

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”), composed of Justice Teresa Doherty, presiding, Justice Richard Lussick and Justice Julia Sebutinde;

SEISED of the Prosecution Motion For a *Locus in Quo* Visit to Karina, Bombali District, The Republic of Sierra Leone, filed on 22 September 2005 (“Motion”);

CONSIDERING also the Joint Defence Response to Prosecution Motion For a *Locus in Quo* Visit to Karina, Bombali District, The Republic of Sierra Leone, filed on 3 October 2005 (“Response”);

CONSIDERING also the Prosecution Reply to the Joint Defence Response to Prosecution Motion For a *Locus in Quo* Visit to Karina, Bombali District, The Republic of Sierra Leone, filed on 7 October 2005 (“Reply”);

NOTING the Order for a Written Representation From the Registrar Pursuant to Rule 33 on Security Measures for a Site Visit to Karina Town in the Bombali District of Sierra Leone, issued by the Presiding Judge on 10 October 2005 (“Order”);

CONSIDERING also the Written Representation From the Registrar on Security Measures for a Site Visit to Karina Town in the Bombali District of Sierra Leone, filed on 14 October 2005 and the Strictly Confidential Written Representation From the Registrar on Security Measures for a Site Visit to Karina Town in the Bombali District of Sierra Leone, dated 14 October 2005 (“Registrar’s Representations”);

MINDFUL of the provisions of Articles 14 and 17 of the Statute of the Special Court for Sierra Leone (“the Statute”) and of Rule 4, Rule 54 and Rule 89(B) and (C) of the Rules of Procedure and Evidence of the Special Court (“the Rules”);

DECIDES the Motion based solely on the written submissions of the parties pursuant to Rule 73(A) of the Rules, as follows.

I. SUBMISSIONS OF THE PARTIES

Motion

1. The Prosecution filed this Motion towards the conclusion of its case-in-chief, pursuant to the provisions of Rule 4, Rule 54 and Rule 89(B) and (C) of the Rules requesting a *locus in quo* inspection of Karina Town in the Bombali District of Sierra Leone. The Prosecution observed that the Trial Chamber has hitherto heard testimonial evidence, unchallenged in cross-examination, that the attack upon Karina, and specifically the killing, amputations, burning of houses and abduction of civilians alleged to have occurred there were ordered by the first Accused in the presence of the second and third Accused, and that all three Accused participated in the crimes alleged to have occurred in Karina. The Prosecution submitted that a site visit to Karina is relevant to all counts in the indictment and to the criminal responsibility of the Accused under Article 6(1) and 6(3) of the Statute and would greatly assist the Trial Chamber in assessing the testimonial evidence.

2. The Prosecution argued further that although the crimes are alleged to have taken place approximately seven years ago, there are still many physical reminders of the alleged crimes in Karina and that a site visit is the best and most expedient way to convey to the Trial Chamber the necessary information regarding “the environs, spatial configuration, and physical character of the locations of alleged criminal acts, which information cannot be adequately conveyed through the presentation of oral testimony or topographical maps” alone.

3. The Prosecution submitted further that a site visit to Karina would be helpful in the evaluation of evidence relating to other rural parts of the country where similar crimes are alleged to have taken place, in so far as the site visit will provide the Trial Chamber with first hand experience of a small, rural Sierra Leonean village.

4. The Prosecution argued that during the proposed site visit the Trial Chamber has powers under Rule 4 of the Rules to “exercise their functions away from the Seat of the Court, if so authorized by the President” and pursuant to Rule 54 of the Rules “to issue such orders as may be necessary for the preparation or conduct of the trial”. The Prosecution argued further that the proposed site visit would not be prohibitive in terms of time, security arrangements, cost or travel and could be completed in one working day thereby causing no delay in the trial.

5. The Prosecution proposed that the site visit team would comprise the Judges of the Trial Chamber as well as representatives of the Prosecution and Defence teams and necessary security and support staff only. In support of the Motion the Prosecution cited several cases from the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) including the *Prosecutor v. Bagilishema*¹, *Prosecutor v. Bagosora et al*², *Prosecutor v. Simba*³, *Prosecutor v. Brdjanin*.⁴ The Prosecution also relied upon the Trial Chamber’s earlier decision in the *Prosecutor v. Brima et al*.⁵

Response

6. The Defence opposed the Motion on the grounds that a site visit to Karina is not necessary for or instrumental to the discovery of the truth or the determination of the trial. The Defence argued that any evidence relating to “the environs, spatial configuration, and physical character of the locations of alleged criminal acts” should have been adduced during the *viva voce* testimony of the Prosecution witnesses and not afterwards.

7. The Defence argued further that a site visit to Karina at this stage of the proceedings, in particular after having heard the relevant Prosecution witnesses, would seriously infringe on the rights of the Accused to effectively cross-examine those witnesses with regard to any new information that may arise in the course of the visit, as they cannot be recalled.

8. The Defence argued further that Karina is neither representative of other rural villages in Sierra Leone nor are the “physical reminders of the alleged crimes in Karina” replicated in other villages. A site visit may therefore give the Trial Chamber an erroneous impression that all other villages in Sierra Leone are like Karina.

9. The Defence argued that the timing of the proposed site visit namely, after the close of the Prosecution case, will unfairly prejudice the Defence Case. The Defence argued that they intend to challenge and contradict the account of events in Karina as given by the Prosecution witnesses by

¹ *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, Judgment, 7 June 2001

² *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor’s Motion for Site Visits in the Republic of Rwanda, 29 September 2004

³ *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the defence request for site visits in Rwanda

⁴ *Prosecutor v. Brdjanin*, Case No. IT-99-36, Status Conference Script, 24 March 2004

⁵ *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Decision on Confidential Joint Defence request to Inspect *Locus in Quo* concerning the Evidence of Witness TF1-024, 16 June 2005

adducing evidence to challenge the alleged role of the Accused persons in the attack on Karina, particularly during the alleged massacre at Karina, and to the effect that at the time of the attack the first Accused had been detained by forces under the command and control of the RUF. The Defence submit that the most propitious time for such a visit ought to be at a time when both the Prosecution and the Defence have closed their respective cases.

10. The Defence submitted further that inconsistencies exist in the testimonies of the Prosecution witnesses' account of events in Karina which cannot be fairly and definitively resolved by the proposed site visit and in the circumstances of these conflicting accounts the proposed visit will unfairly prejudice the case against the Accused persons.

11. In the alternative, the Defence request that in the event that the Motion is granted, the Defence should be allowed to re-cross-examine the particular witnesses who testified-in-chief pertaining specifically to Karina, regarding the results and assessment of the site visit.

Reply

12. The Prosecution submitted that in the unlikely event that significant new evidence emerges during the site visit, the Defence may apply for leave to recall any witnesses for further cross-examination, upon showing good cause. The Prosecution reiterated that the evidence regarding the layout of Karina, its construction and environs is vital to the proper adjudication of the events in Karina and assessment of the evidence already before the court, and that this evidence can only be conveyed through first hand observation. The Prosecution also argued that professional judges are able to put their observations of Karina into proper scope and perspective without making impermissible assumptions or inferences.

Registrar's Representations

13. Pursuant to the Trial Chamber's Order the Registrar submitted that whilst adequate logistical arrangements can be made to facilitate the site visit to Karina, there are security concerns that cannot adequately be addressed.

II. DELIBERATIONS

The applicable law

14. The Rules do not specifically provide for site inspections. However, Rule 54 of the Rules generally empowers the Trial Chamber:

At the request of either party or on its own motion, to issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

15. Rule 89(B) of the Rules enjoins the Trial Chamber to “*apply rules of evidence that will best favour a fair determination of the matter before it, and are consonant with the spirit of the Statute and the general principles of law*”; while Rule 89(C) of the Rules permits the Trial Chamber to admit “*any relevant evidence*”.

16. The Trial Chamber is of the opinion therefore that it generally has power pursuant to the above Rules, to order site inspections where necessary. Article 10 of the Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone provides that the Special Court shall have its seat in Sierra Leone. Consequently, Rule 4

of the Rules which permits the Trial Chamber to “*exercise their functions away from the Seat of the Special Court if so authorised by the President*” is inapplicable in the circumstances since Karina Town, the site of the proposed visit, is in Sierra Leone.

17. This Trial Chamber has previously ruled that whilst “*the need for a site inspection has to be assessed in view of the particular circumstances of each trial*”, the Chamber will not undertake a site inspection unless it is shown that the inspection would be “*instrumental in the discovery of the truth and the determination of the matter before the Trial Chamber.*”⁶

18. The Trial Chamber also finds jurisprudence from other international tribunals in this regard quite instructive. For example the International Criminal Tribunal for Rwanda (ICTR), whose Rules are similar to those cited above, has ruled that it would not undertake a site inspection which “*though informative, would not be instrumental in the discovery of the truth and the determination of the matter before it*”.⁷ In another instance the ICTR declined to undertake a site inspection where it was considered financially and logistically unfeasible to do so.⁸ In other instances the ICTR has ruled that the most appropriate time for a site inspection is “*at the end of the presentation of both the Prosecution and Defence cases*”.⁹

19. The International Criminal Tribunal for the Former Yugoslavia (ICTY) took the view that a site inspection should only take place in the presence of the accused unless the accused has waived his right to be present. The Tribunal then went on to decline a proposed site inspection on the grounds that

*the presence of the Accused in Sarajevo during a visit by the Trial Chamber would pose a considerable security risk for the Parties and accompanying staff, [and] that it would be virtually impossible to guarantee the safety of the Accused during the visit, considering the charges brought against him, his former position in the VRS and the locations to be visited.*¹⁰

In addition the Trial Chamber observed that although the proposed site visit was intended to acquaint the Trial Chamber with certain locations in Sarajevo and its surroundings, the Trial Chamber found that those places were described by witnesses, that photographs and maps of the locations were exhibited, that videos were played during the trial and that “*such visualisation was of substantial assistance to the Trial Chamber in its process of adopting an image of the terrain*”.¹¹ The Trial Chamber also considered that denying the Prosecution Motion would not affect the rights of the

⁶ *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-2004-16-T, Decision on Confidential Joint Defence Request to Inspect Locus in Quo Concerning Evidence of Witness TF1-024, 16 June 2005, para. 6, 7.

⁷ *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Decision on the Defence Motion Requesting an Inspection of the Site and the Conduct of a Forensic Analysis, 17 February 1998, para. 8.

⁸ *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Defence Request for Site Visits in Rwanda, 31 January 2005, para. 3.

⁹ *Prosecutor v. Ndayambaje et al.*, Case No. ICTR-98-42-T, Decision on Prosecutor’s Motion for Site Visits in the Republic of Rwanda under Rules 4 and 73 of the Rules of Procedure and Evidence, 23 September 2004, para. 14-15; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor’s Motion for Site Visits in the Republic of Rwanda, 29 September 2004, para. 3.

¹⁰ *Prosecutor v. Galic*, Case No. IT-98-29-T, Trial Chamber Judgment, 5 December 2003, para. 774.

¹¹ *Ibid.*

accused to a fair and expeditious trial, nor would it adversely affect the Trial Chamber's ability to try the case.

20. Applying the above guidelines to the present case, we note that while the Prosecution would on the one hand, like the proposed site inspection of Karina conducted at the close of their case, the Defence would on the other, prefer that such an inspection be conducted at the conclusion of both the Prosecution and Defence cases. We also note that neither of the parties has referred to the presence of the Accused persons during such a site visit. The right of an accused person to be tried in his presence is guaranteed by article 17(4)(d) of the Statute. Accordingly, the Trial Chamber is of the view that a site inspection should only take place in the presence of each of the Accused persons unless the Accused have expressly waived their right to be present, which is not the case here.

21. We also note the Registrar's undertaking that adequate logistical arrangements are available in order to enable the Trial Chamber to complete the proposed site inspection to Karina within one day. We are concerned however, that the presence of the Accused in Karina during such a visit, is likely to pose a considerable security risk for the parties and accompanying staff and that the security arrangements available may not adequately guarantee the safety and security of the Accused persons during such a visit.

22. In addition we note that although the proposed site visit is intended to acquaint the Trial Chamber of "*the environs, spatial configuration, and physical character of the locations within Karina Town and its environs*", a number of Prosecution witnesses have already given graphic testimony describing scenes and locations at Karina and its environs, and maps have been exhibited to assist the Trial Chamber in visualising the scene or scenes of the alleged crimes.

23. In the premises we are of the view that a site inspection while perhaps informative, would not be instrumental in the discovery of the truth and the determination of the matter before us.

FOR ALL THE ABOVE REASONS,

THE TRIAL CHAMBER DISMISSES the Motion.

Done at Freetown, Sierra Leone, this 25th day of October 2005.

Justice Richard Lussick

Justice Teresa Doherty
Presiding Judge

Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]