

ICTR-98-44D-T  
10-05-2011  
(7644-7639)

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

UNITED NATIONS  
NATIONS UNIES

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Solomy Balungi Bossa, Presiding  
Bakhtiyar Tuzmukhamedov  
Mparany Rajohnson

**Registrar:** Adama Dieng

**Date:** 10 May 2011

**THE PROSECUTOR**

v.

**Callixte NZABONIMANA**  
*Case No. ICTR-98-44D-T*

Handwritten signature of Callixte Nzabonimana  
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Date stamp: 10 MAY 2011

**DECISION ON SITE VISIT**

*(Rule 4 of the Rules of Procedure and Evidence and Practice Direction on Site Visits)*

**Office of the Prosecutor**

Paul Ng'arua  
Memory Maposa  
Simba Mawere  
Mary Diana Karanja

**Defence Counsel**

Vincent Courcelle-Labrousse  
Philippe Larochelle

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## INTRODUCTION

1. On 1 March 2011, the Trial Chamber issued an oral order for the parties to file written submissions regarding the possibility of conducting a site visit to Rwanda in the course of the present proceedings.<sup>1</sup>
2. On 15 March 2011, the Prosecution filed its submissions concerning the proposed site visit.<sup>2</sup>
3. On 16 March 2011, the Defence filed its submissions concerning the proposed site visit.<sup>3</sup> At the outset of its submissions, the Defence informed the Trial Chamber that the Accused “would like to be present in Rwanda during the site visit”.<sup>4</sup>
4. On 24 March 2011, the Trial Chamber submitted a request to the Registrar to determine the feasibility of the participation of the Accused in the proposed site visit.<sup>5</sup>
5. On 6 May 2011, the Trial Chamber declared the evidence phase in the present proceedings to be closed, and set a deadline of 5 July 2011 for the submission of closing briefs.<sup>6</sup> At that time, the Trial Chamber requested clarification from the Defence as to whether the Accused would waive his right to attend any possible site visit in the event that his attendance proved impossible. The Defence advised the Chamber that the Accused would waive his right to be present for any possible site visit should the Registrar’s recommendation compromise the ability of the Defence to participate in a site visit.<sup>7</sup>
6. On 10 May 2011, the Trial Chamber received an official correspondence from the Registrar indicating that the presence of the Accused during a site visit to Rwanda would be an unprecedented event in the history of the Tribunal which, in the opinion of the Registrar, may pose untold mobility, security, detention, and other logistical challenges and risks.<sup>8</sup>

<sup>1</sup> Transcript of Trial Proceedings, 1 March 2011 (English), p. 2, l. 31 – p. 3, l. 1, 19-23 (“Transcript”).

<sup>2</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor’s Submissions on Site Visit, 15 March 2011.

<sup>3</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Defence Submissions on Site Visit, 16 March 2011.

<sup>4</sup> Defence Submissions, para. 1.

<sup>5</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Request for Information from the Registrar Pursuant to Rule 33, 24 March 2011.

<sup>6</sup> Draft Transcript of Trial Proceedings, 6 May 2011 (English) (“Draft Transcript”).

<sup>7</sup> Draft Transcript.

<sup>8</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Registrar’s Submission in Respect of Trial Chamber III Request for Information, dated 9 May 2011.

## SUBMISSIONS OF THE PARTIES

### *Prosecution Submissions*

7. The Prosecution suggests the following locations to be included in any site visit itinerary: 1) the route from Kigali to Gitarama town in Nyabikenke *commune*; 2) the area between Nyabikenke communal office and Karangwa's bar in Cyayi Centre; 3) the area surrounding the Fina Petrol station in Nyamabuye *commune*; 4) Jongoli Hill in Nyabikenke *commune* and its immediate vicinity; and 5) Gasenyi Centre in Nyabikenke *commune* and its environs.<sup>9</sup> In requesting the aforementioned locales, the Prosecution stresses the importance of calculating distances, deciphering the relative positions of significant landmarks, and determining the vantage points of locations mentioned by witnesses during trial in order to assess their ability to properly observe the events described in their testimonies.<sup>10</sup>

### *Defence Submissions*

8. The Defence requests that a site visit comprise the following: 1) the route from where the French Embassy in Kigali was situated in 1994 to Gasenyi Centre in Nyabikenke *commune*; 2) the area surrounding Gasenyi Centre; 3) the route between Gasenyi Centre and Mbuye Centre; 4) the Accused's domicile in Kavumu *secteur*, Nyabikenke *commune*; 5) Kivumu Commercial Centre in Nyabikenke *commune* and its environs; 6) Mount Ndiza in Nyabikenke *commune*; 7) the location of Gasagara Centre in Nyabikenke *commune*; 8) the *Centre de Kabimbura* in Nyabikenke *commune*; 9) the area between Karangwa's bar at Cyayi and the Nyabikenke communal office; 10) Jongoli Hill in Nyabikenke *commune*;<sup>11</sup> 11) Butare Trading Centre in Rutobwe *commune*; 12) specific locations the Accused is alleged to have attended in Ruhango *commune*; and 13) various locations in Nyamabuye *commune*.<sup>12</sup> The thrust of the Defence's justifications for its proposed locations is to measure distances that figure prominently in the Indictment, to take note of the dimensions and surroundings of various buildings and other points of interest that pertain to the allegations against the Accused; and to assess vantage points vis-à-vis various locations in order to assess the accuracy of eyewitness testimony given at trial.<sup>13</sup>

<sup>9</sup> Prosecution Submissions, paras. A-E.

<sup>10</sup> Prosecution Submissions, paras. A-E.

<sup>11</sup> Defence Submissions, pp. 3-4.

<sup>12</sup> Defence Submissions, pp. 2-4.

<sup>13</sup> Defence Submissions, pp. 2-4.

## DELIBERATIONS

### *Applicable Law*

9. Rule 4 of the Rules of Procedure and Evidence (“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 and in the interests of justice.

10. Section 1.4 of the Practice Direction on Site Visits states:

If the President approves that a visit to Rwanda be conducted and the Chamber, in accordance with the requests of one or more parties or *proprio motu*, finds that such a visit could substantially assist it in the assessment of the evidence, it shall deliver its decision no later than seven days after the closure of the evidence phase in the case. The decision shall include the itinerary and indicate the sites to be visited.

As the plain wording of this Practice Direction suggests, while the parties are allowed to provide submissions as to which locations merit inclusion in a site visit itinerary, the ultimate consideration as to whether and where to conduct a site visit are the Trial Chamber’s own impressions as to which locations, if any, could substantially assist it in the assessment of the evidence adduced at trial.

### *Analysis*

11. The Trial Chamber has carefully considered the submissions of both parties, the need to ensure an economical use of the considerable and valuable resources of the Tribunal that a site visit would consume, the Accused’s waiver of his right to attend the site visit, and the Chamber’s own impressions as to which geographical locations referenced in the present proceedings would benefit from further elucidation by way of an on-site visit.

12. Having afforded all the above factors their due weight, the Trial Chamber considers that its assessment of the evidence could be substantially assisted by a site visit to the following six locations: 1) the route from the site of the former French Embassy in Kigali in 1994 to the Nyabikenke communal office, and a neighbouring location known as Cyayi; 2) Gasenyi Trading Centre in Gasenyi *cellule*, Kigina *secteur*, Nyabikenke *commune*; 3) Fina Petrol Station in Gitarama town, Nyamabuye *commune*; 4) the Accused’s domicile in Kavumu *secteur*, Nyabikenke *commune*; 5) Jongoli Hill in Kiciro *cellule*, Ngoma *secteur*, Nyabikenke *commune*; and 6) Mount Ndiza spanning Nyabikenke and Nyakabanda *communes*. While the Trial Chamber is cognisant of the fact that both parties have requested to visit more locations than the aforementioned, the Chamber considers that there exists sufficient *viva voce* and documentary evidence on the trial record for the Chamber to conduct its ultimate analyses with respect to those locations that will not be attended in

rendering its final Judgement in the present proceedings. Consequently, the Trial Chamber does not believe that it would be an effective expenditure of the Tribunal's precious resources to expand the scope of the site visit beyond the parameters enunciated above.

13. Having consulted the available resources of the Tribunal, the Trial Chamber further announces that the aforementioned site visit shall be conducted on the dates of 5 to 9 September 2011, which shall be inclusive of return travel between the seat of the Tribunal in Arusha, Tanzania and Rwanda. Further particulars regarding the precise itinerary to be followed during the site visit shall be communicated to the parties in due course, after all requisite logistical consultations with affected organs of the Tribunal have been concluded.
14. The Trial Chamber notes that Section 2 of the Practice Direction on Site Visits states that “[t]he visit shall take place after the closure of the evidence phase and before the date set for the filing of closing arguments. It shall commence no later than 30 days after the Chamber’s decision.” While the Trial Chamber recalls that the deadline for the filing of closing briefs has already been set for 5 July 2011 and that the site visit, as scheduled, would occur more than 30 days after the close of the evidence phase, the Chamber observes that the Practice Direction on Site Visits allows for the variation of these prescribed time limits if “good cause”<sup>14</sup> necessitates a variation. The Trial Chamber considers that the concomitant professional commitments of all the Judges of this Chamber in several other cases presently pending before this Tribunal,<sup>15</sup> which poses considerable logistical challenges in the scheduling and allocation of juridical resources, constitutes the very type of good cause envisioned by the Practice Direction to vary the default timeframes imposed therein.
15. Moreover, recalling that Section 1.3 (iii) of the Practice Direction on Length and Timing of Closing Briefs and Closing Arguments stipulates that “[i]n the event of site visits, the [word] limit [for closing briefs] shall be expanded by 3,000 words”, and Section 4 (ii) of the same Practice Direction states that “[i]n the event of site visits, the time limit [for filing closing briefs] shall be extended by 14 days”, the Chamber shall allow the parties to file, within 14 days of the completion of the site visit, addenda to their closing briefs not exceeding 3,000 words that must deal exclusively with matters directly arising during the course of the visit. Noting the express allowance in the said Practice Direction that the default timeline for the

<sup>14</sup> Practice Direction on Site Visits, s. 7.1.

<sup>15</sup> *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42; *Prosecutor v. Ngirabatware*, ICTR-99-54; *Prosecutor v. Ndahimana*, ICTR-01-68.

submission of closing briefs may be varied “if a legal recess or extraordinary circumstances necessitate such a variation”,<sup>16</sup> and recalling the logistical impediments flowing from this Chamber’s equally important and conflicting professional obligations explained above, as well as the fact that the closing arguments in this case are scheduled to be submitted only 10 days prior to the biennial judicial recess of the Tribunal, the Chamber is of the opinion that the necessary circumstances for the allowance of addenda in the manner described above is warranted.

**FOR THESE REASONS, THE TRIAL CHAMBER**

**DECLARES** that it shall conduct a site visit in the present proceedings, to consist of visits to the locations detailed above, from 5 to 9 September 2011;

**ALLOWS** the parties, within 14 days of the completion of the site visit, to file addenda to their closing briefs not exceeding 3,000 words, which shall exclusively address matters arising during the course of the site visit;

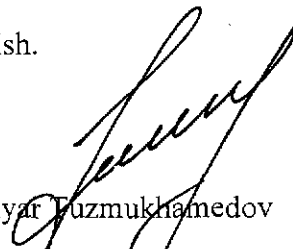
**REQUESTS** the Registry to make all necessary logistical arrangements to facilitate the occurrence of the site visit; and

**ORDERS** the parties to apprise themselves of the allowable participants as stipulated in section 3 of the Practice Direction on Site Visits, as well as the procedures to be observed during the course of the site visit as stipulated in section 5 of the same Practice Direction, and to strictly adhere to those dictates.

Arusha, 10 May 2011, done in English.



Solomy Balungi Bossa  
Presiding Judge



Bakhtiyar Tuzmukhamedov  
Judge



Mparany Rajohnson  
Judge



<sup>16</sup> Practice Direction on Length and Timing of Closing Briefs and Closing Arguments, s. 5 (i).