



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T 32000
14-12-2006
(32000 - 31998)
1624

ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 14 December 2006

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No.: ICTR-98-41-T

JUDICIAL RECORDS/ARCHIVES
RECEIVED
2006 DEC 04 1 P 12:07
J. K. M. M.

DECISION ON KABILIGI MOTION FOR TESTIMONY BY VIDEO-CONFERENCE
AND MODALITIES FOR PRESENTATION OF WITNESSES

The Prosecution

Barbara Mulvancy
Drew White
Christine Graham
Rashid Rashid
Gregory Townsend

The Defence

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

6/11

32000

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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

BEING SEIZED OF the "Motion to Request the Testimony of Witnesses SX-1, VIP-1, and TT-02 to be Heard Via Video Conference", etc., filed by the Kabiligi Defence on 11 December 2006;

CONSIDERING the oral submissions of the parties on 12 December 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Kabiligi Defence requests that three of its witnesses, who are former French military officers, be permitted to testify by video-link on the basis that the French Ministry of Defence refuses to authorize their travel to Arusha because of security concerns. The French authorities have also requested that the testimony be heard according to the same special conditions as were applied to Witness DM-26, namely: (i) that the testimony be heard in closed session; (ii) non-disclosure of the witness's identity; (iii) limiting the scope of examination to matters already covered during a previous interview of the witness, and the same limitation on cross-examination; (iv) the presence of a representative of the Government of France in the proceedings who is authorized to assert a national security privilege; and (v) non-disclosure of the witness's testimony to any party to another proceeding.¹

2. The requests are opposed by the Prosecution, which asserts that it has not yet received the statements taken during formal interviews of the witnesses and that, accordingly, it is not in a position to know whether video-testimony is justified, and whether it is able to agree to the modalities proposed for the witnesses' testimony.² The Defence responds that it has not yet received the statements in question from the French judicial authorities but that, in any event, previous interviews with two of the three witnesses have already been disclosed to the Prosecution, and that the questions during the formal interviews were the same as those asked earlier.³ Further, the Defence indicates that statements from the formal interviews are expected shortly, and will be disclosed to the Prosecution immediately.

DELIBERATIONS

3. 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".⁴ Whether video-conference testimony is in the "interests of justice" under Rule 54

¹ Motion, para. 1; *Bagosora et al.*, *Modalities for Presentation of a Witness* (TC), 20 September 2006, para. 3.

² T. 12 December 2006 pp. 3-5 (draft).

³ *Id.* p. 5 (draft). The Defence does concede that no previous statement of Witness TT-02 exists.

⁴ *Bagosora et al.*, *Decision on Video-Conference Testimony of Kabiligi Witness Delta and to Hear Testimony in Closed Session* (TC), 1 November 2006, para 2; *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 Prosecution Request for Testimony of Witness BT Via Video-Link* (TC), 8

blw

31999

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.⁵ 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.⁶

4. According to the Defence, the three witnesses are unable to come to Arusha because authorization to do so has been refused by their government. The Prosecution asserts that France has an obligation to cooperate with the Tribunal and that, accordingly, the Chamber ought to inquire more closely into the security concerns and determine whether they are well-founded. The Chamber has no reason to doubt the good faith basis for the views of the Government of France, as described by the Defence in its motion. Accordingly, the witnesses have a credible basis to assert that they are unable to testify in Arusha because of the position of their government. Allowing their testimony, which appears to concern matters on which no other Defence witnesses have been called, is in the interests of justice.

5. Despite the absence of statements from the formal interviews, a sufficient basis has been established by the Defence that these three witnesses are in generally the same situation as Witness DM-26. The modalities were previously requested in order to safeguard the security of the witnesses and to facilitate non-disclosure of matters that may touch upon national security concerns. The Defence has made a sufficient showing, based on the existing statements and the role and identity of the witnesses, that the modalities requested may facilitate these objectives to the same degree as was the case for Witness DM-26. For the reasons more fully expressed in that decision, the Chamber accepts that those modalities are compatible with the Rules and the Statute.⁷ These measures must, however, be understood as justified only by the exceptional circumstance that the Government of France has invoked national security, and appears to have a credible basis for doing so. Furthermore, the final determination as to the proper scope of questioning, in accordance with the modalities prescribed by this decision, must rest with the Chamber.⁸

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

⁵ *Bagosora et al.*, Decision on Video-Conference Testimony of Kabiligi Witness Delta and to Hear Testimony in Closed Session (TC), 1 November 2006, para 2; *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.

⁶ *Bagosora et al.*, Decision on Video-Conference Testimony of Kabiligi Witness Delta and to Hear Testimony in Closed Session (TC), 1 November 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 of Witness Amadou Deme by Video-Link (TC), 29 August 2006, para. 5.

⁷ *Bagosora et al.*, Modalities for Presentation of a Witness (TC), 20 September 2006, para. 5.

⁸ *Bagosora et al.*, Modalities for Presentation of a Witness (TC), 20 September 2006, para. 5; *The Prosecutor v. Blaskic*, Decision of Trial Chamber I on Protective Measures for General Philippe Morillon, Witness of the Trial Chamber (TC), 12 May 1999.

blm

31998

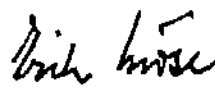
FOR THE ABOVE REASONS, THE CHAMBER

AUTHORIZES the taking of the testimony of Witnesses SX-1, VIP-1, and TT-02 by video-conference;

INSTRUSTS the Registry, in consultation with the parties, to make all necessary arrangements, in respect of the testimony of Witnesses SX-1, VIP-1, and TT-02 by video-conference and to videotape the testimony for possible future reference by the Chamber;

DECLARES that (i) the testimony be heard in closed session; (ii) the witness's identity will not be disclosed; (iii) examination and cross-examination shall be limited to matters already covered during previous interviews of the witness; (iv) a representative of the Government of France may be present during proceedings and may request that the witness be relieved from answering questions on the grounds of national security; and (v) the witness's testimony shall not be subject to disclosure to any party in another proceeding.

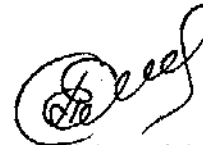
Arusha, 14 December 2006



Erik Møse
Presiding Judge



Jai Ram Reddy
PP. Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

