



UNITED NATIONS  
NATIONS UNIES

ICTR - 98-44D-T  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

24-08-2011  
(8545 - 8541)

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EWJ

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OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Adama Dieng

**Date:** 24 August 2011

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**THE PROSECUTOR**

v.

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

**DECISION ON NZABONIMANA'S MOTION  
FOR INSPECTION OF ADDITIONAL LOCATIONS**

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

**Office of the Prosecutor**  
Paul Ng'arua  
Simba Mawere  
Mary Diana Karanja

**Defence Counsel**  
Vincent Courcelle-Labrousse  
Philippe Larochelle

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## INTRODUCTION

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1. On 10 May 2011, the Trial Chamber issued a decision in which it declared that a site visit to Rwanda shall be conducted in the present proceedings from 5 to 9 September 2011, and stipulated an itinerary of locations to be visited during the course of the said visit.<sup>1</sup>
2. On 25 July 2011, the Defence filed a motion requesting that three additional locations be added to the itinerary of the impending site visit ("Motion").<sup>2</sup>
3. On 28 July 2011, the Prosecution filed a response opposing the Defence Motion, and further requesting that the Defence be denied fees in relation to the Motion ("Response").<sup>3</sup>

## SUBMISSIONS OF THE PARTIES

### *Motion*

4. The Defence invokes Section 5.5 of the Practice Direction on Site Visits ("Practice Direction") in "request[ing] that certain sites be added to the Decision on Site Visit scheduled 5 to 9 September 2011",<sup>4</sup> namely "the Gasagara, the Butare and Kabimbura centers... because they are 'nearby' and 'relevant'" to locations already stipulated by the existing itinerary.<sup>5</sup> The Defence then submits justifications regarding the probity of the additional sites as they pertain to the case against the Accused, as well as their convenient location in relation to the established sites to be visited.<sup>6</sup> Finally, the Defence appends to its Motion a map which purports to demonstrate the facility with which the site visit delegation could visit the additionally requested sites.<sup>7</sup>

### *Response*

5. At the outset, the Prosecution argues that the "[t]he Defence motion is procedurally defective because it does not seek for reconsideration of the 10 May 2011 Decision on the site visit, and should therefore fail on this ground alone".<sup>8</sup>

<sup>1</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on Site Visit, 10 May 2011.

<sup>2</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana's Motion for Inspection of Additional Locations, 25 July 2011.

*Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor's Response to Nzabonimana's Motion for Inspection of Additional Locations, 28 July 2011.

<sup>4</sup> Motion, paras. 1-3.

<sup>5</sup> Motion, para. 4.

<sup>6</sup> Motion, paras. 5-12.

<sup>7</sup> Motion, Annex A.

<sup>8</sup> Response, para. 9.

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6. In the alternative, the Prosecution submits that "the Trial Chamber has already ruled that it considers that sufficient *viva voce* and documentary evidence exists on the trial record for it to conduct its ultimate analysis with respect to the Kabimbura centre, Gasagara centre and Butare centre locations",<sup>9</sup> and contends that Section 5.5 of the Practice Direction "is meant for the procedure to be followed at locations, and is not a stand alone procedure which the Defence can use at this stage."<sup>10</sup> The Prosecution also argues that sufficient Defence evidence has been tendered for the Trial Chamber to form its own impressions as to the necessity of visiting these locations, and thus the requested expansion of the itinerary "will not make any meaningful contribution to the Chamber's task of assessing the evidence".<sup>11</sup>
7. Finally, the Prosecution argues that the Defence has not shown that adding the proposed three additional locations to the site visit itinerary "would be instrumental in the discovery of truth and determination of matters before the Trial Chamber". To this end, the Prosecution submits that the primary intent of the Defence's request is not to examine "the particular physical attributes of the locations in questions", but rather to discredit Prosecution witnesses, which "the jurisprudence of this Tribunal... has in the past declined to humour" as a sound basis for conducting site visits.<sup>12</sup>
8. Consequently, the Prosecution submits that the Motion "is baseless, and an unnecessary waste of the Tribunal's resources, and prays that they be denied fees for this motion".<sup>13</sup>

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## 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 I.4 of the Practice Direction 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 Section suggests, 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. Indeed,

<sup>9</sup> Response, para. 10.

<sup>10</sup> Response, para. 11.

<sup>11</sup> Response, paras. 12-14.

<sup>12</sup> Response, paras. 20.

<sup>13</sup> Response, para. 21.

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the jurisprudence of this Tribunal has consistently held that “[a] site visit should be granted when the visit will be instrumental to the discovery of the truth and determination of the matter before the Chamber”.<sup>14</sup> In making this determination, the Trial Chamber “should consider whether some of the ‘disputed issues at trial are relative to physical attributes of various sites’ relevant to the case... [such as] assessment of issues of visibility, layout of buildings, distances between locations and correlative proximity of places.”<sup>15</sup> Finally, it is well-established that logistical concerns and the economy of juridical resources must be given due weight in determining whether to conduct a site visit, as well as the length and scope of any site visit undertaken.<sup>16</sup>

11. Section 5.5 of the Practice Direction declares that:

*Proprio motu*, or at the request of a party, the Trial Chamber may decide... (iii) to inspect other locations nearby where relevant.

*Analysis*

12. Firstly, the Trial Chamber finds that the Defence’s reliance on Section 5.5 of the Practice Direction in seeking its present relief is obviously misplaced. Section 5 is clearly entitled “The Procedure on Location”, and its nine sub-sections are manifestly aimed toward addressing issues that shall or may arise during the course of the site visit itself, and not before.<sup>17</sup> Therefore, the Defence’s Motion to add three additional locations pursuant to Section 5.5 of the Practice Direction is clearly premature.

13. Secondly, in view of the jurisprudence referenced above regarding the importance of observing a succinct itinerary and maintaining respect for the precious financial resources of the Tribunal, the Trial Chamber would be remiss to ignore that many logistical preparations required for the established site visit itinerary have already been undertaken by the Registry over the past several months, which should not lightly be disturbed at such a late juncture prior to the commencement of the planned visit.

14. Finally, while Section 5.5 of the Practice Direction allows either party, during the course of the site visit, to request that the delegation “inspect other locations nearby where relevant”, this allowance must be read in concert with the jurisprudence cited above which clearly establishes that the preeminent concern in determining a site visit itinerary is whether any

<sup>14</sup> *Prosecutor v. Ndindiliyimana et al.*, ICTR-00-56-T, Decision on Locations for the Site Visit to Rwanda, 9 March 2009, para. 5. See also *Prosecutor v. Rwamakuba*, Decision on Defence Motion for a View *Locus in Quo*, 16 December 2005, para. 6; *Prosecutor v. Mpambara*, ICTR-2001-65-T, Decision on the Prosecution Motion for a Site Visit, 10 February 2006, para. 4.

<sup>15</sup> *Ndindiliyimana*, para. 6. See also *Mpambara*, para. 5.

<sup>16</sup> *Ndindiliyimana*, para. 5; *Rwamakuba*, paras. 6-7; *Mpambara*, para. 5.

<sup>17</sup> Practice Direction, Sections 5.1-5.9.

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proposed additional sites would advance the ascertainment of truth given the existing trial record in the instant proceedings.

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15. To that end, having reviewed the trial record with respect to the three locations the Defence seeks to add to the site visit itinerary (including extensive cross-examination of Prosecution witnesses as well as counter-evidence adduced by Defence witnesses),<sup>18</sup> the Trial Chamber concludes that it has already received considerable evidence with respect to these locations that will assist it in the ascertainment of truth and the determination of the relevant matters before the Chamber. Consequently, the Defence should be apprised that a renewed request to visit the three locations described in the instant Motion shall not be entertained by the Trial Chamber via Section 5.5 of the Practice Direction once the site visit has commenced.
16. With respect to the Prosecution's request that fees be denied to the Defence, while the Trial Chamber does not find, for the reasons expounded above, that an expansion of the existing site visit itinerary is warranted, the Chamber does not find the instant Motion so frivolous or disruptive of the Tribunal's resources as to warrant the denial of fees.

**FOR THESE REASONS, THE TRIAL CHAMBER**

**DENIES** the Defence Motion; and

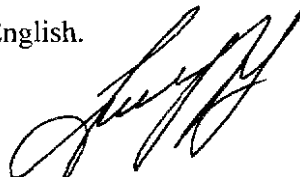
**DENIES** the Prosecution request that fees be denied to the Defence in relation to the preparation of the instant Motion.

Arusha, 24 August 2011, done in English.



Solomy Balungi Bossa

Presiding Judge



Bakhtiyar Tuzmukhamedov

Judge



Mparany Rajohnson

Judge



<sup>18</sup> See, e.g., Testimony of Prosecution Witnesses CNAF, CNAZ, CNAY, CNBH, CNBT, CNBA, and Defence Witnesses T109 and T110.