

ICTR-97-36A-T  
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(1233-1229)

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

UNITED NATIONS  
NATIONS UNIES

OR: ENG

**TRIAL CHAMBER I**

**Before Judges:** Florence Rita Arrey, Presiding  
Mparany Mamy Richard Rajohnson  
Aydin Sefa Akay

**Registrar:** Adama Dieng

**Date:** 17 March 2010

**THE PROSECUTOR**

v.

**Yussuf MUNYAKAZI**

*Case No. ICTR-97-36A-T*

JUDICIAL RECORDS/ARCHIVES  
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**DECISION ON YUSSUF MUNYAKAZI'S MOTION FOR JUDICIAL VIEW OF  
THE *LOCUS IN QUO***

**Office of the Prosecutor:**

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**INTRODUCTION**

1. On 15 October 2009, the Defence made an oral application to the Chamber requesting a site visit to Rwanda. The Trial Chamber ordered that the Defence file its motion in writing.<sup>1</sup> On 20 October 2009, the Defence filed a motion pursuant to Rule 4 of the Rules of Procedure and Evidence (the "Rules"), asking for judicial view of the *Locus in quo*.<sup>2</sup> The Prosecution in its response stated that, it leaves the issue at the discretion of the Trial Chamber.<sup>3</sup>
2. On 26 October 2009, the Chamber ordered the Defence to file an itinerary indicating the specific locations to be visited.<sup>4</sup> On 30 October 2009, the Defence filed a detailed itinerary indicating the specific locations to be visited.<sup>5</sup>
3. During the Oral arguments on 28 January 2010, the Defence further expressed the need to have a site visit, stating that certain places could best be appreciated by physical observation, in relation to the various places. The Prosecution reiterated its position that it would rely on the Trial Chamber's discretion in making a decision.<sup>6</sup>

**DELIBERATIONS**

4. The Tribunal's Statute and Rules of Procedure and Evidence ("the Rules",) do not explicitly provide for site visits. Nevertheless, Rule 4 of the Rules 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".
5. The practice at the Tribunal has been that a request for a site visit is granted when the visit will be instrumental to the discovery of the truth and determination of the

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<sup>1</sup> Transcript of 15 October 2009, p.53

<sup>2</sup> *Prosecutor v. Munyakazi*, ICTR-97-36A-T., Yussuf Munyakazi's Motion for Judicial View of the *Locus in Quo* (Rule 4 of the RPE), 20 October 2009. ("Motion")

<sup>3</sup> *Prosecutor v. Munyakazi*, ICTR-97-36A-T, Prosecution's Response to Yussuf Munyakazi's Motion for Judicial View of the *Locus in Quo* (Rule 4 of the RPE), 22 October 2009. ("Response")

<sup>4</sup> *Prosecutor v. Munyakazi*, ICTR-97-36A-T, Order to the Defence to file an Itinerary indicating the Specific Locations to be visited, 26 October 2009. ("Order")

<sup>5</sup> *Prosecutor v. Munyakazi*, ICTR-97-36A-T, Yussuf Munyakazi's detailed itinerary and specific locations to be visited, 30 October 2009. ("Defence Itinerary")

<sup>6</sup> Transcript of 28 January 2010 pp. 2-3

matter before the Chamber. In addition, the number of sites to be visited, their importance,<sup>7</sup> the logistical planning, the costs of the visits, and the number of days required for a proper site visit are taken into account.<sup>8</sup>

6. The Defence proposes that the Trial Chamber visit the following locations; Munyakazi's three houses in Bugarama, the location of what was formerly his fourth house, the CIMERWA factory, the football Pitch, the Gendarmerie Camp at Bugarama, Kibangira area, Mibilizi parish, Nyirandakunze forest, Shangi parish, Nyamasheke parish, Kabeza center, the statue of the Virgin Mary and Kangano Communal office.<sup>9</sup>
7. The Trial Chamber paid special attention to the question of whether some of the "disputed issues at trial are relative to physical attributes of various sites",<sup>10</sup> and if the site visit might assist the Chamber in its assessment of issues of visibility, layout of buildings, distances between locations and correlative proximity of places.<sup>11</sup>
8. The Chamber finds that based on the evidence before it, a site visit to these locations will assist it in the discovery of the truth and assessment of the evidence adduced at trial.

<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* ICTR-2001-73-T, Decision on the Prosecution's Motion for a View of the *Locus in Quo*, 19 June 2007 at para. 3. *Prosecutor v. Nsengimana* ICTR-2001-69-I, Decision on Site Visit to Rwanda, 27 February 2008 at para. 2.

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

<sup>9</sup> Defence Itinerary, pp 4-6

<sup>10</sup> *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.

<sup>11</sup> *Prosecutor v. Karera*, *supra* note 4 at para. 1.

**Annex I****Itinerary for Site visit**

<b>Places</b>	<b>Locations</b>
Bugarama	Munyakazi's three houses
	Location of what was formerly Munyakazi's fourth house (close to the custom office)
	CIMERWA factory
	The football Pitch(es)
	Location of the Gendarmerie Camp in Bugarama
	Kibangira area
Mibilizi parish	The courtyard, its carpentry workshop, the gendarmes room, the priests residences, Ingoro place
	Nyirandakunze forest
Shangi parish	The church building Nuns' residences
Nyamasheke parish,	The church building Kabeza center, The statue of the Virgin Mary Kangano Communal office

**ACCORDINGLY, THE CHAMBER**

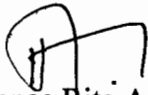
**GRANTS** the Defence Motion;

**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 30 May to 2 June 2010, 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.

Arusha, 17 March 2010, done in English.



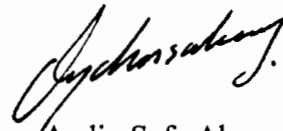
Florence Rita Arrey

Presiding Judge



Mparany Mamy Richard  
Rajohnson

Judge



Aydin Sefa Akay

Judge

[Seal of the Tribunal]

