



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
(03-10-2007)
64528-64526)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

64528
Amung

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 2 November 2007

JUDICIAL RECORDS ARCHIVES
2007 NOV 31 A 9:39
Asoka de Silva

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

**DECISION ON BIZIMUNGU'S REQUEST FOR WITNESS DE4-12 TO TESTIFY
VIA VIDEO-LINK**

Rules 54 and 75 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Mr Alphonse Van
Mr Moussa Sefou
Mr Segun Jegede
Mr Lloyd Strickland
Mr Abubacarr Tambadou
Ms Felistas Mushi
Ms Faria Rekkas
Ms Marlize Keefer

Counsel for the Defence:

Mr Gilles St-Laurent and Mr Ronnie MacDonald for **Augustin Bizimungu**
Mr Christopher Black and Mr Vincent Lurquin for **Augustin Ndindiliyimana**
Mr Charles Taku and Ms Beth Lyons for **François-Xavier Nzuwonemeye**
Mr Fabien Segatwa and Mr Seydou Doumbia for **Innocent Sagahutu**

INTRODUCTION

1. The Prosecution finished presenting its evidence in this case on 7 December 2006 after calling 72 witnesses. The Defence for Bizimungu ("Defence") started its case on 16 April 2007. The current trial session started on 16 October 2007. Shortly thereafter, the Defence made a request for Witness DE4-12 to testify via video-link.¹ The Prosecution and the other Defence teams did not respond to the Motion.

DELIBERATIONS

2. In principle, witnesses shall be heard directly by the Chamber.² The Chamber has discretion, however, to allow a witness' testimony via video-link for purposes of witness protection, or in the interests of justice. In determining the interests of justice, the Chamber considers 1) if the proposed witness' testimony is important, 2) the inability or unwillingness of the witness to travel to Arusha, and 3) whether a good reason has been adduced for that inability or unwillingness. It is the responsibility of the moving party to meet the burden of proof.³

3. The Defence proposes a video-link testimony on the basis of the witness' fears for his security if he travels to Arusha. The Defence admits that this witness testified several years ago in Arusha in another case before the Tribunal and in a trial within a national jurisdiction. The Defence, however, submits that since the time of the witness' prior testimony, the situation has become more dangerous for witnesses testifying before this Tribunal and the witness' advocacy work has become more public, thereby putting him at greater risk. The Defence also refers to a Trial Chamber I decision, which allowed this witness to be heard by video-link.

4. The Chamber notes that the submissions regarding Witness DE4-12's fears for his security are very general. More importantly no documentation has been provided in support of the witness' alleged security fears, particularly what has changed since he had last testified in Arusha. Finally, the Chamber notes that Trial Chamber I granted the video-link testimony of this witness in another case in the interests of justice and in light of the need to quickly complete the trial, adding however that the witness's fears might have been exaggerated.⁴ The Chamber reminds the Defence that video-link testimony is granted as an exceptional measure, based on proper documentation. The Chamber finds that the Defence has not met the burden of proof for its request.

¹ Requête confidentielle du Général Augustin Bizimungu afin de faire témoigner le témoin DE4-12 par voie de vidéoconférence, filed on 22 October 2007.

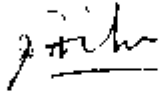
² See Rule 90(A) of the Rules of Procedure and Evidence.

³ See for example, *Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Decision on the Defence Motions for Additional Time to Disclose Witness' Identifying Information, to Vary its Witness List, and for Video-Link Testimony, and on the Prosecution's Motion for Sanctions (TC), 11 September 2007, para. 14; *Prosecutor v. Augustin Ndingiyimana et al.*, Case No. ICTR-00-56-I, Decision on the Prosecution Request for Witness Romeo Dallaire to Give Testimony by Video-Link (TC), 15 September 2006, para. 13; *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Jérôme-Clément Bicamumpaka's Motion for Video-Link Testimony For Witness I.J-1 (TC), 27 April 2007, paras. 2-5.

⁴ *Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, Decision on Defence Request for Video-Link Testimony (TC), 27 June 2007, para. 5.

**FOR THE ABOVE REASONS, THE CHAMBER HEREBY
DENIES the Defence Motion.**

Arusha, 2 November 2007, done in English



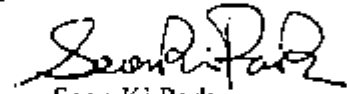
Asoka de Silva

Presiding Judge



Taghnia Hikmet

Judge



Seon Ki Park

Judge

[Seal of the Tribunal]