



UNITED NATIONS
NATIONS UNIES

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

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 3 October 2007

THE PROSECUTOR

v.

Emmanuel RUKUNDO

Case No. ICTR-2001-70-T

**DECISION ON DEFENCE REQUEST TO MEET
THE ACCUSED DURING HIS EXAMINATION-IN-CHIEF**

Office of the Prosecutor:

Mr William T. Egbe
Mr Sulaiman Khan
Ms Veronic Wright
Mr Patrick Gabaake
Mr Disengi Mugeyo
Ms Amina Ibrahim

Counsel for the Defence:

Ms Aïcha Condé
Ms Allison Turner

INTRODUCTION

1. The trial against Emmanuel Rukundo commenced on 15 November 2006. The Prosecution closed its case on 12 March 2007. The Defence commenced its case on 9 July 2007. The second and last session for the Defence case began on 3 September 2007, and is due to close, at the latest on 11 October 2007. The Accused Emmanuel Rukundo is scheduled to testify, starting on 4 October 2007 or the latest on 5 October 2007.

2. On 25 September 2007, the Defence filed the present motion,¹ requesting authorisation to visit the Accused during his examination-in-chief, including authorisation to visit him after business hours. The Defence submits that it will not have sufficient opportunity to meet the Accused to adequately prepare him prior to his testimony scheduled for 4 October 2007 because of other trial commitments.² The Prosecution, in its Response filed on 28 September 2007³, opposes the Defence request to meet the Accused after commencement of his testimony. The Prosecution submits that the Defence has had sufficient time in the session to meet the Accused and no exceptional circumstances exist for the authorisation of such a meeting.⁴ The Prosecution does not, however, oppose the Defence request to meet the Accused outside business hours prior to the commencement of his testimony.⁵

DELIBERATIONS

3. The Chamber recalls that as a general rule, once a witness, including an accused, has made a solemn declaration in accordance with Rule 90(B) of the Rules of Procedure and Evidence and has commenced testifying, the parties must not communicate with the witness on the content of the witness's testimony.⁶ The underlying rationale behind this practice at the Tribunals is to prevent tutoring of the witness by the Counsel. Since a witness is considered a witness of the court once he is sworn in, there must be exceptional circumstances made out to deviate from this principle. Some Trial Chambers have allowed Defence Counsel to meet the Accused during his examination-in-chief.⁷ Such authorisation is, however, an exercise of the specific Trial Chamber's discretion based on an assessment of the particular situation in the case.

4. The Chamber recalls that it has on several occasions since the first session of the Defence case reminded the Defence that it was expected to close its case by 5 October 2007.⁸ Further, the Chamber has also enquired of the Defence on several occasions when the

¹ Defence Request for Authorisation to visit the Accused during the (*sic*) his examination in chief, filed on 25 September 2007 (Defence Motion).

² Defence Motion, paras. 11-15.

³ Prosecution's Response to the Defence Request for Authorisation to visit the Accused Person during his examination in chief, filed on 28 September 2007 (Prosecution Response).

⁴ Prosecution Response, paras. 5, 10, 12, 13, 14, 15 and 16.

⁵ Prosecution Response, para. 2.

⁶ See also *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Oral Decision (TC), 2 November 2005, pp. 83-85; cf., *Prosecutor v. Kordic*, Case No. IT-95-14/2, Decision on Prosecution's Motion on Trial Procedure (TC), 19 March 1999, paras. 9-13.

⁷ *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Oral Decision (TC), T. 30 August 2005, pp. 7-14; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Oral Decision (TC), T. 2 November 2005, pp. 83-85; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Oral Decision (TC), T. 3 October 2006, pp. 75-76 (ICS); *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Oral Decision (TC), T. 6 October 2006, p. 53; *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Oral Decision (TC), T. 14 May 2007, p. 10; *Prosecutor v. Renzaho*, Case No. ICTR-97-31-T, Oral Decision (TC), T. 27 August 2007, p. 2.

⁸ See T. 24 July 2007, pp. 7-8, 12; T. 3 September 2007, p. 2; T. 5 September 2007, pp. 1-3; T. 12 September 2007, pp. 26-27; T. 21 September 2007, pp. 2, 30.

Accused would testify.⁹ In this regard, the Chamber permitted a further extension until 11 October 2007 for reasons of the Defence's lack of preparedness, on the condition that the Accused commence his testimony at the latest on 5 October 2007.¹⁰ The Chamber cannot accept the Defence submission that it has not had reasonable opportunity to prepare the Accused prior to his testimony due to other trial commitments, and recalls that there have been several occasions in this session when the Chamber was forced to adjourn early or not sit at all because of the poor organisation of the Defence in keeping witnesses ready to testify.¹¹ The Chamber has, while reminding the Defence that the Accused also needed to be accommodated as a witness in the current session,¹² suggested that such time available to the Defence away from court be used to prepare the Accused for his testimony.¹³ The Chamber also points out to the Defence that it is the usual practice at the Tribunal for the Lead Counsel and Co-Counsel to divide work between themselves in a manner which allows them to be adequately prepared with all their witnesses. Further, the Chamber notes that the Defence does not allege the existence of any other exceptional circumstances, including being surprised by any new facts, allegations or documents at this late stage of the case, to justify such a meeting. The Chamber therefore denies the Defence request to meet the Accused after the commencement of his testimony.

5. The Chamber notes that the Defence motion additionally includes a request to meet the Accused after business hours prior to the commencement of his testimony. In light of the imminent scheduled appearance of the Accused, the Chamber sees merit in the Defence request. The Chamber, however, finds that the particular administrative details of such meetings are within the purview of the Registry. The Registrar is responsible for the servicing and administration of the Tribunal under Rule 33(A) and the administration of visits of accused at the UNDF by the Defence is a matter falling squarely within the ambit of the Commanding Officer of the UNDF, as provided for under Rules 61 and 65 of the Detention Rules.¹⁴ The Chamber therefore directs the Defence to liaise with the Registry on issues relating to the administrative aspects of their request to meet the Accused prior to the commencement of his testimony.

⁹ See T. 24 July 2007, pp. 7-8; T. 5 September 2007, pp. 1-3; T. 12 September 2007, pp. 1, 26-27; T. 13 September 2007, pp. 45-52; T.17 September 2007, pp. 1-2.

¹⁰ T.13 September 2007, pp. 45-52; T. 24 September 2007, pp. 42-43.

¹¹ T. 5 September 2007, p. 37 (ICS); T.10 September 2007, pp. 71-72 (ICS); T. 21 September 2007, p. 2. *See as example*, the Chamber did not sit on the following days this session because of the unavailability of witnesses: 6 September, 7 September, 14 September and 26 September. Further, the Chamber adjourned early on the following days because of the unavailability of witnesses: 5 September, 19 September, 20 September and 25 September.

¹² T. 10 September 2007, pp. 71-72 (ICS).

¹³ T. 13 September 2007, p. 1; T. 21 September 2007, p. 31

¹⁴ *Prosecutor v. Nyiramasuhuko et al.*, Case No.ICTR-98-42-T, Decision on Arsène Shalom Ntahobali's Extremely Urgent Motion for Greater Access to the Accused at UNDF (TC), 3 March 2006, paras. 16 and 17. *See also* Rules covering the Detention of Persons awaiting Trial or Appeal before the Tribunal or otherwise detained on the authority of the Tribunal.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence request to meet the Accused during his examination-in-chief; and

INSTRUCTS the Defence to liaise with the representatives of the Registry and the UNDF on the administrative issues relating to its meeting with the Accused prior to the commencement of his testimony.

Arusha, 3 October 2007

Asoka de Silva
Presiding Judge

Taghrid Hikmet
Judge

Seon Ki Park
Judge

[Seal of the Tribunal]