

ICTR-01-72-T  
5-9-2007  
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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

**Before Judges:** Inés Mónica Weinberg de Roca, Presiding  
Florence Rita Arrey  
Robert Fremr

**Registrar:** Adama Dieng

**Date:** 05 September 2007

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THE PROSECUTOR

v.

Simon BIKINDI

*Case No. ICTR-2001-72-T*

DECISION ON DEFENCE MOTION FOR TESTIMONY OF WITNESS DIH  
VIA VIDEO LINK

*Rules 54, 73, 75, 90 (A) of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

William T. Egbu  
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Veronic Wright  
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Iain Morley  
Amina Ibrahim  
Gilain Disengi Mugcyo

**Defence Counsel:**

Andreas O'Shea  
Jean de Dieu Momo

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## INTRODUCTION

1. The Defence is scheduled to commence its case on 24 September 2007.<sup>1</sup> The Defence filed a revised witness list on 13 August 2007.<sup>2</sup> On 14 August 2007, the Defence filed a motion requesting Defence Witness DIH to be heard by video-link.<sup>3</sup> The Prosecution opposes the motion.<sup>4</sup>

## DELIBERATION

2. The possibility for a witness to give 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")<sup>5</sup>, that "[w]itnesses shall, in principle, be heard directly by the Chambers".<sup>6</sup> Nevertheless, a chamber may authorize pursuant to Rule 54 of the Rules 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.<sup>7</sup>
3. In its original motion, the Defence requests that the testimony of Witness DIH be heard from the International Criminal Court seat in The Hague, Netherlands, because of the advanced age of the witness. The Defence adds that the authorization of such a video conference will not cause any prejudice to the Prosecution as the latest was granted such a video conference for one of its witnesses. The Prosecution submits that the reasons advanced by the Defence do not justify for the Chamber to grant the motion pursuant to Rules 75 and 90 (A) of the Rules of Procedure and Evidence (the "Rules"). The Defence's Reply gives more substantial elements for the Chamber to assess the issue. It also modifies the wished place for the video link to the ICTR Office in The Hague.<sup>8</sup>
4. The Defence argues that the importance of the witness lies in his ability to give a detailed insight into the songs composed by the Accused as a central point in the prosecution case is that the Accused incited to genocide through his songs.<sup>9</sup> The Defence also submits that

<sup>1</sup> Scheduling Order, 26 June 2007.

<sup>2</sup> Confidential Defence Filing of Revised List of Witnesses, filed on 13 August 2007.

<sup>3</sup> Requête aux fins d'autoriser l'organisation d'une vidéo conférence à l'effet d'entendre la déposition d'un témoin de la Défense, filed on 14 August 2007 (dated 13 August 2007); Reply to Prosecution Response to Application for Testimony via Video Link, filed on 21 August 2007 (dated 20 August 2007), (the "Reply").

<sup>4</sup> The Prosecutor's Response to Defence Request for Deposition of Defence Witness DIH by Video Link, filed on 16 August 2007.

<sup>5</sup> The possibility for a witness to testify by video link is not regulated by Rule 71 of the Rules which concerns depositions.

<sup>6</sup> *Prosecutor v. 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, para. 35; *Prosecutor v. Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT 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.

<sup>7</sup> *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, para. 4.

<sup>8</sup> Reply, para. 6.

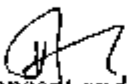
<sup>9</sup> Reply, para. 3.

the witness has expressed his willingness to testify in this case but his unwillingness to come to Arusha because of his advanced age. The Defence indicated on 27 August 2007 that Witness DIH was 78 years old and that he was suffering for diabetes and problems of joint articulation due to age.<sup>10</sup> The Defence did not file any documents in support of its motion. Consequently, the Chamber finds that the Defence did not prove the inability of the witness to come to Arusha to testify.

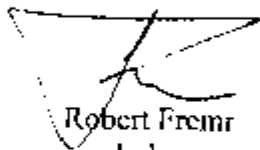
**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the Defence motion requesting Witness DIH to testify via video link.

Arusha, 05 September 2007, in English.

  
With the consent and on behalf  
of  
Inés Mónica Weinberg de Roca  
Presiding Judge  
(Absent during signature)

  
Florence Rita Arrey  
Judge

  
Robert Fremr  
Judge

[Seal of the Tribunal]



<sup>10</sup> Additional Information on Witness DIH with Reference to Application for Testimony via Video link, filed on 27 September 2007.