

ICTR-2001-73-T
14-3-2007
(6375 - 6373)

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**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER III

Before Judges: Inés Mónica Weinberg de Roca, Presiding
Khalida Rachid Khan
Lee Gacuiga Muthoga

Registrar: Adama Dieng

Date: 14 March 2007

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-T

**DECISION ON DEFENCE MOTION FOR A HEARING BY VIDEO-LINK FOR
WITNESS BNZ60**

Office of the Prosecutor:
Wallace Kapaya
Sylvester Ntukamazina
Iain Morley
Gina Butler
Iskandar Ismail
Jane Mukangira

Defence Counsel:
John Philpot
Peter Zaduk

INTRODUCTION

1. In its Motion, the Defence requests a video-link hearing for Witness BNZ60¹. The witness currently resides in Belgium and the Defence contends that the witness will be unable to leave the country, since her travel documents are not yet available. The Prosecution has filed a Response requesting that the Motion be dismissed.² The Defence filed a Reply reiterating its original justifications and stating that neither the Defence nor the witness can accelerate the resolution of her immigration status in Belgium.³

DELIBERATIONS

2. The receipt of testimony via video-link is an exception to the general principle, articulated in Rule 90 (A) of the Rules of Procedure and Evidence (the "Rules") that witnesses "shall, in principle, be heard directly by the Chambers".⁴ The Chamber may authorize testimony by video-link where it is in the interests of justice, based on a consideration of (i) the importance of the testimony; (ii) the inability or unwillingness of the witness to attend; and (iii) a good reason adduced for the witness' inability or unwillingness to attend the trial proceeding. Where the witness is unwilling to attend, the refusal must be genuine and well-founded, giving the Chamber reason to believe that the testimony will not be heard unless the video-link is authorised.⁵

3. In its Motion, the Defence contends that Witness BNZ60 cannot travel to Arusha since her travel documents are not currently available.⁶ The Defence submits that the Witness and Victims Support Section ("WVSS") verified the witness' situation and advised that, under the present circumstances, the witness could only testify via video-link from Belgium.

4. The Chamber finds that the Defence has not demonstrated the inability or unwillingness of the witness to attend the proceedings in person. In the current situation, without delving into consideration of the importance of the testimony, the Defence has not demonstrated that the witness' travel documents will not be available before the end of the trial, but instead claims that, for reasons not made clear to the Chamber, Witness BNZ60 does not have travel documents at this moment. The Defence has not filed any documents in support of its Motion, and the Chamber does not have any reason to believe that the witness is reluctant to testify or that traveling to Arusha to testify at the Tribunal will jeopardize her immigration status.

¹ Confidential "Defence Motion for a Hearing by Video Link for Witness BNZ60", 5 March 2007 (the "Motion").

² "Prosecutor's Confidential Response to the Defense Motion for Hearing by Video Link for Witness BNZ60", 8 March 2007 (the "Response").

³ "Reply to Prosecutor's Response to the Motion for a Hearing by Video Link for Witness BNZ60", 12 March 2007 (the "Reply").

⁴ *Prosecutor v. Nuhimana 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, para. 35; *Prosecutor v. Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness B/T Via Video-Link (TC), 8 October 2004 ("Bagosora, Decision of 8 October 2004"), para. 15; *Prosecutor v. Bagosora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004 ("Bagosora, Decision of 20 December 2004"), para. 4.

⁵ *Bagosora*, Decision of 8 October 2004, paras. 6-7; *Bagosora*, Decision of 20 December 2004, para. 4; *Prosecutor v. Bagosora*, Decision on Ntabakuze Motion to Allow Witness DK 52 to give Testimony by Video-Conference (TC), 22 February 2005 (*Bagosora*, Decision of 22 February 2005"), para. 4.

⁶ Motion, paras. 13-14.

5. Under the circumstances, the Chamber denies the Motion for Witness BNZ60 to testify by video-link from Belgium. The Chamber therefore requests the Registrar to make appropriate arrangements to bring the witness to the seat of the Tribunal in order to testify. As such, the Registrar should request the cooperation of the Belgian authorities.

FOR THE ABOVE REASONS, THE CHAMBER

I. DENIES the Motion;

II. REQUESTS the Government of Belgium, in accordance with this Decision, to cooperate with the Registrar and WYSS, and, in conjunction with the Government of the United Republic of Tanzania, the Registrar and WYSS to take the necessary measures to bring the witness to the seat of the Tribunal;

III. INSTRUCTS the Registrar to:

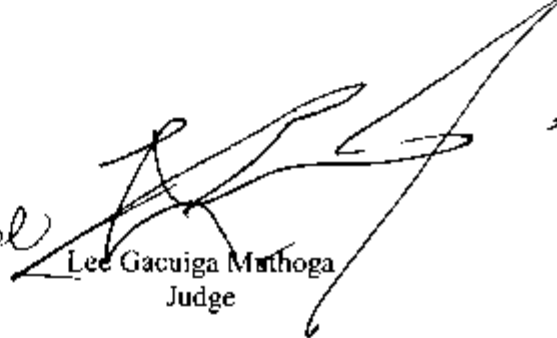
A) transmit this decision to the Government of Belgium; and

B) remain abreast of any developments which may occur and may affect the timing of Witness BNZ60's testimony in Arusha, and as soon as possible, inform the Chamber of all pertinent developments relative to this matter.

Arusha, 14 March 2007, done in English.

Inés Mónica Weinberg de Roca
Presiding Judge


Khalida Rachid Khan
Judge


Lee Gacuga Mathoga
Judge

[Seal of the Tribunal]





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From:	<input checked="" type="checkbox"/> Chamber TC3 Christopher Rassi (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Protals Zigiranyirazo			Case Number: ICTR-2001-73
Dates:	Transmitted: 14 03 2006			Document's date: 14 03 2006
No. of Pages:	3	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	DECISION ON DEFENCE MOTION FOR A HEARING BY VIDEO-LINK FOR WITNESS BN260			
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**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre
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The Prosecutor vs.

Protais ZIGIRANYIRAZO

Case No /Affaire No.

ICTR-01-73-T

To:
A:

☐ TC1
☐ Judge E. Mose, President
☐ Judge J. R. Reddy
☐ Judge S. A. Egorov
☐ Judge F. Lattanzi (Mpambara)
☐ Judge F. R. Arrey (Karera)
☐ SLO
☐ C. Gosnell, Co-ordinator

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

☒ TC3
☐ Judge I. M. Weinberg de Roca (Zigiranyirazo)
☐ Judge K. R. Khan
☐ Judge D. C. M. Byron
☐ Judge F. Lattanzi (Bakundi & Rukundo)
☐ Judge L. G. Muthoga (Zigiranyirazo)
☐ Judge F. R. Arrey (Ruhundo)
☐ Judge E. F. Short (Karera et al.)
☐ Judge K. Hökberg (Seromba & Rwamakuba)
☐ Judge G. G. Kam (Seromba Karera et al.)
☐ E. O'Donnell, SLO
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☐ H. Gogo, Co-ordinator (Seromba)

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☒ **OTP / BUREAU DU PROCUREUR**

☐ Senior Trial Attorney in charge of case: **W. Kapaya**

received by

☒ **DEFENSE**

☐ Accused / Accusé: **P. Zigiranyirazo**

complete / remplir "CMS4 FORM"

☐ Lead Counsel / Conseil Principal: **J. Philpot**

☐ In / à Arusha Arusha

(signature)

☐ by fax complete / remplir "CMS3bis FORM"

☐ Co-Counsel / Conseil Adjoint: **P. Zaduk**

☐ In / à Arusha Arusha

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☐ S. Chenault, Jurist Linguist

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☐ J.-P. Fomété (Chief, CMS) ☐ N. Diallo (TC1) ☐ R. Kouambo (TC2) ☒ C. Hometowu (TC3)

☐ F. A. Talon
(Appeals/Team IV)

To:

☐ A. Dieng ☐ A. Miller, OLA, NY

☐ D. Registrar

☐ S. Menon

☐ M. Niang

☐ S. van Driessche

Subject:
Objet:

☒ Spokesperson ☐ E. O'Donnell

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**DECISION ON DEFENCE MOTION FOR A HEARING BY VIDEO-LINK FOR
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14/03/2007

Pages

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