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17-06-2010
(3701-3696)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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1294

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Aydin Sefa Akay

Registrar: Mr. Adama Dieng

Date: 17 June 2010

THE PROSECUTOR

v.

Jean-Baptiste GATETE

Case No. ICTR-2000-61-T

2010 JUN 17 P 2:26
JUDICIAL AUTHORITY
J. B. GATETE

DECISION ON SITE VISIT TO RWANDA

Rules 4 and 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:

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For the Accused:

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INTRODUCTION

1. The Prosecution case concluded on 16 November 2009. At the close of the Defence case on 29 March 2010, the Chamber informed the Parties that it considered that a site visit to Rwanda was appropriate.¹ The Parties made initial submissions by 30 April 2010 and supplemental submissions by 24 May 2010, following the Chamber's request for supporting detail.² The Defence position is that a site visit is not necessary in this case for the Chamber to make a determination on the evidence heard.³ The Prosecution submits that a site visit could be of assistance to the Chamber in its assessment of the evidence.⁴ The site visit was set for 11 to 16 July 2010.⁵ The Chamber will consider the Parties' submissions below.

2. The Defence also moves to postpone the site visit and the closing arguments, expressing its concern about the security situation in Rwanda.⁶ The Prosecution objects to the Defence Motion.⁷

DISCUSSION

3. While site visits are not expressly provided for in the Tribunal's Statute or Rules of Procedure and Evidence, Rule 4 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."

4. The need for a site visit must be assessed in view of the particular circumstances of each trial.⁸ In view of the logistics and costs involved, a decision to carry out a site visit should be made preferably when the visit will be instrumental in the discovery of the truth and the determination of the matters before the Chamber.⁹ In determining whether a site visit will

¹ T. 29 March 2010, p. 3; *The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-T, Scheduling Order for Filing of Closing Briefs, Hearing of Closing Arguments and Site Visit to Rwanda, 31 March 2010.

² Interoffice Memorandum from Prosecution Counsel to the Chamber, with a copy to the Defence, 28 April 2010; Defence Submissions on Site Visit, 30 April 2010; Email correspondence dated 30 April 2010 and 10 May 2010 from the Chamber to the Parties; Prosecutor's Submissions Regarding Pending Site Visit, 24 May 2010; Defence Supplemental Submissions on the Site Visit, 24 May 2010.

³ Defence Submissions on the Site Visit, 30 April 2010, para. 3; Defence Supplemental Submissions on the Site Visit, 24 May 2010, para. 2.

⁴ Status Conference, T. 29 March 2010, p. 2.

⁵ The site visit was initially set for 10 to 16 June 2010, but the dates were modified due to an unforeseen scheduling conflict. Interoffice Memorandum from the Chamber to the Court Management Section, 7 May 2010, circulated to the Parties via email correspondence on 10 May 2010. The President has authorized the Chamber to conduct its functions away from the Seat of the Tribunal pursuant to Rule 4 during this period. Interoffice Memoranda from the President to the Chamber, 6 April 2010 and 26 May 2010.

⁶ Defence Motion for the Postponement of the Site Visit and Closing Arguments, 7 June 2010 ("Defence Motion").

⁷ Prosecution Response to Defence Motion, 7 June 2010.

⁸ *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Motions for Site Visits to Rwanda (TC), 21 April 2008 ("*Bizimungu Decision*"), para. 3; *The Prosecutor v. François Karera*, Case No. ICTR-01-74-T, Decision on Site Visit to Rwanda (TC), 1 September 2006 ("*Karera Decision*"), para. 3.

⁹ *The Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82-T, Scheduling Order for Site Visit to Rwanda and Hearing of Closing Arguments (TC), 9 March 2010 ("*Ntawukulilyayo Order*"), para. 3; *Bizimungu Decision*, paras. 2-5; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on the Prosecutor's Motion for Site Visits in the Republic of Rwanda (TC), 29 September 2004, para. 4; *The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T, Decision on the Defence Request for Site Visits in Rwanda (TC), 31 January 2005, paras. 2-3.



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be “instrumental”, Trial Chambers have looked to whether disputed issues at trial relate to physical attributes of various sites relevant to the case. A site visit may assist a Chamber in its assessment of issues of visibility, layout of buildings, distances between locations and correlative proximity of places.¹⁰ A detailed record of a Chamber’s site visit should be made.¹¹

5. Having considered the Parties’ submissions, and recalling the evidence in this case, the Chamber concludes that some of the disputed points at trial concern physical attributes of several sites in Byumba and Kibungo prefectures, including issues involving line-of-sight and the suitability of certain locations for activities alleged to have occurred there. The Chamber finds these locations to be relevant to the charges against the Accused and the evidence adduced at trial.¹² They will therefore be included in the confidential itinerary attached to this Order.¹³

6. The Parties’ submissions included proposed visits to the houses of protected witnesses. Because such visits may compromise the identities of those witnesses, the potential security risk overrides their possible evidentiary value.¹⁴ The Chamber will, however, request that the Registry indicate to the Chamber and Parties when in the close vicinity, where the sites of those houses are located.

7. In the Chamber’s view, the site visit will require a maximum of five days, including travel time.

Modalities of the Visit

8. The Defence requests that the Chamber order that written, photographic and video records of the site visit be made.¹⁵ It also submits that the Parties should have the opportunity to make observations at the sites and that their investigators should guide the Chamber to the locations visited.¹⁶ It requests that a representative of the Witnesses and Victims Support Section (“WVSS”) be present at all times during the conduct of the site visit in order to ensure protective measures for witnesses are maintained during the visit.

¹⁰ *Ntawukulilyayo* Order, para. 3; *The Prosecutor v. Munyakazi*, ICTR-97-36A-T, Decision on Yussuf Munyakazi’s Motion for Judicial View of the *Locus in Quo* (TC), 17 March 2010, para. 7; *The Prosecutor v. Jean Mpambara*, Case No. ICTR-2001-65-T, Decision on the Prosecution Motion for a Site Visit (TC), 10 February 2006, para. 5; *The Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-T, Decision on Defence Motion for a View *Locus in Quo* (TC), 16 December 2005, para. 8; *Karera* Decision, para. 3; *The Prosecutor v. Théoneste Bagosora et al.*, Decision on Bagosora Motion for Site Visit (TC), 11 December 2006, para. 3.

¹¹ *Protais Zigiranyirazo v. The Prosecutor*, ICTR-01-73-A, Decision on Zigiranyirazo’s Motion for Admission of Additional Evidence, 16 September 2009, para. 21 citing *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgment, 2 February 2009, para. 50.

¹² The Chamber does not find it instrumental to its evaluation of the evidence to visit sites that were suggested solely to corroborate testimony. The Defence suggested visits to the house of Emmanuel Ndemezo and to the location of Denise Dusabe’s former house. These locations do not appear to be disputed by the Prosecution.

¹³ Confidential Annex A.

¹⁴ See for example, *Ntawukulilyayo* Order, para. 5; *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-T, Supplemental Decision Regarding Site Visit in Rwanda and Composite Itinerary (TC), 19 October 2009, para. 6. See also Article 19 of the Tribunal’s Statute which requires Trial Chambers to have due regard for the protection of victims and witnesses.

¹⁵ Defence Submissions on the Site Visit, 30 April 2010, paras. 19-21.

¹⁶ *Id.*, para. 22.

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9. The Prosecution submits that the Parties should not make observations during the visit, save where there might be an issue as to whether a site is incorrect. It further suggests that new items, including photographs, audiotapes or transcripts, need not be admitted into evidence in connection with the site visit.¹⁷

10. In determining the site visit modalities, the Chamber is mindful of its obligation to respect the rights of the accused, as well as the need to maintain a detailed record of the site visit.¹⁸ It does not consider, however, that contemporaneous observations by the Parties or audio, video or photographic recordings of the visit are necessary to ensure these principles. The Chamber will therefore not allow the Parties to make oral representation at the sites, save where there might be an issue as to whether a site is incorrect. A Registry representative will guide the site visit participants to the specific locations listed in the confidential itinerary attached to this Order.¹⁹ The representative will announce the location and keep a detailed official record of the site visit, submitting such record to the Chamber and Parties no later than 23 July 2010.²⁰ The Chamber and the Registry representative will at all times be mindful of the witness protection measures in place. The Chamber therefore does not find it necessary for a representative of WVSS to accompany the participants on the site visit.

Security Situation in Rwanda

11. The Defence also moves to postpone the site visit as well as the closing arguments, which are scheduled for 2 and, if need be, 3 August 2010.²¹ It notes that members of its team were threatened and harassed in Rwanda in April 2010 and that this, combined with tension arising from the upcoming presidential election in Rwanda, causes too important a security risk for it to participate in the site visit in July.²² The Defence submits that it has a right to be present during the site visit and that it is unwilling to have the visit conducted in its absence.

12. The Prosecution objects, and submits that the Defence has failed to show that the security situation in Rwanda is so tense that the Chamber cannot exercise its functions there.²³

¹⁷ Prosecutor's Submissions Regarding Pending Site Visit, paras. 4-5.

¹⁸ See Articles 19 and 20 of the Tribunal's Statute with respect to the Trial Chamber's obligation to ensure a fair trial and respect the rights of the accused; see also *Ntawukulilyayo*, Decision on Extremely Urgent Defence Motion for the Trial Chamber to Reissue New Modalities for the Site Visit to Rwanda (TC), 25 April 2010, para. 7. With respect to the requirement to maintain a detailed record of the site visit, see *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Zigiranyirazo's Motion for Admission of Additional Evidence, 16 September 2009, para. 21 citing *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgment, 2 February 2009, para. 50.

¹⁹ Confidential Annex A.

²⁰ In setting these modalities, the Chamber has taken into consideration the Practice Direction on Site Visits of 3 May 2010.

²¹ Interoffice Memorandum from Judge Muthoga to Court Management Section, 7 May 2010; Defence Motion.

²² The Defence Motion included a series of press articles concerning the security situation in Rwanda.

²³ Prosecution Response to Defence Motion.



13. Following the filing of the Defence Motion, the Chamber directed the ICTR Security and Safety Unit in Kigali to evaluate the security risk for the proposed dates of the site visit. After assessing the current political climate in Rwanda, the Unit considers that it will be safe to undertake the site visit from 11 to 16 July 2010, subject to the outcome of the necessary security survey and reconnaissance of all sites to be visited.²⁴ It will also continue to monitor the situation closely. The Chamber therefore declines to postpone the site visit and closing arguments.

FOR THESE REASONS, the Chamber

1. **DIRECTS** the Registry to make all necessary arrangements to visit the relevant sites, and to liaise with the Parties and the Chamber to facilitate the implementation of this Decision; and
2. **DIRECTS** that the site visit shall be conducted in accordance with the itinerary set out in Confidential Annex A, attached to this Order;
3. **REQUESTS** the Registry to indicate to the Chamber and Parties, when in the close vicinity, where the sites relating to protected witnesses are located, as indicated in the confidential itinerary;
4. **ORDERS** that, at each site visited, the following procedure will be adopted:
 - a. A Registry representative will guide the site visit participants to the specific locations to be visited as detailed in the site visit itinerary;
 - b. The Registry representative will announce the location at each site;
 - c. The Registry representative will keep a detailed official record of the site visit;
 - d. The official record will be submitted to the Chamber and Parties and admitted into the trial record as a Chamber's exhibit no later than 23 July 2010;
 - e. Parties will not be permitted to make oral representations at the sites, save in the case where a site is considered to be incorrect and not in accordance with the attached confidential itinerary;
 - f. There will be no audio, video or photographic recordings of the sites;
5. **INSTRUCTS** the Parties to inform the Registry by 25 June 2010 of those persons from their teams who will attend the site visit and provide their full names and contact details; and

²⁴ Confidential Interoffice Memorandum from Security and Safety Unit at ICTR-Kigali to Security and Safety Section at ICTR-Arusha, 14 June 2010, attached hereto as Confidential Annex B.

6. DENIES the Defence Motion.

Arusha, 17 June 2010



Klalida Rachid Khan
Presiding Judge



For and with the consent of
Lee Gacuiga Muthoga
Judge



Aydin Sefa Akay
Judge

[Seal of the Tribunal]

