visiting these locations will be helpful to its deliberations. In the Chamber's view, the Defence has had ample opportunity to test the credibility of Prosecution Witness GFD. In relation to the geographical layout of the various places mentioned in GFD's evidence, the Chamber recalls that during cross-examination of this Witness, the Defence tendered Exhibit D 47(d) which indicated both Kora market and Kora dispensary on a sketch map.¹⁵ Similarly, during the testimony of Defence Witness DB28 this map was presented to him and he provided additional explanations.¹⁶ The Chamber therefore has sufficient information upon which to assess GFD's credibility and finds that a site visit will not serve any useful purpose.

24. Bizimungu requests the Chamber to visit the houses of Ephrem Setako and Prosecution Witness AOE respectively. The Defence suggests that visiting these locations will enable the Chamber to realize that Witness AOE was not Setako's neighbour and that his testimony which follows on this affirmation was therefore false. The Chamber finds that the Defence mis-stated Witness AOE's testimony. Properly understood, Witness AOE's evidence is that he and Setako lived in neighbouring secteurs.¹⁷ The Chamber therefore finds that the Defence has failed to provide good reasons for a site visit to these locations.

FOR ALL THE FOREGOING REASONS, THE CHAMBER

GRANTS in part the Motions filed by the Prosecution, as well as the Defence teams for Ndindiliyimana, Nzuwonemeye and Sagahutu;

DENIES Bizimungu's Motion in its entirety;

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

DIRECTS the Registry to make all necessary arrangements to visit the relevant sites from 13 to 18 April 2009, and to liaise with the Parties and the Chamber to facilitate the implementation of this Decision;

DIRECTS that the site visit shall be conducted in accordance with the itinerary in Annex I and the procedure described in Annex II to this Decision.

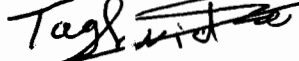
¹⁵ Exhibit D47 (d) admitted into evidence on 19 May 2005, p72, 84; see also Exhibit D47(e) T. 19 April 2007, p20.

¹⁶ T. 19 April 2007, pp6-8.

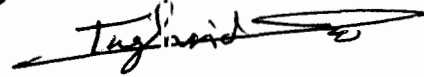
¹⁷ T. 8 June 2005, p22 where Witness AOE stated that Setako was his neighbour "generally speaking", and added that "He lived in Musumba *secteur*, which is a *secteur* bordering the Mukamira *secteur*."

Arusha, 9 March 2009, done in English • TPIR




Read and approved by
Asoka d Silva

Taghrif Hikmet


Read and approved by
Seon Ki Park

Presiding Judge
Absent at the time of
Signature

Judge

Judge
Absent at the time of
Signature

[Seal of the Tribunal]



The Prosecutor v. Ndindiliyimana et al, Case No: ICTR-2000-56-T

Decision on Locations for the Site Visit, 9 March 2009

Annex I: Itinerary for the Site Visit from 13 to 18 April 2009

- I. **Monday 13 April 2009:** Travel from Arusha to Kigali. Hotel check-in.
- II. **Tuesday 14 April** – 9.00a.m. Site Visit to Kigali. Start at Camp Kigali including RECCE headquarters, the armoury, the site where Belgian soldiers were killed; ESM; CHK; Hotel Diplomat; Residence of Prime Minister Agathe, Avenue Paul VI, *Avenue de L'Armée, Milles Collines* Junction. Proceed to Radio Rwanda, Rwandatel; National Bank of Rwanda, and the Office of the President. Finally, visit Kacyiru Camp and Kinamba.
- III. **Wednesday 15 April:** 8.30 a.m. Depart for Ruhengeri. Start site visit at Hotel Muhabura; proceed to Court of Appeal; then to Mukamira Military Camp. Return to Kigali.
- IV. **Thursday 16 April:** 9.00a.m. Depart for Butare. Visit Ndindiliyimana's House in Nyaruhengeri and then Kansi Parish. Return to Kigali.
- V. **Friday 17 April:** Visit sites in Kigali that could not be reached on Tuesday 14 April 1994.
- VI. **Saturday 18 April 2009:** Return to Arusha.

The Prosecutor v. Ndindiliyimana et al Case No: ICTR-2000-56-T

Decision on Locations for the Site Visit, 9 March 2009

Annex II: Directives on the Procedure and Modalities for the Site Visit

1. For each of the sites listed in the Chamber's "Decision on Locations for the Site Visit", the Party or Parties that requested the visit shall, and any other party, may submit in writing to the Chamber the following information in respect of each site:
 - the relevance of the site to the matters for determination by the Chamber, with specific reference to the Trial record, where possible;
 - the particular matter(s) the Party is seeking the Chamber to see and the conclusion(s) it wishes the Chamber to draw from viewing the site in question.
 - These submissions should be sent, by email to Mr. Roger Kouambo, who will act as Registry representative on this trip, on the following address: kouambo-tchinda@un.org no later than close of business on Monday 6 April, 2009.
2. Parties will not be permitted to make oral representations at the Sites;
3. At each of the Sites visited by the Chamber, the following procedure will be followed:
 - a) The Registry representative, Mr. Kouambo, will announce the location;
 - b) The Registry representative, Mr. Kouambo, will read aloud all of the submissions which have been made by the Parties in reference to that site (notably the relevance of the site as advanced by the Party or Parties; and the conclusion(s) which the Party or Parties are asking the Chamber to draw as a result of viewing the particular site);
 - c) The Registry representative will act as official note taker during the Chamber's site visits;
 - d) The notes so taken will be submitted to the Chamber no later than Wednesday 22 April 2009;
4. Upon returning to the Seat of the Tribunal in Arusha, the official notes of the site visit as taken by Mr. Kouambo in accordance with the procedure set out in this directive, will be admitted into the trial record as a Chamber's Exhibit.
5. Please take note of the Chamber's Directives and act accordingly.