



UNITED NATIONS
NATIONS UNIES

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

OR: ENG

TRIAL CHAMBER II

Before Judges: Taghrid Hikmet, Presiding
Seon Ki Park
Joseph Masanche

Registrar: Adama Dieng

Date: 3 March 2010

THE PROSECUTOR

v.

Gaspard KANYARUKIGA

Case No. ICTR-2002-78-T

**SUPPLEMENTAL DECISION REGARDING THE SITE VISIT IN RWANDA
AND ITINERARY OF SITES TO BE VISITED**

Office of the Prosecutor:

Holo Makwaia
Althea Alexis Windsor
Cheikh Tidiane Mara
Lansana Dumbuya

Defence Counsel:

David Jacobs
Claver Sindyigaya
Marc Nerenberg
Iain Edwards

INTRODUCTION

1. The trial in this case commenced on 31 August 2009.¹ After calling 11 witnesses over 14 trial days, the Prosecution closed its case on 17 September 2009. The Defence case commenced on 18 January 2010.² After calling 23 witnesses over 14 trial days, the Defence rested its case on 11 February 2010.³
2. On 30 September 2009, the Prosecution filed a motion for a site visit pursuant to Rules 4 and 73 of the Rules of Procedure and Evidence.⁴
3. On 19 October 2009, the Chamber denied the Prosecution motion for a site visit, finding that it would only be in a position to determine the usefulness of a site visit and the sites to be visited at the end of the Defence case.⁵
4. On 12 February 2010, the Trial Chamber held a Status Conference to hear submissions on the possibility of a site visit and to schedule the filing of the Closing Briefs and hearing of oral closing arguments.⁶ With regard to the site visit, the Prosecution submitted that it supported a site visit and was ready to go whenever it suited the Chamber and the Defence.⁷ The Defence opposed the idea of a site visit.⁸
5. In its Scheduling Order following the Status Conference on 12 February 2010,⁹ the Chamber ordered that a site visit occur during the second half of April 2010 “in order for the Chamber to visit the locations mentioned by the witnesses in this case and assess, if necessary, the distances between these locations”.¹⁰ In the same Order, the Chamber requested that the Parties provide submissions to the Chamber regarding the specific date(s) for the site visit and the sites to be visited.¹¹
6. On 23 February 2010, the Prosecution filed a second motion for site visits in the Republic of Rwanda, maintaining its submissions from the motion filed on 30 September 2009.¹² In addition, the Prosecution requests that the site visit occur between 26 April

¹ T. 31 August 2009, p. 1.

² T. 18 January 2010, p. 1.

³ T. 11 February 2010, p. 20.

⁴ 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 September 2009.

⁵ Decision on the Prosecution Motion for Site Visits (TC), 19 October 2009.

⁶ Status Conference, T. 12 February 2010, p. 1.

⁷ Status Conference, T. 12 February 2010, pp. 1-2.

⁸ Status Conference, T. 12 February 2010, p. 2.

⁹ Scheduling Order following the Status Conference held on 12 February 2010 (TC), 17 February 2010.

¹⁰ Scheduling Order following the Status Conference held on 12 February 2010 (TC), 17 February 2010, Order I.

¹¹ Scheduling Order following the Status Conference held on 12 February 2010 (TC), 17 February 2010, Order II.

¹² Prosecutor’s Motion for Site Visits in the Republic of Rwanda under Rules 4 and 73 of the Rules of Procedure and Evidence in Compliance with the Chamber’s [S]cheduling Order of 17 [February] 2010, filed 23 February 2010, p. 2.

2010 and 30 April 2010 and provides a list of sites and routes, which it wishes the Chamber to visit.¹³

7. On 23 February 2010, the Defence also filed submissions in response to the Chamber's 17 February 2010 Scheduling Order.¹⁴ The Defence requests that the site visit occur between 26 April 2010 and 30 April 2010 due to security concerns.¹⁵ The Defence also submits a list of sites and routes in Rwanda that it wishes the Chamber to visit.¹⁶ Finally, the Defence requests that the site visit be accompanied by court reporters and that video and photographic records be taken during the site visit.¹⁷ The Defence has annexed suggested "Rules of Procedure and Conduct" to its submissions.¹⁸

8. On 25 February 2010, the Defence filed a response to the Prosecutor's 23 February 2010 motion for site visits.¹⁹

9. On 1 March 2010, the Prosecution filed a reply to the Defence's 25 February 2010 response, proposing additional routes to be visited by the Chamber during its site visit.²⁰

10. On 2 March 2010, the Defence filed an additional submission in response to the Prosecution's 1 March 2010 reply.²¹ The Defence requests that the Chamber reject the routes proposed by the Prosecution in its 1 March 2010 submissions.²²

DELIBERATIONS

Organisation of the Site Visit

11. The Prosecution and Defence have both requested that the Chamber schedule the site visit for the week beginning 26 April 2010. The Chamber notes, however, that due to the scheduling of another site visit at that time, it is not possible for this Chamber to go on a site visit then. With this in mind and considering the advice from the Registry and the ICTR Security Section in Kigali, the Chamber orders that the site visit occur from 19 April 2010 to 21 April 2010.

¹³ Prosecutor's Motion for Site Visits in the Republic of Rwanda under Rules 4 and 73 of the Rules of Procedure and Evidence in Compliance with the Chamber's [S]cheduling Order of 17 [February] 2010, filed 23 February 2010, pp. 2-3.

¹⁴ Defence Submissions with Respect to Site Visit in Rwanda, filed on 23 February 2010.

¹⁵ Defence Submissions with respect to Site Visit in Rwanda, filed 23 February 2010, para. 2.

¹⁶ Defence Submissions with respect to Site Visit in Rwanda, filed 23 February 2010, para. 3.

¹⁷ Defence Submissions with respect to Site Visit in Rwanda, filed 23 February 2010, paras. 7-8.

¹⁸ Defence Submissions with respect to Site Visit in Rwanda, filed 23 February 2010, para. 9, Annex.

¹⁹ Response to "Prosecutor's Motion for Site Visits in the Republic of Rwanda under Rules 4 and 73 of the Rules of Procedure and Evidence in Compliance with the Chamber's Cheduling [sic] Order of 17 Februray [sic]2010," filed on 25 February 2010.

²⁰ Prosecution's Reply to the Defence Submissions Filed on 25 February 2010 to the Prosecution Submission for Site Visits in Rwanda, filed on 1 March 2010, para. 4.

²¹ Additional Defence Submissions Further to "Prosecution's Reply to the Defence Submissions Filed on 25 February 2010 to the Prosecution Submission for Site Visits in Rwanda," filed on 2 March 2010.

²² Additional Defence Submissions Further to "Prosecution's Reply to the Defence Submissions Filed on 25 February 2010 to the Prosecution Submission for Site Visits in Rwanda," filed on 2 March 2010.

Composite Itinerary

12. 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.”

13. The Trial Chamber has already found that a site visit should occur. With respect to the locations to be visited, the Chamber has considered the sites proposed by the Parties and finds that the locations contained in Confidential Annex B should be visited.

14. The Chamber recalls that, in its 1 March 2010 submissions, the Prosecution requested that additional routes be added to the itinerary for the site visit.²³ Having considered the Parties’ submissions, as well as the timing for the site visit, the Chamber finds that there is insufficient time to visit all of the sites proposed by the Parties. The Chamber therefore has decided not to add these routes to the itinerary. The Chamber notes, however, that it may ask the Parties during the site visit to make submissions regarding possible alternative routes that have not been visited by the Chamber.

Procedure for the Site Visit

15. The Chamber notes that the Defence has proposed “Rules of Procedure and Conduct” for the site visit in this case.²⁴ The Chamber recalls that “detailed records of [the] Trial Chamber’s site visits should normally be kept. The purpose of a site visit is to assist a Trial Chamber in its determination of the issues and therefore it is incumbent upon the Trial Chamber to ensure that the parties are able to effectively review any findings made by the Trial Chamber in reliance on observations made during the site visit.”²⁵ Thus, having considered the Parties’ submissions, the Chamber adopts the “Rules of Procedure and Conduct for the Site Visit” contained in Annex A of this Decision. The Chamber notes that written, photographic and video records shall be kept during the site visit.

16. In addition, the Chamber notes that the Defence has requested that the Chamber visit the homes of certain protected witnesses. Having considered the Defence submissions, the Chamber finds that certain sites would be useful in determining the matter before the Trial Chamber. However, in order to minimise the risks associated with these visits, the Chamber instructs the Defence to confer with the Registry and the Witness and Victims Support Section to ensure that the witnesses’ protective measures are maintained during the site visit.

²³ Prosecution’s Reply to the Defence Submissions Filed on 25 February 2010 to the Prosecution Submission for Site Visits in Rwanda, filed on 1 March 2010, para. 4.

²⁴ Defence Submissions with respect to Site Visit in Rwanda, filed 23 February 2010, para. 9, Annex.

²⁵ *Karera v. Prosecutor*, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009, para. 50 (with further references). See also *Zigiranyirazo v. Prosecutor*, Case No. ICTR-01-73-A, Judgement (AC), 16 November 2009, para. 36.

FOR THESE REASONS, the Chamber

ORDERS the site visit to occur between 19 April 2010 and 21 April 2010;

ORDERS that the Rules of Procedure and Conduct attached to this Order as Annex A shall govern the protocol of the site visit;

ISSUES a composite confidential itinerary (Confidential Annex B) for the site visit in the Republic of Rwanda;

INSTRUCTS the Parties to inform the Chamber by 5 March 2010 of those persons from their teams who will attend the site visit and provide their full names and contact details;

INSTRUCTS the Registry to provide by 5 March 2010 the number, full names and contact details of all persons from the Registry who will attend the site visit;

INSTRUCTS the Defence to confer with the Registry and Witness and Victims Support Section to ensure witness protection during the site visit;

REQUESTS that the Registry to make all the necessary arrangements, in liaison with the Chamber and the Parties, to facilitate the implementation of this Decision, and requests the Registry, following the site visit, to submit a confidential report of the visit to the Parties and the Chamber.

Arusha, 3 March 2010

[read and approved by]

[read and approved by]

Taghrid Hikmet
Presiding Judge
[absent at the time
of signature]

Seon Ki Park
Judge

[Seal of the Tribunal]

Joseph Masanche
Judge
[absent at the time
of signature]

PROSECUTOR V. KANYARUKIGA
ICTR-2002-78-T

ANNEX A

RULES OF PROCEDURE AND CONDUCT FOR THE SITE VISIT IN THE CASE OF
PROSECUTOR V. GASPARD KANYARUKIGA

Participants in the Site Visit

1. The Prosecution and the Defence shall each be represented during the site visit by one Counsel and one Investigator.

Procedure on Site

2. The Parties' investigators will guide the site visit participants to the specific locations to be visited as detailed in the site visit itinerary (Confidential Annex B).

3. Upon arrival at a location, and until the site visit at that location has been concluded, the investigators may not confer with Counsel for the Prosecution or the Defence.

4. Upon arrival at a location, the Bench shall briefly introduce the location. Where necessary, Counsel for the Prosecution and the Defence may then make observations of a strictly factual nature, without giving any commentary regarding events that are alleged to have occurred there. The Parties may refer to the Amended Indictment for purposes of referencing.

5. Observations of a factual nature are those which pertain to what can be observed or perceived, such as the distance to or visibility of an area and the condition in which a specific place is found. Submissions of an argumentative or legal nature will not be allowed.

6. Neither Party shall seek the admission of evidence throughout the entire duration of the site visit.

7. At any time during the visit to a location, the Judges may make observations and may address the site visit participants with questions.

8. After any observations have been made at a location, the Bench shall conclude the site visit at that location.

Record of the Site Visit

9. An audio recording shall be made during the site visit. An ICTR Court Reporter shall accompany the site visit and prepare a written transcript of the proceedings in English. This transcript may be subsequently admitted into evidence. There shall be no French transcript of the site visit.

10. A video recording shall be made during the site visit. Video footage from the site visit may be subsequently admitted into evidence.

11. The Judges may request a representative of the Registry to photograph certain locations during the site visit. The location depicted by the photograph shall be noted in the record. Photographs may be admitted into evidence at a later stage.