



ICTR-98-41-T
01-11-2006
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

31282
1494

(31282 - 31280)

ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 1 November 2006

2006 NOV - 11 P 1:07
JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No.: ICTR-98-41-T

**DECISION ON VIDEO-CONFERENCE TESTIMONY OF KABILIGI
WITNESS DELTA AND TO HEAR TESTIMONY IN CLOSED SESSION**

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid
Gregory Townsend

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

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

BEING SEIZED OF the "Motion to Request the Testimony of Witness DELTA to be Heard Via Video Conference and in Closed Session", filed by the Kabiligi Defence on 30 October 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Kabiligi Defence requests that Witness Delta be permitted to give his testimony by video-conference on the basis of his legitimate and sincere belief that he may be arrested while on the territory of countries through which he allegedly must transit on his way to Tanzania. The motion asserts that the Tribunal's host country agreement does not extend immunity from arrest to such travel. The motion argues that Witness Delta is in exactly the same position as Witness YUL-39, whom the Chamber has agreed to hear by video-testimony on the basis that he has a genuine and well-founded fear that he may be arrested while in transit through the territory of a third country.¹

DELIBERATIONS

2. Testimony by video-conference may be ordered on the basis that it is "in the interests of justice", pursuant to Rule 54 of the Rules of Procedure and Evidence, or as a witness protection measure under Rule 75, where it is "necessary to safeguard the witness's security".² Whether video-conference testimony is in the "interests of justice" under Rule 54 will depend on the importance of the testimony, the witness's inability or unwillingness to attend, and whether a good reason has been adduced for that inability or unwillingness.³ Although it is not absolutely necessary that the reason for the refusal to attend be objectively justified, a showing must at least be made that the witness has a credible basis for the refusal, and that those grounds are genuinely held.⁴

3. Witness Delta refuses to travel to Arusha on the basis that he believes that an international arrest warrant has been issued against him, and that he would have no immunity from the execution of that warrant while in transit through third countries. The witness

¹ *Bagosora et al.*, Decision on Video-Conference Testimony of Kabiligi Witnesses YUL-39 and LAX-23 and to Hear Testimony in Closed Session (TC), 19 October 2006, para. 2.

² *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004, paras. 5-8; *Nahimana et al.*, Decision on the Prosecutor's Application to Add Witness X to its List of Witnesses and for Protective Measures (TC), 14 September 2001.

³ *Bagosora et al.*, Decision on Video-Conference Testimony of Kabiligi Witnesses YUL-39 and LAX-23 and to Hear Testimony in Closed Session (TC), 19 October 2006, para. 2; *Bagosora et al.*, Decision on Video-Conference Testimony of Kabiligi Witnesses KX-38 and KVB-46 (TC), 5 October 2006, para. 3; *Bagosora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004, para. 4; *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT via Video Link (TC), 8 October 2004, para. 6.

⁴ *Bagosora et al.*, Decision on Video-Conference Testimony of Kabiligi Witnesses KX-38 and KVB-46 (TC), 5 October 2006, para. 3; *Bagosora et al.*, Decision on Testimony of Witness Amadou Deme by Video-Link (TC), 29 August 2006, para. 5; *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004, paras. 6, 13.

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genuinely fears that such a warrant has been issued, and the Defence has provided information suggesting that this belief is justified. The Chamber acknowledges that there is a basis to believe that the witness's fear of arrest while in transit to the Tribunal may be well-founded.⁵ The prospective testimony is of potential importance, concerning a ten-day period in April 1994 during which the Accused claims he was outside of Rwanda.⁶ The Defence asserts that it has only three witnesses who can confirm this alibi evidence, and that the appearance of the other two is uncertain.⁷ Under these circumstances, the Chamber considers that hearing this witness by video-conference is in the interests of justice.

4. Requests to hear the entirety of a witness's testimony in closed session are usually decided orally after the Chamber has had the opportunity to hear the witness directly.⁸ The Chamber has generally been liberal in its approach to such concerns, and has always exercised caution in protecting witnesses' identities.⁹ In accordance with this practice, the Chamber will refrain from making any order until having had the opportunity to hear from the witness himself at the beginning of his testimony.

FOR THE ABOVE REASONS, THE CHAMBER

AUTHORIZES the taking of the testimony of Witness Delta by video-conference;

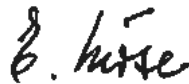
INSTRUCTS the Registry, in consultation with the parties, to make all necessary arrangements, in respect of the testimony of Witness Delta by video-conference and to videotape the testimony for possible future reference by the Chamber;

DENIES as premature, the request to hear the entire testimony in closed session.

Arusha, 1 November 2006



Erik Møse
Presiding Judge



Jai Ram Reddy
A.A. Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



⁵ See *Bagosora et al.*, Decision on Video-Conference Testimony of Kabiligi Witnesses YUL-39 and LAX-23 and to Hear Testimony in Closed Session (TC), 19 October 2006, para. 3.

⁶ Motion, para. 21.

⁷ *Id.* para. 22.

⁸ *Bagosora et al.*, Decision on Video-Conference Testimony of Kabiligi Witnesses YUL-39 and LAX-23 and to Hear Testimony in Closed Session (TC), 19 October 2006, para. 6; *Bagosora et al.*, Decision on Requests to Hear Testimony in Closed Session (TC), 18 October 2006, para. 1.

⁹ *E.g.* T. 3 October pp. 15-18 (Witness LCH-1), 46-50 (Witness LX-1).