



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
11-09-2006
(29321-29318)

29321

S. Nyumba

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 11 September 2006

2006 SEP 11 11 A 9 16
JUDICIAL RECORDS/ARCHIVES
UNIT: TR

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

**DECISION ON NTABAKUZE MOTION UNDER ARTICLE 28 AND FOR VIDEO-
CONFERENCE TESTIMONY UNDER RULE 54 OF COLONEL de ST. QUENTIN**

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid

The Defence

Raphaël Constant
Allison Turner
Paul Skolnik
Frédéric Hivon
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the Ntabakuze “Motion for Request of Cooperation from the Government of France Pursuant to Article 28 of the Statute”, and the Addendum and Amendment thereto, filed on 8 March and 28 August 2006, respectively;

HEREBY DECIDES the motion.

INTRODUCTION

1. On 8 March 2006, the Ntabakuze Defence filed a motion asking the Chamber to issue a request for cooperation to the Government of France, in particular, to “facilitate a meeting and an interview with Colonel Grégoire de St. Quentin with a view to calling him as a witness”.¹ The Defence and the Registry subsequently advised the Chamber that progress was being made towards arranging an interview. On 5 May and 27 June 2006, a representative of the Ntabakuze Defence interviewed Colonel de St. Quentin in accordance with procedures required by the Government of France. The Addendum and Amendment to the motion now requests an “order to the Government of France to provide all necessary cooperation and assistance to facilitate the immediate attendance ... of Colonel Grégoire de St. Quentin, to appear as a witness before this Trial Chamber”.²

2. Article 28 of the Statute imposes an obligation on States to “cooperate with the International Criminal Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law”. A request to a Chamber to make an order under Article 28 must set forth the nature of the information sought; its relevance to the trial; and the efforts that have been made to obtain it. The type of assistance sought should also be defined with particularity.³

3. The Government of France has indicated its willingness to make Colonel de St. Quentin available for a deposition by video-conference pursuant to Rule 71 (D) of the Rules of Procedure and Evidence rather than allowing him to travel to Arusha to testify *viva voce* as is requested by the Defence.⁴ France indicates that it is difficult to make Colonel de St. Quentin available on short notice, as he is the commander of a military unit on active duty.⁵ The Defence acknowledges the French position, but does not support the request for a deposition, arguing that Rule 71 (A) requires that there be “exceptional circumstances”. As the Defence knows of no such circumstances, it does not believe that such an application would succeed. Furthermore, Rule 71 (A) states that a deposition may be granted “at the request of either party”; the Defence argues that in the absence of such a request, no deposition may be ordered.⁶

¹ Motion, p. 5.

² Addendum, p. 4.

³ *Bagosora et al.*, Decision on Request to the Kingdom of The Netherlands for Cooperation and Assistance (TC), 7 February 2005, para. 5; *Bagosora et al.*, Decision on Request for Subpoena of Major General Yaache and Cooperation of the Republic of Ghana (TC), 23 June 2004, para. 4.

⁴ Addendum, Annex 2 (Note verbale from the Ambassador of France in Tanzania to the ICTR Registrar, 7 August 2006).

⁵ Addendum, Annex 1 (Note verbale from the Ambassador of France in Tanzania to the ICTR Registrar, 7 July 2006).

⁶ Addendum, para. 7.

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DELIBERATIONS

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4. Where possible, a Trial Chamber should take the legitimate concerns of a state into account in fashioning requests pursuant to Article 28. The Government of France submits that Colonel de St. Quentin remains on active duty as the head of a military unit and that his absence would be disruptive of its proper functioning. On the other hand, the trial calendar prescribes that the presentation of the Ntabakuze case be completed by 13 October 2006.

5. The Defence correctly observes that a deposition under Rule 71 may only be granted "at the request of either party". As no party has made such a request, the Chamber may not make such an order.

6. The Chamber does, however, have the power under Rule 54 to order the hearing of testimony by video-conference where it is "in the interests of justice". This power, and the "interests of justice" standard, was first recognized before the ICTY in the *Tadić* case, a precedent which this Tribunal has followed.⁷ The criteria for determining whether video-conference testimony is in the "interests of justice" include: the importance of the testimony; the inability or unwillingness of the witness to attend; and that a good reason has been adduced for that inability or unwillingness.⁸ Rule 54 specifically provides that an order thereunder may be made by the Chamber *proprio motu*.⁹

7. The submissions of the Government of France indicate that Colonel de St. Quentin's appearance in Arusha on short notice would interfere with the functioning of the military unit which he commands. This concern constitutes a good reason for Colonel de St. Quentin's inability to appear. Under these circumstances, and in light of the Defence's insistence on the importance of the testimony, it is in the interests of justice that the testimony be heard by video-conference. Although the Defence has made no such request, the Chamber considers this to be an appropriate mechanism for respecting the legitimate concerns of the Government of France, while ensuring that the testimony is heard in accordance with the trial schedule. Accordingly, the order shall be made *proprio motu*.

⁷ *Tadić*, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence By Video-Link (TC), 25 June 1996, para. 19; *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004; *Bagosora et al.*, Decision on Testimony By Video-Conference (TC), 20 December 2004, para. 4.

⁸ *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004, para. 6.

⁹ Rule 54 reads: "At the request of either party or *proprio motu*, a Judge or a Trial Chamber may 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."

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FOR THE ABOVE REASONS, THE CHAMBER

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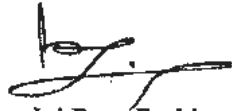
RESPECTFULLY REQUESTS the Government of France to make Colonel de St. Quentin available to provide testimony in the present case by way of video-conference;

DIRECTS the Registry to transmit this decision to the relevant authorities of the Government of France and, in consultation with the parties and the Government of France, to arrange for the taking of a deposition by video-conference in accordance with this decision.

Arusha, 11 September 2006



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

