



UNITED NATIONS
NATIONS UNIES

ICTR-01-68-R4273
07-12-2010
(2527-2524)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER III

Before Judges: Florence Rita Arrey, Presiding
Judge Bakhtiyar Tuzmukhamedov
Aydin Sefa Akay

Registrar: Adama Dieng

Date: 07 December 2010

JUDICIAL RECORDS ARCHIVE
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THE PROSECUTOR

v.

GREGOIRE NDAHIMANA

Case No. ICTR-2001-68-T

**DECISION ON PROSECUTION'S MOTION FOR SITE VISITS IN THE REPUBLIC OF
RWANDA**

Under Rules 4 and 73 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Holo Makwaia, Senior Appeals Counsel
Althea Alexis-Windsor, Appeals Counsel
Segun Jegede, Trial Attorney
Lansana Dumbuya, Case Manager

Counsel for the Defence

Bharat. B. Chadha, Lead Counsel
Wilfred Ngunjiri Nderitu, Co Counsel
Tharcisse Gatarama, Legal Assistant
Marie-Pier Barbeau, Legal Assistant

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INTRODUCTION

1. The Trial commenced on 6 September 2010. The Prosecution called fifteen witnesses over nineteen trial days and closed its case on 19 November 2010. The Defence case is scheduled to start on 17 January 2011.¹
2. On 12 November 2010, the Prosecution filed a motion pursuant to Rule 4 and 73 of the Rules of Procedure and Evidence (the "Rules"), requesting a site visit to the Republic of Rwanda ("Motion").² The Prosecution submits that a site visit is necessary, and in the interests of justice, and that such a visit would assist the Chamber in evaluating the testimony of the witnesses and discovering the truth of the matters at issue.³
3. On 18 November 2010, the Defence filed a response to the Motion ("Response").⁴ The Defence stated that it does not oppose the motion in principle, but argues that the motion is premature at this stage of the proceedings noting that other locations and sites which may require a site visit may arise during the Defence case.⁵

DELIBERATIONS*Applicable Law*

4. 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". In accordance with the jurisprudence of the Tribunal, a site visit is granted when the visit will be instrumental to the discovery of the truth and determination of the matter before the Chamber.⁶

¹ Status Conference held on 19 November 2010, Transcript p 2

² Prosecution's motion for site visit in the Republic of Rwanda (*Under Rules 4 and 73 of the Rules of Procedure and Evidence*), 12 November 2010

³ Prosecution Motion paras 4-5

⁴ Defence Response to the Prosecution's motion for site visit in the Republic of Rwanda (*Under Rules 4 and 73 of the Rules of Procedure and Evidence*), 18 November 2010

⁵ Defence Response paras 3-4

⁶ *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

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5. In determining whether a site visit will be “instrumental to the discovery of the truth and determination of the matters before the Chamber”, the Trial Chamber must consider whether some of the “disputed issues at trial are relative to physical attributes of various sites” relevant to the case.⁷ Furthermore, the ease of logistical planning, the cost of the visits to the Tribunal, and the number of days required for a proper site visit are to be considered by the Chamber.⁸
6. The Prosecution submits that a site visit is necessary and that it would assist the Trial Chamber in evaluating the evidence brought before it.⁹ More specifically, the Prosecution argues that such a visit will assist the Chamber in assessing the distances between buildings, the areas in question and enable it to have a clear image of the site as a whole.¹⁰ The Chamber notes that the Prosecution does not point to any particular piece of evidence that could require a site visit or provide any specific explanations as to how a site visit would assist the Chamber in understanding that evidence.
7. The Prosecution refers to the *Seromba* and *Kanyarukiga* cases, stating that they dealt with the same events as the *Ndahimana* case and the Trial Chambers in those two cases granted the Prosecution's request for a site visit.¹¹ However, in the *Seromba* case, the Prosecution's motion for a site visit was made at a late stage of the Defence case and the Defence did not object. Thus the Chamber was in a position to determine the merits of a site visit on the Prosecution evidence and evidence already adduced by the Defence.¹² In the *Kanyarukiga* case, the Trial Chamber denied the Prosecution's motion for a site visit

Prosecution Motion for a Site Visit (TC), 10 February 2006 at para. 4; *Prosecutor v. Seromba, Décision écrite 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.

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

Prosecutor v. Ndindiliyimana et al. (TC), ICTR-00-56-T, Decision on Nzuwonemeye's Motion for On-Site visits, 27 May 2008, para 4.

⁹ Prosecution Motion paras 4-5

¹⁰ Prosecution Motion paras 4-5

¹¹ Prosecution Motion para 3

¹² In the *Seromba* case, the Defence started its case on 31 October 2005 and ended on 27 April 2006. The Defence was almost at the end of its case when the Prosecution made an oral motion for a site visit on 23 March 2006. The Defence was in favour of the site visit, the Chamber considered among other things the Defence's “positive response” in granting the motion. Transcript of 24 March 2006 pp.33, 34

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at the end of the Prosecution case, considering that “only at the conclusion of the Defence case will it be in a position to determine the usefulness of a site visit”¹³

- 8. Bearing in mind issues of logistical planning and the cost of such visits to the Tribunal, the Chamber is of the opinion that a determination on the need for a site visit, and the list of potential sites to visit, should await the end of both the Prosecution and the Defence cases.

FOR THE ABOVE REASONS, THE CHAMBER

DEFINES the Prosecution Motion.

Arusha, 07 December 2010, done in English.

Florence Rifa Arrey

Presiding Judge

Bakhtiyar Tuzmukhamedov

Judge

Aydin Sefa Akay

Judge



¹³ *Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-T, Decision on the Prosecution Motion for site visits, 19 October 2009