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ICTR-98-44-T  
23-11-2010  
(52392-52387)

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 23 November 2010

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**THE PROSECUTOR**

v.

**Édouard KAREMERA  
Matthieu NGIRUMPATSE**

*Case No. ICTR-98-44-T*

**DECISION ON SITE VISIT TO RWANDA**

*Rules 4 and 54 of the Rules of Procedure and Evidence*

**Office of the Prosecution:**  
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## INTRODUCTION

1. On 30 September 2010, the Chamber invited the Parties to submit filings on the advisability of site visits in Rwanda in accordance with the Practice Direction of 3 May 2010.<sup>1</sup> Matthieu Ngirumpatse filed submissions for proposed site visit locations on 14 October 2010.<sup>2</sup> Édouard Karemera filed submissions for proposed site visit locations on 15 October 2010.<sup>3</sup> The Prosecution made no site visit requests, but responded to Ngirumpatse's submissions on 15 October 2010, and filed a supplemental submission in response to Karemera's site visit submission on 22 October 2010.<sup>4</sup>

## DELIBERATION

2. As a preliminary matter, the Chamber notes that Édouard Karemera's Site Visit Submission was dated 14 October 2010, but was not filed until 15 October 2010. This was received by the Prosecution after it had filed its response to Matthieu Ngirumpatse's Site Visit Submission, and was technically filed after the time allotted by the Practice Direction.<sup>5</sup> However, the Prosecution did not oppose the late submission, and filed a supplemental response in order to provide its thoughts on Karemera's submissions. The Chamber will therefore consider all submissions, regardless of whether their date of filing was outside of the time allotted by the Practice Direction.

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."

<sup>1</sup> *The Prosecutor v Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Scheduling Order (TC), 30 September 2010. The relevant Practice Direction is: UNICTR Practice Direction on Site Visits, 3 May 2010, para. 1.1 ("Practice Direction").

<sup>2</sup> Observations pour Matthieu Ngirumpatse sur l'éventualité d'une visite de lieux, filed on 14 October 2010 ("*Ngirumpatse's Site Visit Submission*").

<sup>3</sup> Requête sur l'opportunité du transport sur les lieux, filed on 15 October 2010, ("*Karemera's Site Visit Submission*").

<sup>4</sup> Prosecutor's Submissions concerning Site Visits and Closing Submissions, filed on 15 October 2010 ("*Prosecutor's Site Visit Submission*"); Prosecutor's Supplemental Submission concerning Site Visits, filed on 22 October 2010 ("*Prosecutor's Supplemental Submission*").

<sup>5</sup> Practice Direction, para. 1.1.

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4. Because the President of the Tribunal is also a member of this Chamber, the Chamber obtained authorisation pursuant to Rule 4 from the Vice-President.<sup>6</sup> The need for a site visit must be assessed in view of the particular circumstances of each trial.<sup>7</sup> 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.<sup>8</sup> In determining whether a site visit will 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.<sup>9</sup> A detailed record of a Chamber’s site visit should be made.<sup>10</sup>

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 the Kigali and Kibuye *préfectures*, including issues involving line-of-sight and the suitability of certain locations for activities alleged to have occurred there. With the exception of the inside of the CND Parliament Building, the Chamber finds all locations proposed by the Parties to be relevant to the charges against the Accused and the evidence adduced at trial. The sites to be visited are therefore included in the Confidential Annex attached to this Decision.<sup>11</sup>

6. The Chamber intends that the site visit should be conducted in as expedient a manner as possible. Accordingly, the Chamber notes that pursuant to the current status of scheduling of

<sup>6</sup> Interoffice Memorandum from the Vice-President to the Chamber, 19 November 2010.

<sup>7</sup> *The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-2000-61-T, Decision on Site Visit to Rwanda (TC), 17 June 2010, para. 4, (“*Gatete Decision*”); *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, para. 3 (“*Bizimungu Decision*”); *The Prosecutor v. François Karera*, Case No. ICTR-01-74-T, Decision on Site Visit to Rwanda (TC), 1 September 2006, para.3 (“*Karera Decision*”).

<sup>8</sup> *The Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82-T, (“*Ntawukulilyayo*”), Scheduling Order for Site Visit to Rwanda and Hearing of Closing Arguments (TC), 9 March 2010, para. 3, (“*Ntawukulilyayo Order*”); *Bizimungu Decision*, paras. 2-5; *The Prosecutor v. Théoneste Bagosora, Aloys Ntabakuze, and Anatole Nsengiyumva (“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.

<sup>9</sup> *Ntawukulilyayo Order*, para. 3; *The Prosecutor v. Yussuf 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; *Bagosora et al.*, Decision on Bagosora Motion for Site Visit (TC), 11 December 2006, para. 3.

<sup>10</sup> *Protais Zigiranyirazo v. The Prosecutor*, ICTR-01-73-A, Decision on Zigiranyirazo’s Motion for Admission of Additional Evidence (AC), 16 September 2009, para. 21 citing *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009, para. 50, (“*Karera Appeal Judgement*”)

<sup>11</sup> Confidential Annex of Site Visit Locations.

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the trial dates, it intends that the Site Visit should begin after the close of the Defence case. The Chamber will liaise with the Registry, WVSS, and ICTR Security in Kigali in order that a detailed itinerary may be created and shared with the Parties as soon as possible. A scheduling order will be issued in due course.

#### *Modalities of the Visit*

7. The Chamber notes that both Accused persons have waived their right to be present during the Site Visit.<sup>12</sup>

8. Matthieu Ngirumpatse requests that the Chamber order that photographic records of the Site Visit be made under the Chamber's control, and that his counsel be allowed to take photographs and make submissions to the Chamber on site.<sup>13</sup> The Prosecution, in response to the locations submitted by Ngirumpatse and Édouard Karemera, requests the ability to point out additional locations it considers relevant at or near Ngirumpatse and Karemera's proposed sites to the Chamber during the Site Visit.<sup>14</sup>

9. In determining the Site Visit modalities, the Chamber is mindful of the Practice Direction, its obligation to respect the rights of the accused, and the need to maintain a detailed record of the Site Visit.<sup>15</sup> It does not consider, however, that the suggestion of new locations by the Parties or photographic recordings of the visit are necessary to ensure these principles. The Chamber will therefore not allow the Parties to propose additional locations at the sites, and the parties shall be permitted to make observations for the record of a factual nature only, without giving any commentary regarding events that are alleged to have occurred there.<sup>16</sup>

<sup>12</sup> Ngirumpatse's Site Visit Submission, para. 5; Karemera's Site Visit Submission, para. 4.

<sup>13</sup> Ngirumpatse's Site Visit Submission, para. 6.

<sup>14</sup> Prosecutor's Site Visit Submission, para. 4.

<sup>15</sup> 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 *Ntawukuliyayo*, 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 (AC), 16 September 2009, para. 21 citing *Karera Appeal Judgement*, para. 50.

<sup>16</sup> See Practice Direction, para. 5.4, where it is stated that "observations of a factual nature are those that 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 shall not be allowed."

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10. The Party who has requested each particular site will guide the Site Visit participants to the specific locations listed in the Confidential Annex attached to this Order. The Registry 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 seven days after the conclusion of the Site Visit.

**FOR THE ABOVE REASONS, THE CHAMBER**

- I. 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
- II. DIRECTS** that the Site Visit shall be conducted in accordance with the list of sites set out in the Confidential Annex attached to this Decision;
- III. ORDERS** that, at each site visited, the following procedure will be adopted:
  - a. The Registry representative will announce the location;
  - b. The requesting Party will guide the site visit participants to the specific locations to be visited as detailed in the site visit location list;
  - 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 seven days after the completion of the Site Visit;
  - e. Parties will be permitted to make only factual representations at the sites, and will not be permitted to make any arguments of a legal nature or to give any commentary with regard to the events that are alleged to have occurred there;
  - f. There will be no audio, video or photographic recordings during the Site Visit;

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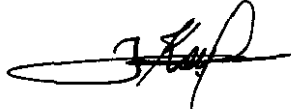
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IV. INSTRUCTS the Parties to inform the Registry no later than 15 January 2011 of those persons from their teams who will attend the site visit and provide their full names and contact details.

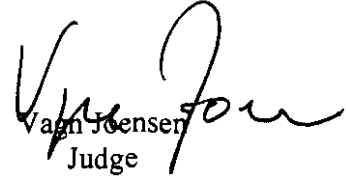
Arusha, 23 November 2010, done in English.



Dennis C. M. Byron  
Presiding Judge



Gberdao Gustave Kam  
Judge



Vagn Joensen  
Judge

[Seal of the Tribunal]

