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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 28 April 2011

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THE PROSECUTOR
v.
GREGOIRE NDAHIMANA
Case No. ICTR-2001-68-T

SCHEDULING ORDER FOR SITE VISIT TO RWANDA, FILING OF CLOSING BRIEFS AND HEARING OF CLOSING ARGUMENTS
(Pursuant to Rules 4, 54 and 86 of the Rules of Procedure and Evidence)

Office of the Prosecutor:
Holo Makwaia, Senior Appeals Counsel
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Counsel for the Defence
Bharat B. Chadha, Lead Counsel
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Marie-Pier Barbeau, Legal Assistant

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INTRODUCTION

1. The Trial commenced on 6 September 2010 and the Defence Case started on 17 January 2011.¹
2. On 12 November 2010 the Prosecution filed a motion requesting a site visit to the Republic of Rwanda.² On 18 November the Defence filed a response in which it did not oppose the Prosecution's Motion but argued that the site visit should take place after the completion of the Defence evidence.³ On 7 December the Chamber denied the Prosecution Motion for site visit as being premature.⁴
3. On 7 April 2011, the Chamber issued an Invitation to the parties to make submissions on potential sites to be visited in Rwanda upon completion of the evidence hearing stage of the case scheduled for 13 May 2011⁵ in accordance with the ICTR Practice Direction on Site Visits. The invitation to the parties was reiterated by a verbal reminder by the Bench to the parties during the hearing session on 20 April 2011.⁶
4. On 20 April 2011 the Prosecution filed its submissions indicating the sites which are of importance to its case ("Prosecutor's submission")⁷ On 21 April, the Defence filed submissions indicating the sites which are important to its own case (Defence's submission).⁸

¹ Status Conference held on 19 November 201, Transcript p. 2.

² *Prosecutor v Ndahimana*, ICTR 2001-68-T, Prosecutor'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 *Prosecutor v Ndahimana*, ICTR 2001-68-T, Defence Response to the Prosecutions Motion for site visit in the Republic of Rwanda (*Under Rules 4 and 73 of the Rules of Procedure and Evidence*), 18 November 2010.

⁴ *Prosecutor v Ndahimana*, ICTR 2001-68-T, Decision on Prosecution's motion for site visit in the Republic of Rwanda (*Under Rules 4 and 73 of the Rules of Procedure and Evidence*), 7 December 2010.

⁵ *Prosecutor v Ndahimana*, ICTR 2001-68-T, Invitation to make submissions on potential site visit to Rwanda under Rules 4, 54 and 86 of the Rules of Procedure and Evidence, 7 April 2011.

⁶ Minutes of Proceedings; *Ndahimana* Case, 20 April 2011.

⁷ *Prosecutor v Ndahimana*, ICTR 2001-68-T, Prosecution's Submissions on Potential Site Visit in Rwanda (*Under Rules 4 and 73 of the Rules of Procedure and Evidence*), 20 April 2011.

⁸ *Prosecutor v Ndahimana*, ICTR 2001-68-T, Defence's Submissions on Potential Site Visit in Rwanda under Rule 4 of the Rules of Procedure and Evidence, 21 April 2011.

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PARTIES' SUBMISSIONS

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Prosecution's submissions

5. The Prosecution submits that a site visit conducted by the Trial Chamber to Nyange parish would be instrumental in the discovery of the truth of the matter before it⁹ and notes that in the respective matters of *Seromba*¹⁰ and *Kanyarukiga*¹¹ which deal with exactly the same events, having the questions of fact and law in common, the Trial Chamber granted the Prosecutor's request for a site visit.¹²
6. The Prosecution further submits that a visit to the site of the events which comprise the subject matter of the present trial is necessary in the interests of justice to enable the Trial Chamber properly evaluate the testimony of the witnesses. It adds that it would be beneficial for the Trial Chamber to gain a clear image of the area as a whole by identifying the relevant locations and gauging for itself, the distances in question.¹³
7. The Prosecutor estimates that the site visit will take no more than 4 days including departure from Arusha to Kigali, driving to Kivumu and back to Kigali and then flying back to the Seat of the Tribunal in Arusha;¹⁴ and prays the Chamber to order a visit by the Trial Chamber and parties to the following sites:
 - The former Kivumu commune office.
 - Gregoire Ndahimana's official residence in April 1994.
 - Health Centre.
 - The Convent.
 - Nyange parish including the church area, Presbytery and secretariat,
 - Areas adjacent to Nyange parish, including fields belonging to the parish in 1994, Nyange trading centre.
 - The former pharmacy of Gaspard Kanyarukiga.
 - The Virgin Mary statue.
 - The CODEKOKI building and adjacent highway leading to Kibuye.
 - Other places proposed by Defence and the Trial Chamber.

⁹ Prosecutor's submissions para 4.

¹⁰ *Prosecutor v Athanase Seromba*, Case No ICTR-2001-66-T, Decision on Prosecutor's Motion for site visits in Rwanda, Rule 73 of the Rules of Procedure and Evidence 29 March, 2006

¹¹ *Prosecutor v Gaspard Kanyarukiga*, Case No ICTR-2002-78-T, Decision on the Prosecution Motion for site visits (TC) 19 October, 2009.

¹² Prosecutor's submissions para. 3.

¹³ Prosecutor's submissions para. 5.

¹⁴ Prosecutor's submissions para. 6.

Defence's submissions

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8. The Defence submission mentions the same sites proposed by the Prosecution to be visited¹⁵ and states its reasons for visiting each site in relation to the charges in the indictment and evidence adduced during the testimony of witnesses. Other activities proposed by the Defence in addition to the sites proposed for visitation include the measurement of the following:¹⁶
- The distance between the Nyange church and the parking yard of ASTALDI Company.
 - The distance between Nyange church and Mutanoga market.
 - The distance between the communal office and the location of Dr Ntawuruhunga's house at Rufungo.
 - The distance between Dr Ntawuruhunga's house and the office of the *Prefet* in Kibuye.
 - The distance between Kigali and Gitarama.
 - The distance between Gitarama and Nyange.
9. The Defence proposes the visit to the Nyange church in order to substantiate its challenge of testimony given by Prosecution witnesses CBY and CBS who said they could see authorities meeting on the balcony of the Presbytery from their positions in the Church courtyard, as well as testimony given by CBS who said that while standing in the church courtyard, he could see Ndahimana in the crowd at the Statue of the Virgin Mary.¹⁷ The Defence desires the Chamber to make a proper assessment of whether, given the prevalent situation at the time in Nyange, it would have been possible for a person to see the Accused in a crowd of people at the Statue or conversely, whether someone at the Statue could have seen what was going on at the Nyange church.¹⁸
10. The Defence concludes that it reserves a right to add additional sites to be visited after completing its presentation of Defence witnesses 'as observed by the Honorable Trial Chamber on 20 April 2011'.¹⁹

¹⁵ Defence's submissions para 3.

¹⁶ Defence's Submissions para 3.

¹⁷ Defence's submissions paras. 4, 5.

¹⁸ Defence's submissions paras. 6, 7.

¹⁹ Defence submissions para 8.

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DELIBERATIONS*Applicable Law*

11. 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 the determination of the matter before the chamber.²⁰ 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 the Chamber in its assessment of issues of visibility, layout of buildings, distances between locations and correlative proximity of places.²¹
12. The Trial Chamber notes that the scheduled date for the completion of hearing the Defence witnesses is 13 May 2011 and that the Defence has only five witnesses left to testify²². Thus it is of the opinion that now is a suitable time to commence the processes stipulated in the Practice Direction for Site Visits²³ having received submissions from both parties on sites to be visited.
13. The Chamber recalls that its 20 April 2011 ruling concerning the Defence’s plea for more time within which to make submissions as to locations of the site visit was that no extension of time would be granted. The Defence was directed to comply with the Chambers Order of 7 April²⁴ due to the required planning in terms of the logistics, administrative and technical support as well as mobilization of Teams in Rwanda. Moreover, the Chamber, having considered the evidence disclosed by the Defence notes that the likelihood of the emergence

²⁰ *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Motions for Site Visit to Rwanda (TC), 21 April 2008, paras. 2-5; *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; *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.

²¹ *Prosecutor v. Dominique Ntawukuliwayo*, Case No. ICTR-05-82, Scheduling Order for Site Visit To Rwanda and Hearing of Closing Arguments (Rules 4, 54 and 86 of the Rules of Procedure and Evidence), 9 March 2010.

²² The Defence witnesses who are remaining to testify between 3 May and 13 May 2011 as at 20 April 2011 were ND17, ND35, ND20, BX7 and the Accused (ND31). See MOP Ndahimana 20 April 2011.

²³ ICTR Practice Direction, 3 May 2010.

²⁴ *Prosecutor v Ndahimana*, ICTR 2001-68-T, Chambers’ Invitation to make submissions on Potential site visit to Rwanda, 7 April 2011.

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of a 'completely new site' which shall warrant the Defence to 'exercise its right' to make further submissions on additional sites is very low.

14. It is the opinion of the Chamber having considered the evidence in this case and the submissions made by the Parties, that several of the disputed issues at trial concern physical presence of the Accused at specific locations and distances between certain locations as well as issues involving line-of-sight, in particular, the area/facilities in and around Nyange church premises, the Statue of the Virgin Mary, Kanyarukiga's pharmacy, the Nyange communal and health centres as well as Nyange market centre. The Chamber notes that both the Parties are of the view that a site visit to the same locations would assist the Chamber in its assessment of evidence adduced at trial.
15. While it true that the Defence also listed some additional locations not mentioned by the Prosecution²⁵ and conversely, the Prosecution also mentions a few locations which the Defence did not mention,²⁶ the Chamber is of the opinion that due to the close proximity of these locations, they can all be visited during the Site visit within the allocated time. In the Chamber's view, the site visit will require a maximum of four days including travel time and will not incur difficult logistical planning or additional significant cost to the Tribunal. The site visit should therefore take place from 7 to 10 June in accordance with the confidential itinerary couched in general terms and annexed to this Decision.²⁷
16. In view of the above, the Chamber schedules the filing of the parties closing briefs on 25 July 2011 after the closing of the Defence case on 13 May 2011 and the completion of the site visit by 10 June 2011. The Parties oral closing arguments are hereby scheduled to be heard by the Chamber on the 21 and 22nd September 2011.

²⁵ Defence submissions para. 3.

²⁶ Prosecution submissions para. 7.

²⁷ Annex B.

FOR THE ABOVE REASONS, THE CHAMBER

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I. REQUESTS the President of the Tribunal²⁸ to authorise the Chamber to exercise its function away from the Seat of the Tribunal pursuant to Rule 4 of the Rules of Procedure and Evidence from 7 – 10 June 2011; and if such permission is granted,

II. ORDERS that a site visit be conducted to Rwanda from the 7 – 10 June 2011;

III. DIRECTS the Registry to make all necessary arrangements for visiting the relevant sites listed in the attached Annex A and to liaise with the Parties and the Chamber to facilitate the implementation of this decision;

IV. DIRECTS that the site visit will be conducted in accordance with the itinerary set out in general terms in the Confidential Annex B attached to this Decision.

V. ORDERS that at each site to be visited, the following procedure shall be adopted:

- i) A Registry representative will guide the visit participants to the specific locations to be visited as detailed in the site visit Itinerary;
- ii) The Registry representative will announce the location at each site;
- iii) The Registry representative will keep a detailed official record of the site visit;
- iv) The official record will be submitted to the Chamber and Parties no later than 17 June 2011 and admitted into the trial record as a Chamber's exhibit;
- v) Parties will not be permitted to make oral representations at the sites. However, in the case where a party considers a site to be incorrect and not in accordance with the attached confidential itinerary, it may indicate this to the Chamber at the site;
- vi) There will be no audio, video or photographic recordings of the sites;

VI. INSTRUCTS the Parties to each submit to the Registry by 4 May 2011, the full names and contact details of, respectively, the Counsel and one other member of the team who will participate in the site visit²⁹;

²⁸ The International Criminal Tribunal for Rwanda, Arusha.

²⁹ ICTR Practice Direction for Site Visits, 3 May 2010, para. 3(iii) and para. 3(iv).

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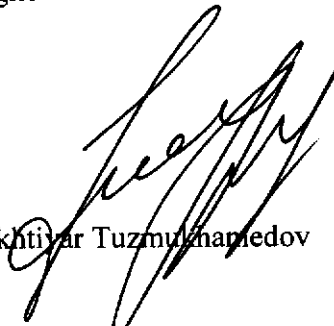
VII. **ORDERS** that the Parties' closing briefs be filed on 25th July 2011;

VIII. **ORDERS** that the Parties Closing arguments be heard on the 21st and if necessary, the 22nd September 2011.


Arusha, 28 April 2011, done in English.


Florence Rita Arrey

Presiding Judge


Bakhtiyar Tuzmukhanedov

Judge


Aydin Sefa Akay

Judge

[Seal of the Tribunal]



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ANNEX 'A'

COMPARATIVE TABLE OF SITES PROPOSED BY THE PARTIES FOR VISITATION

	Prosecution	Defence
1	The former Kivumu commune office	Measurement of the distance between Nyange Church and the communal office.
2	Gregoire Ndahimana's official residence in April 1994 (<i>at Nyange</i>)	Measurement of the distance between the location of the official residence of the <i>bourgmestre</i> and the Nyange parish.
3	Health Centre	Measurement of the distance between the Nyange Church and the Nyange health centre.
4	The Convent	Measurement of the distance between Nyange church and the sister's convent.
5	Nyange parish including the church area, presbytery and secretariat,	Nyange parish church courtyard area and presbytery.
6	Areas adjacent to Nyange parish, including fields belonging to the parish in 1994,	----not proposed by the Defence -----
7	Nyange trading centre	--- not proposed by the Defence-----
8	The former pharmacy of Gaspard Kanyarukiga	--- not proposed by the Defence-----
9	The Virgin Mary statue	Have the view of the Nyange church courtyard from the statue of the Virgin Mary and vice versa.
10	The CODEKOKI building and adjacent highway leading to Kibuye.	--- not proposed by the Defence-----
11	--- not proposed by the Prosecution---	Measurement of the distance between the Nyange church and the parking yard of ASTALDI Company.
12	--- not proposed by the Prosecution---	Measurement of the distance between Nyange church and Mutanoga market.
13	--- not proposed by the Prosecution---	Measurement of the distance between the communal office and the location of Dr Ntawuruhunga's house at Rufungo.
14	--- not proposed by the Prosecution---	Measurement of the distance between Dr Ntawuruhunga's house and the office of the <i>Prefet</i> in Kibuye.
15	--- not proposed by the Prosecution---	Measurement of the distance between Kigali and Gitarama
16	--- not proposed by the Prosecution---	Measurement of the distance between Gitarama and Nyange.
*	Other places proposed by Defence and the Trial Chamber.	Other places deemed appropriate by the Trial Chamber.

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ANNEX 'B'

GENERAL ITINERARY FOR SITE VISITS BY THE CHAMBER AND PARTIES
(7 – 10 JUNE 2011)

<u>Depart</u>	<u>to site/location</u>	<u>Date</u>	<u>Action</u>
1. Arusha	Kigali	7/06/2011	Arrival
2. Kigali	Gitarama	8/06/2011	Site visit ³⁰
3. Gitarama	Nyange	8/06/2011	Site visits ³¹
4. Nyange	Rufungo	8/06/2011	Site visits ³²
5. Kigali	Kibuye	9/06/2011	Site visit ³³
6. Kigali	Arusha	10/06/2011	Departure

³⁰ The objective of passing through Gitarama on the way from Kigali to Nyange is only to gauge the distance from Kigali to Gitarama and will not entail visiting specific sites at Gitarama.

³¹ Nyange Church and environs, the Statue of the Virgin Mary, Kanyarukiga's shop, Mutanoga market, Communal office, Health centre, *Bourgmestre's* residence, Sister's convent and also Rufungo village for Ntawuruhunga's and *bourgmestre's* private residences if practicable.

³² Rufungo is actually in Nyange and so can be visited by the Chamber and parties on the same day that the Nyange sites are visited. Kibuye is further away and thus it would be more practicable to start off from Kigali the following day, 9 June to go straight to Kibuye.

³³ The Chamber shall visit the Kibuye site and any additional sites at its discretion on 9 June 2011.