

ICTR-98-44-T

11-06-2008

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INTERNATIONAL  
NATIONALS

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Case No. ICTR-98-44-T

ENGLISH

Original: FRENCH

Before: Judge Dennis C. M. Byron, presiding  
Judge Gberdao Gustave Kam  
Judge Vagn Joensen

Registrar: Adama Dieng

Date: 2 April 2008

THE PROSECUTOR

v.

ÉDOUARD KAREMERA  
MATHIEU NGIRUMPATSE  
JOSEPH NZIRORERA

Handwritten signature and date: 11/06/2008

DECISION ON ÉDOUARD KAREMERA'S MOTION TO ALLOW DEFENCE  
WITNESSES TO TESTIFY VIA VIDEO-LINK

*Articles 21 and 22 of the Statute, Rules 54 and 90 of the Rules of Procedure and Evidence*

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CIH08-0056 (L)

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Translation certified by USS, ICTR

1. On 18 March 2008, Édouard Karemera filed a motion requesting the Chamber to allow four witnesses whom he intends to call to testify to do so via video-link.<sup>1</sup> The Prosecution objects to this request.<sup>2</sup>

2. Rule 90(A) of the Rules of Procedure and Evidence (the "Rules") provides that witnesses shall, in principle, be heard directly by the Chamber. Although the Rules do not expressly provide for the Chamber to hear witnesses via video-link, the Chamber may, under Rules 54 and 75 of the Rules,<sup>3</sup> authorize witnesses to testify via video-link in the interests of justice, and in the light of the following factors: the importance of the testimony, the witness's inability or unwillingness to appear before the Tribunal and whether or not valid reasons have been adduced for the witness's inability or refusal to appear. When the witness refuses to appear before the Tribunal, his refusal must be genuine and justified, thus giving the Chamber reasons to believe that he will not testify unless the Chamber allows him to do so via video-link.<sup>4</sup>

3. When the Chamber has to rule on a request for video-link testimony, it also takes into account the rights of each party, by ensuring in particular that the witness's appearance on a closed circuit video screen instead of his physical presence in the courtroom does not reduce the parties' ability to evaluate his testimony and to cross-examine him.

4. In his Motion, Édouard Karemera requests the Chamber to allow Witnesses NKM, KBL, LSP and XFP to testify via video-link.

5. The Chamber notes that Witness NKM is not on the list of the witnesses whom Édouard Karemera intends to call to testify, as presented in his Pre-Defence Brief, and that there is no identification sheet for NKM. In the light of these circumstances and in the absence of a motion by Édouard Karemera to vary his witness list, his application for video-link testimony cannot be admissible.

<sup>1</sup> *Requête d'Édouard Karemera afin d'autoriser des témoins de la Défense à déposer par vidéo*, filed confidentially on 18 March 2008.

<sup>2</sup> Prosecutor's Response to "*Requête d'Édouard Karemera afin d'autoriser des témoins de la Défense à déposer par vidéo*", filed on 20 March 2008.

<sup>3</sup> Rule 54 of the Rules reads: "At the request of either party or *proprio motu*, a 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 75(A) provides: "A Judge or a Chamber may, *proprio motu* or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Support Unit, order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused."

<sup>4</sup> See for example, *The Prosecutor v. Siméon Nchamihiga*, Case No. ICTR-2001-63-T, Decision on the Prosecution Motion to Hear the Testimony of Witness LM by Video-link. (Trial Chamber), 25 January 2007, para. 3; *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatswe, Joseph Nzirorera*, Case No. ICTR-98-44-T (*Karemera et al.*), Decision on Prosecutor's Confidential Motion for Special Protective Measures for Witness ADI (Trial Chamber), 3 May 2006, para. 4; *The Prosecutor v. Protas Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Defence Motions for Videolink Hearings of Witnesses BNZ104 and J-PR2 (TC), 21 February 2007, para. 5.

6. Regarding the importance of the testimonies of Witnesses KBL, LSP and XFP, the Prosecutor submits that the information provided by Édouard Karemera in his Motion is vague and not sufficiently precise. The Chamber notes that the Accused's Pre-Defence Brief provides information relating to the acts and facts referred to in the Indictment and on which the said witnesses will testify. Consequently, the Chamber is of the opinion that the testimonies are important enough in this case to warrant recourse to a special measure such as a video-conference.

7. As to why the said witnesses cannot or do not want to appear before the Tribunal, the Prosecutor submits that the fears expressed by Witnesses KBL, LSP and XFP as well as their statements are subjective, insufficient and/or vague. The Chamber notes that each of the said witnesses has made statements expressing, *inter alia*, their fears regarding their own safety and that of their families, and describing personal circumstances which make them particularly vulnerable should their testimonies be heard in Arusha.

8. It is the Chamber's opinion that the fears expressed by Witnesses KBL, LSP and XFP are indeed genuine, that their unwillingness to travel to Arusha is justified, and that they would ultimately refuse to testify should they not be allowed to do so via video-link. Bearing in mind that the Accused has the right to be able to call these witnesses in support of his defence, the Chamber rules that it is in the interests of justice to grant the request for testimony by video-conference.

**FOR THE ABOVE REASONS, THE CHAMBER**

- I. **GRANTS** Édouard Karemera's Motion in part;
- II. **REQUESTS** the cooperation of the authorities of The Netherlands to enable Witnesses KBL, LSP and XFP to testify via video-link from The Hague;
- III. **REQUESTS** the Registrar to transmit this Decision to the authorities of The Netherlands, to cooperate with them in the implementation of the prescribed measure in view of the next session of the trial, and to make the necessary arrangements for the video-link testimony to be taken at an appropriate time during the said trial session.

Done at Arusha on 2 April 2008.

[Signed]

Dennis C. M. Byron  
Presiding Judge

[Signed]

Dennis C. M. Byron  
for Gberdao Gustave Kam  
Judge  
(Absent during signature)

[Signed]

Vagn Joensen  
Judge

Seal of the Tribunal

