

ICTR-00-56-084

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UNITED NATIONS
RWTWSS/EN/01

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: 31 October 2007

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The PROSECUTOR
v.
Augustin NDINDILIYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

DECISION ON BIZIMUNGU'S REQUEST FOR VIDEO-LINK TESTIMONIES OF WITNESSES DC2-2 AND DE8-6

Office of the Prosecutor:
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Mr Gilles St-Laurent and Mr Ronnie MacDonald for Augustin Bizimungu
Mr Christopher Black and Mr Vincent Lurquin for Augustin Ndingiliyimana
Mr Charles Taku and Ms Beth Lyons for François-Xavier Nzuwonemeye
Mr Fabien Segatwa and Mr Seydou Doumbia for Innocent Sagahutu

[Signature]

INTRODUCTION

1. This trial is now at the Defence stage. The Defence case for the Accused Bizimungu, the first in line, started on 16 April 2007.

2. On 5 October 2007, the Defence for Bizimungu ("the Defence") filed a confidential motion¹ for the video-link testimony of Witnesses DC2-2 and DE8-6. The Defence submits that the testimonies of both witnesses are important to the allegations against the Accused and provides documentation² indicating the inability or unwillingness of the witnesses to travel to Arusha to testify. The Prosecution and the Defence for the other Accused did not respond to the motion.

DELIBERATIONS

3. In principle, witnesses shall be heard directly by the Chamber.³ Nonetheless, the Chamber may instead authorize testimony by video-conference for purposes of witness protection, or where it is in the interests of justice to do so. In determining the interests of justice, the Chamber assesses: i) the importance of the testimony; ii) the inability or unwillingness of the witness to travel to Arusha; and iii) whether a good reason has been adduced for that inability and/or unwillingness. The burden of proof lies with the moving party.⁴

4. The Pre-Defence Brief indicates that Witness DC2-2 will testify on the role of soldiers of the Rwandan Army during the events of 1994. The witness will purportedly deny that soldiers were involved in acts of violence against civilians and that the document defining the enemy was distributed among the troops. The Chamber finds that this testimony of Witness DC2-2 may be relevant to the allegations against the Accused Bizimungu as Chief of Staff of the Rwandan Army in 1994, and particularly to the allegations in paragraphs 26, 30 and 31 of the Indictment.

5. Witness DC2-2 is a refugee in his present country of residence.⁵ In his signed declaration,⁶ the witness states that he is unable to travel to Arusha to testify because of the failing health of his wife. He indicates that he is the only one to take care of the needs of his wife and family. The Chamber notes that the extensive health records of the witness's spouse⁷ provided as Annexe 2, indicate that she is chronically ill and may require close attention from her husband. The Chamber is therefore satisfied of the witness's inability to travel to Arusha to testify.

¹ Requête confidentielle et en extrême urgence du Général Augustin Bizimungu afin de faire témoigner les Témoins DC2-2 et DE8-6 par voie de vidéoconférence (Articles 54 et 71 du Règlement de procédure et de preuve), filed on 5 October 2007 (Defence Motion).

² Annexes 1-4, Defence Motion.

³ Rule 90(A) of the Rules of Procedure and Evidence.

⁴ *Prosecutor v. Nindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on the Prosecution Request for Witness Roméo Dallaire to give Testimony via Video-Link (TC), 15 September 2006, para.13; *Prosecutor v. Rukundo*, Case No. ICTR-01-70-T, Decision on the Defence Motions for Additional Time to Disclose Witnesses' Identifying Information, To Vary its Witness List and for Video-Link Testimony, and on the Prosecution's Motion for Sanctions (IC), 11 September 2007, para.23; *Prosecutor v. Rukundo*, Case No. ICTR-01-70-T, Decision on the Defence's Urgent and Confidential Motion requesting authorisation for Witness SJD to testify via video-link (IC), 24 September 2007, para.3; *Prosecutor v. Rukundo*, Case No. ICTR-01-70-T, Decision on Defence Motion for Video-Link Testimony for Witness SLB (TC), 3 October 2007, para.4.

⁵ Defence Motion, para.11.

⁶ Annexe 1, Defence Motion.

⁷ Annexe 2, Defence Motion.

6. Witness DE8-6 is expected to testify on the attacks on refugees at the Ruhengeri Court of Appeal. The witness will also deny the alleged presence of Bizimungu at a meeting at the *préfecture* office to prepare for the massacres of Tutsis at the Court of Appeal.⁸ The Chamber is satisfied that this potential testimony is relevant to the allegations in paragraphs 64 - 66 of the Indictment, among others.

7. The Chamber notes that correspondences from the WVSS, provided as Annexe 3, indicate that due to the status of Witness DE8-6 as an asylum seeker in his present country of residence, he is not given the appropriate travel documentation and is not permitted to re-enter the country if he should leave it to testify before the Chamber in Arusha.⁹ These correspondences from the WVSS confirm the inability of the witness to travel to testify.

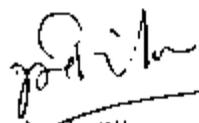
8. The Chamber finds that both witnesses are unable to travel to Arusha and appear to be able to give important testimony in respect of clearly defined issues. On this basis, the Chamber considers that it is in the interests of justice to allow these witnesses to testify via video-link from their respective locations.

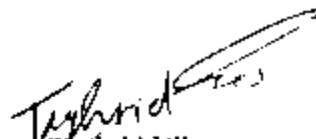
FOR THE ABOVE REASONS, THE CHAMBER

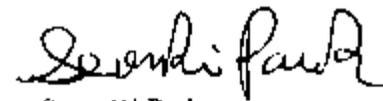
GRANTS the Defence Motion and:

DIRECTS the Registry, in consultation with the Parties, to make the necessary arrangements for Witnesses DC2-2 and DE8-6 to testify via video link from their respective locations on suitable dates.

Arusha, 31 October 2007


Asoka de Silva
Presiding Judge


Toghrid Hikmet
Judge


Seon Ki Park
Judge

[Seal of the Tribunal]

⁸ Pre-Defence Brief.

⁹ Annexe 3, Defence Motion.