

ICTR-01-73-T
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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UNITED NATIONS

OR: ENG

Before: Judge Inés Mónica Weinberg de Roca, Presiding
Judge Khalida Rachid Khan
Judge Lee Gacuga Muthoga

Registrar: Adama Dieng

Date: 21 February 2007

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-T

**DECISION ON THE DEFENCE MOTIONS FOR VIDEOLINK HEARINGS OF
WITNESSES BNZI04 AND JFPR2**

Office of the Prosecutor:

Wallace Kapaya
Charity Kagwi-Ndungu
Silver Ntukamazina
Gina Butler
Iskandar Ismail
Jane Mukangira

Defence Counsel:

John Philpot
Peter Zadak

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal").

SITTING as Trial Chamber III, composed of Judges Inés Mónica Weinberg de Roca, presiding, Khalida Rachid Khan, and Lee Gacuga Muthoga ("Chamber");

BEING SEISED of the "Defence Motion for a Hearing by Video-Link for Witness Jean-Marie Vianney Ndagijimana" and the "Confidential Motion for a Hearing by Video-Link for Witness BNZ104", as filed on 24 October 2006 (the "Motions");

CONSIDERING the Prosecutor's Response to each of the abovementioned Motions, and the Defence Replies to the same, filed on 27 October 2006;¹

NOW DECIDES the Motion on the basis of the written briefs of the parties pursuant to Rule 73 (A).

Introduction

1. This Decision deals with two confidential applications by the Defence requesting the Chamber to hear the testimony of two protected witnesses by video-link. The Defence submit that both witnesses have genuine and serious security concerns in coming to testify in Arusha given their respective personal and professional situations and circumstances within the Rwandan society and context.
2. The Prosecutor opposed both Motions on grounds that the Defence's stated claims of security concerns are not well founded. The Prosecutor argues that an application for video-link may be granted where it is in the "interest of justice," and submits such a determination depends on three cumulative factors: i) the importance of the witness' testimony ii) the witness' inability or unwillingness to attend and iii) whether good reason has been adduced for this inability or unwillingness.
3. The Prosecutor contends that there is no evidence of any threat against both witnesses to justify their refusal to testify in Arusha. The Prosecutor further argues that it would have been possible for the Defence to request orders of safe passage for both of these witnesses so as to allay any security fears that they might have, nor has the Defence exhausted the possibility of a subpoena. As for the importance of the witness to the Defence case, the Prosecutor submits that the Chamber can safely proceed without the testimony of witness JFPR2 because there are other witnesses on the Defence witness list who are scheduled to testify on the same matters.
4. In reply, the Defence emphatically reiterates its position as to the importance of both these witnesses to the Defence case as well as the realities of each of their circumstances which forms the basis of their unwillingness to testify in Arusha.

¹ See "Prosecutor's Response to the Defence Motion for a Hearing by Video-Link for Witness Jean-Marie Vianney Ndagijimana"; "Reply to Prosecutor's Response to the Defence Motion for a Hearing by Video-Link for Witness Jean-Marie Vianney Ndagijimana"; "Prosecutor's Response to the Defence Confidential Motion for a Hearing by Video-Link for Witness BNZ104"; "Reply to Prosecutor's Response to Confidential Motion for a Hearing by Video-Link for Witness BNZ104", all dated 27 October 2006.

Discussion

5. The Chamber recalls that the receipt of testimony via video-link is an exception to the general principle, articulated in Rule 90 (A) of the Rules that witnesses "shall, in principle, be heard directly by the Chambers".² The Chamber may authorize testimonies by video-conference where it is in the interest of justice, based on a consideration of the importance of the testimony; the inability or unwillingness of the witness to attend; and when a good reason has been adduced for the inability or unwillingness to attend. Where the witness is unwilling to attend, his refusal must be genuine and well-founded, giving the Chamber reason to believe that the testimony would not be heard unless the video-link is authorised.³
6. Having carefully considered the submissions of the Parties, the Chamber is persuaded that there are sufficiently good security concerns facing each of these witnesses so as to make them unable and unwilling to testify at the seat of the Tribunal.
7. The Chamber is also satisfied with the Defence submission as to the putative importance of these witnesses to its case so that unless the Chamber authorises the hearing of these witnesses by video-link, the Accused would be deprived of his right to have these witnesses testify in his Defence.

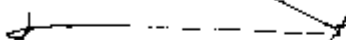
FOR THE ABOVE REASONS, THE CHAMBER

HEREBY GRANTS the Motions for video-link testimony;


REQUESTS the cooperation of the Government of the Netherlands for the appearance of Witness BNZ104 and Jean Marie Vianney Ndagijimana by video-link from the Netherlands; and

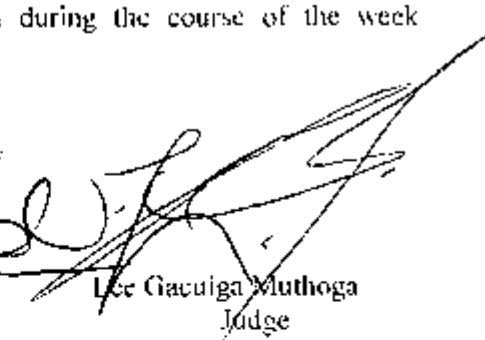
ALSO REQUESTS the Registrar (i) to serve this Decision on the Government of the Netherlands, (ii) to cooperate with the said authorities in its implementation of this Decision, taking into account the overall scheduling of the Defence case, and (iii) make the appropriate arrangements for the video-link testimony to be taken during the course of the week commencing 10 April 2007.

Arusha, 21 February 2007



Inés Mónica Weinberg de Roca
Presiding Judge


Khalida Raehid Khan
Judge


Lee Gacuga Muthoga
Judge

[Seal of the Tribunal]

² *Nahimana et al.*, Decision on the Prosecutor's Application to add Witness X to its List of Witnesses and for Protective Measures, 14 September 2001, para. 35; *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BJ Via Video-Link (TC), 8 October 2004 ("Bagosora, Decision of 8 October 2004"), para. 15; *Bagosora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004 ("Bagosora, Decision of 20 December 2004"), para. 4.

³ *Bagosora*, Decision of 8 October 2004, paras. 6-7; *Bagosora*, Decision of 20 December 2004, para. 4; *Bagosora*, Decision on Ntabakuze Motion to Allow Witness DK 52 to give Testimony by Video-Conference, 22 February 2005 (*Bagosora*, Decision of 22 February 2005"), para. 4.



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Date: 21 February 2007 Case Name / Affaire: The Prosecutor vs. Protalis ZIGIRANYIRAZO

Case No / Affaire No.: ICTR-01-73-T

To: A: TC1
Judge E. Mase, President
Judge J. R. Reddy
Judge S. A. Egorov
Judge F. Lattanzi (Mpanbara)
Judge F. R. Arrey (Karema)
SLO
C. Gosnell, Co-ordinator

TC2
Judge W. H. Sekule
Judge A. Ramarosoan
Judge K. R. Khan (Bizimungu et al)
Judge A. J. N. de Silva
Judge S. B. Bossa (Nyiramasuhuku et al)
Judge L. G. Muthoga (Bizimungu et al)
Judge F. R. Arrey (Muvunyi)
Judge E. F. Short (Bizimungu et al)
Judge T. Hikmet (Ndindiyimana et al)
Judge S. K. Park (Ndindiyimana et al)
SLO
A. Leroy, Co-ordinator
A. Marong (Ndindiyimana et al)

TC3
Judge I. M. Weinberg de Roca (Zigiranyirazo)
Judge K. R. Khan
Judge D. C. M. Byron
Judge F. Lattanzi (Bakoni & Rukundo)
Judge L. G. Muthoga (Zigiranyirazo)
Judge F. R. Arrey (Rukundo)
Judge E. F. Short (Karemira et al)
Judge K. Hökberg (Seromba & Rwamakuba)
Judge G. G. Kam (Seromba, Karemira et al)
E. O'Donnell, SLO
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H. Gogo, Co-ordinator (Seromba)
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C. Rassi
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J. Greenspoon
P. Mathiam
S. Unnikrishnan
K. Ardault
C. Duffy
N. Ferrero
M. I. Mbadanga

OTP / BUREAU DU PROCUREUR
Senior Trial Attorney in charge of case: W. Kapaya received by

DEFENSE
Accused / Accusé: P. Zigiranyirazo
Lead Counsel / Conseil Principal: J. Philpot
In / à Arusha Arusha
Co-Counsel / Conseil Adjoint: P. Zaduk
In / à Arusha Arusha
All Decisions: Appeals Chamber Unit, The Hague
All Decisions & Important Public Documents: Press & Public Affairs, Legal Library

From: De: J.-P. Fomété (Chief, CMS) N. Diallo (TC1) R. Kouambo (TC2) C. Hometowu (TC3) F. A. Talon (Appeals/Team IV)

Cc: A. Dieng A. Miller, OLA, NY D. Registrar S. Menon M. Niang S. van Driessche

Subject / Objet: Kindly find attached the following document(s) / Veuillez trouver en annexe la(s) document(s) suivant(s):