

ICTR-01-63-T  
S-9-2007  
(2154-2150)

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UNITED NATIONS  
STATUTE OF THE  
INTERNATIONAL  
CRIMINAL TRIBUNAL  
FOR RWANDA

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Robert Fremr

**Registrar:** Adama Dieng

**Date:** 5 September 2007

**THE PROSECUTOR**

**v.**

**SIMÉON NCHAMIHIGO**

**Case No. ICTR-2001-63-T**

2007 SEP -5 P 14:00  
Academy 05/09/07

**DECISION ON THE DEFENCE MOTION TO HEAR THE TESTIMONY OF  
WITNESS RAN BY VIDEO-LINK**

*Rules 71, 90 and 90 bis of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Alphonse Van  
Lloyd Strickland  
Madeleine Schwarz  
Adama Niane  
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**Defence Counsel for Siméon Nchamihigo**

Denis Turcotte  
Benoit Henry  
Yann Eyima Vouma

Key

### INTRODUCTION

1. The trial in this case started on 25 September 2006. The Prosecution closed its case on 29 January 2007. The second session of the Defence case commenced on 27 August 2007 during which Witness RAN is scheduled to testify.

2. On 24 August 2007, the Defence filed a motion moving the Chamber, pursuant to Rule 71 of the Rules of Procedure and Evidence ("Rules"), to allow the testimony of Defence Witness RAN via video-link.<sup>1</sup> The Prosecution opposes the Defence application.<sup>2</sup>

### DISCUSSION

3. As a preliminary matter, the Chamber notes that the Prosecution's response was filed one day after the expiration of the time-limit for such filing.<sup>3</sup> The Chamber is, however, of the view that such a delay is minor and that it is in the interests of justice to consider the Prosecution's response.

4. In its Motion, the Defence recalls that Witness RAN is a detained witness for who the Chamber issued an order for the temporary transfer to Arusha in order to allow the witness' testimony in this trial.<sup>4</sup> The Defence, however, was recently informed that the witness' presence is required in Rwanda between 27 August and 21 September 2007 as the trial of the witness will resume during that period and therefore that the witness will not be available to testify before the Tribunal during the current trial session.

5. In support of its submission, the Defence relies upon a correspondence from the Rwandan Ministry of Justice to the Tribunal's Registrar.<sup>5</sup> It also notes that in that correspondence, the Rwandan Minister of Justice proposes that the witness testifies from Kigali via video-link. The Defence therefore requests the Chamber to authorize such video-link. It further contends that in view of the particular situation of Witness RAN, it is in the interests of justice and of the rights of the accused to grant such a request. The Defence also suggests that Witness RAN testifies on the same day than Witness RLN, namely on 13 September 2007, since the later will testify via video-link.<sup>6</sup>

<sup>1</sup> Requête de la Défense aux fins d'autoriser le témoin à décharge « RAN » à déposer par voie de vidéo-conférence, filed on 24 August 2007 ("Defence Motion").

<sup>2</sup> Prosecution Response, filed on 30 August 2007.

<sup>3</sup> See Prosecution Response, para. 4; Rule 73(E) of the Rules of Procedure and Evidence.

<sup>4</sup> *Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T ("Nchamihigo"), Order for the Transfer of Defence Witness from Rwanda (TC), 8 August 2007.

<sup>5</sup> Annex to the Defence Motion.

<sup>6</sup> *Nchamihigo*, Decision on Defence Motion to Hear Witness RLN by Video Link (TC), 17 July 2007.

6. The Prosecution objects that the requirements for granting the video-link are not met in the present case.<sup>7</sup> It contends that the Defence fails to show exceptional circumstances justifying a testimony via video-link, such as a physical or medical incapacity of the witness to appear before the Chamber or other unforeseen and insurmountable circumstances. The Prosecution submits that in view of the anticipated testimony of the witness, it is necessary and in the interests of justice that the witness appears before the Tribunal. It further submits that the Defence does not specify in its Motion the exact date when the witness will appear before the Rwandan court and therefore when the witness will not be able to attend the proceedings before the Tribunal. The Prosecution contends that it is possible to order the transfer of the witness to the seat of the Tribunal since the witness is scheduled to testify at the end of the current trial session. It also recalls that the witness testified in another proceedings before the Tribunal while the witness was detained.

7. Rule 90 (A) of the Rules provides that "witnesses shall, in principle, be heard directly by the Chamber". However, testimony of a witness by video-link has been authorized in this Tribunal on several occasions. Trial Chambers have ordered under Rule 54 that testimony be heard by video-conference provided that it is in the interest of justice to act accordingly,<sup>8</sup> or in exceptional circumstances in accordance with Rule 71 of the Rules.<sup>9</sup> In evaluating such a matter, the Chamber must weigh 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.<sup>10</sup>

8. Furthermore, Rule 90 bis of the Rules provides for a Judge or a Chamber the power to order the temporary transfer of a detained witness provided that (i) the presence of the

<sup>7</sup> Prosecution's Response, paras. 5-13.

<sup>8</sup> *Bagasora et al.*, Case No. ICTR-98-41-T (*Bagasora et al.*), Decision on Prosecution Request for Testimony of Witness BT via Video-Link (TC), 8 October 2004.

<sup>9</sup> Rule 54 provides: "At the request of either party or *proprio motu*, Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial". Rule 71 reads: (A) At the request of either party, a Trial Chamber may, in exceptional circumstances and in the interests of justice, order that a deposition be taken for use at trial, and appoint, for that purpose, a Presiding Officer. [...] (D) The deposition may also be given by means of a video-conference. See for example, *Bagasora et al.*, Decision on Prosecution Request for Testimony of Witness BT via Video-Link (TC), 8 October 2004; *Prosecutor v. Édouard Kérémera, Mathieu Ndirumpane and Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Prosecutor's Motion for Special Protective Measures for Witness ADE (TC), 3 May 2006, para. 4; *Prosecutor v. Aloys Simba*, Case No. ICTR-2001-76-T (*Simba*), Decision on the Defence Request for Taking the Evidence of Witness FMP1 by Deposition (TC), 9 February 2005, para. 5.

<sup>10</sup> *Bagasora et al.*, Decision on Prosecution Request for Testimony of Witness BT via Video-Link (TC), 8 October 2004, para. 6; *Simba*, Decision Authorizing the Taking of the Evidence of Witnesses IMQ, ISG, and BJKI by Video-link (TC), 4 February 2005, para. 4; *Bagasora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004, para. 4.

detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal; and (ii) transfer of the witness does not extend the period of his detention as foreseen by the requested State.

9. In the present case, contrary to the Prosecution submissions, it is clear from the letter of the Rwandan Minister of Justice annexed to the Defence Motion that Witness RAN is required to attend court proceedings in Rwanda between 27 August and 21 September 2007 and will therefore be unable to attend the proceedings during the present trial session. The Chamber is satisfied that there are good reasons for such inability. Although the Chamber had already issued an order for the temporary transfer of the witness from Rwanda,<sup>11</sup> this Order must be reconsidered in the light of the fact newly brought to the attention of the Chamber that the witness' presence is required for a criminal proceeding in Rwanda.

10. Relying upon the Defence Pre-Trial Brief and the summary of the anticipated testimony of Witness RAN, the Chamber is also satisfied of the importance of the testimony of the witness for the case. The Chamber further notes that in its submissions, the Prosecution acknowledges that the anticipated testimony of the witness is important to the case.

11. In view of those specific circumstances, the Chamber is of the view that allowing the testimony of Witness RAN via video-link is warranted. It, however, leaves up to the Registrar to decide on the appropriateness and feasibility to hold on it on the same day as Witness RLN, as required by the Defence.

#### **FOR THOSE REASONS, THE CHAMBER**

**I. GRANTS** the Defence Motion for Witness RAN's testimony to be heard via video-link;

**II. WITHDRAWS** its prior Order for Temporary Transfer of Witness RAN;<sup>12</sup>

**III. REQUESTS** the Registrar to assist in making the necessary arrangements for Witness RAN to testify by way of secure audio-video transmission link during the next trial session starting 27 August 2007, including considering whether it should be taken on the same day as Witness RLN; and that it does so in a confidential manner;

<sup>11</sup> *Achamihigo*, Order for the Transfer of Defence Witness from Rwanda (TC), 8 August 2007.

<sup>12</sup> *Achamihigo*, Order for the Transfer of Defence Witness from Rwanda (TC), 8 August 2007.

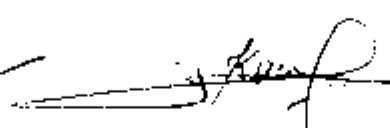
**IV. REQUESTS,** pursuant to Article 28 of the Tribunal's Statute, the assistance and cooperation of Rwanda in that order.

Arusha, 5 September 2007, done in English.



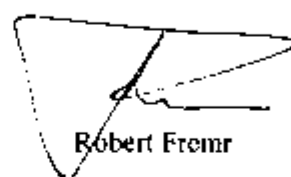
Dennis C.M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge



Robert Fromr

Judge

[Seal of the Tribunal]





# TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION  
(Art. 27 of the Directive for the Registry)

## I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input checked="" type="checkbox"/> Chamber Catherine Denis (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Siméon NCHAMIHIGO			Case Number: ICTR-2001-63
Dates:	Transmitted: 5 September 2007		Document's date: 5 September 2007	
No. of Pages:	5	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
Title of Document:	DECISION ON THE DEFENCE MOTION TO HEAR THE TESTIMONY OF WITNESS RAN BY VIDEO-LINK			
Classification Level:	TRIM Document Type: <input type="checkbox"/> Strictly Confidential / Under Seal <input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Public <input type="checkbox"/> Indictment <input checked="" type="checkbox"/> Decision <input type="checkbox"/> Disclosure <input type="checkbox"/> Judgement <input type="checkbox"/> Warrant <input type="checkbox"/> Affidavit <input type="checkbox"/> Order <input type="checkbox"/> Motion <input type="checkbox"/> Correspondence <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Appeal Book <input type="checkbox"/> Book of Authorities <input type="checkbox"/> Submission from non-parties <input type="checkbox"/> Submission from parties <input type="checkbox"/> Accused particulars			

## II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

**CMS SHALL** take necessary action regarding translation.

☒ Filing Party hereby submits only the original, and will **not** submit any translated version.

☐ Reference material is provided in annex to facilitate translation.

Target Language(s):  
☐ English ☐ French ☐ Kinyarwanda

**CMS SHALL NOT** take any action regarding translation.

☐ Filing Party hereby submits **BOTH** the original and the translated version for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

**CMS SHALL NOT** take any action regarding translation.

☐ Filing Party will be submitting the translated version(s) in due course in the following language(s):  
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## III - TRANSLATION PRIORITISATION (For Official use ONLY)

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<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input checked="" type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: