



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: 9 June 2008

The PROSECUTOR

v.

**Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU**

Case No. ICTR-00-56-T

**DECISION ON NZUWONEMEYE'S EXTREMELY URGENT AND CONFIDENTIAL
REQUEST FOR VIDEO-LINK TESTIMONY OF
WITNESSES Y1, S2, Y3, F10 AND F11**

Office of the Prosecutor:

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Counsel for the Defence:

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

INTRODUCTION

1. The trial is now at the Defence stage. The Defence for the Accused Bizimungu presented its case between 16 April 2007 and 14 December 2007. Currently, the Accused Ndindiliyimana is presenting his defence. The Accused Nzuwonemeye is scheduled to commence his case on 23 June 2008.¹

2. On 4 April 2008, the Defence for Nzuwonemeye ("the Defence") filed an urgent and confidential Motion for Witnesses Y1, S2, Y3, F10 and F11 to testify via video-link.² On the same day, the Defence filed several annexes to the Motion on a confidential and *ex parte* basis. On 8 April 2008, the Defence filed a Corrigendum to the Motion.³ 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.⁴ 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 whether it is in the interests of justice to allow a prospective witness to testify via video-link, the Chamber will take into consideration the following factors: i) the importance of the testimony; ii) the inability or unwillingness of the witness to travel to Arusha to testify; and iii) whether a good justification has been adduced for that inability and/or unwillingness. The burden of proof lies with the moving party.⁵ A video-link testimony is an exceptional measure and is granted only upon sound and legitimate justification based on proper documentation.⁶

4. Witness Y1 is expected to testify on all the charges in the Indictment against the Accused Nzuwonemeye.⁷ The Defence submits that Witness Y1 has concerns over his own safety and that of his family, based on an armed attack on his person in 2006 and threats made to his family. Consequently, Witness Y1 is unwilling to testify in Arusha. The Chamber has reviewed the annexed correspondence between Lead Counsel for Nzuwonemeye and the Registrar in January 2008 and the letter, written in August 2006 by the witness to the representative of the High Commissioner for Refugees in his current

¹ *Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Scheduling Order following the Status Conference of 5 and 6 March 2008, 7 March 2008.

² Nzuwonemeye (*sic.*) extremely urgent confidential request for the testimony of witnesses Y1, S2, Y3, F10 and F11 to be heard via video-link, pursuant to Rules 54 and 71 (Rules of Procedure and Evidence).

³ CORRIGENDUM Nzuwonemeye (*sic.*) extremely urgent confidential request for the testimony of witnesses Y1, S2, Y3, F10 and F11 to be heard via video-link, pursuant to Rules 54 and 71 (Rules of Procedure and Evidence).

⁴ Rule 90(A) of the Rules of Procedure and Evidence.

⁵ *Prosecutor v. Ndindiliyimana 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; Decision on Bizimungu's Request for Video-link Testimonies of Witnesses DC2-2 and DE8-6 (TC), 31 October 2007, para. 3; Decision on Bizimungu's Request for witness DE4-12 to testify via Video-link (TC), 2 November 2007, para. 2; Decision on Bizimungu's Request for Video-link Testimony of Witness DE11-4 (TC), 9 November 2007, para. 4; *Prosecutor v. Rukundo*, Case No. ICTR-01-70-T, Decision on the Prosecutor's Urgent Motion for Witnesses BPA, BLR and BLN to give Testimony Via Video-Link (TC), 14 February 2007; 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 (TC), 11 September 2007, para. 23; Decision on the Defence's Urgent and Confidential Motion requesting authorisation for Witness SJD to testify via video-link (TC), 24 September 2007, para. 3; Decision on Defence Motion for Video-Link Testimony for Witness SLB (TC), 3 October 2007, para. 4.

⁶ *Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Bizimungu's Request for witness DE 4-12 to testify via Video-link (TC), 2 November 2007.

⁷ Pre-Defence Brief.

country of residence, referring to the attack on Witness Y1. The Chamber is satisfied that these documents establish that the witness's unwillingness to travel to Arusha is based on genuinely-held fears. Therefore, the Chamber finds it in the interest of justice to allow Witness Y1 to testify via video link.

5. The Pre-Defence Brief indicates that Witness S2 will testify on the events at the *centre hospitalier de Kigali* (CHK) and also address the allegation of conspiracy against the Accused Nzuwonemeye.⁸ The Chamber finds that the testimony of Witness S2 may be relevant to the allegations in paragraphs 22-25, 83, 108, 110, 112, 118 and 119 of the Indictment.

6. The Chamber notes that the Medical Certificate dated 17 March 2008 annexed to the Motion indicates that Witness S2 is of advanced years and suffers from severe hypertension, which may impact on her ability to travel to Arusha. The Chamber is satisfied that Witness S2's ill health is a plausible justification for her not to travel to Arusha to testify. It is therefore in the interest of justice to allow Witness S2 to testify via video-link from her location.

7. Witness Y3 is expected to testify on the security situation prevailing at CHK from 1991 to mid-May 1994. He will testify that there were neither killings nor rapes perpetrated against girls and women at Kigali Hospital. The witness will also testify that there was no list of people drawn on the basis of ethnicity, and that the only list that was in existence was drawn up by the hospital's management for administrative purposes to record the number of hospital personnel present at the time.⁹ The Chamber finds that the testimony of Witness Y3 may be relevant to the allegations in paragraphs 83, 108, 110, 112, 118 and 119 of the Indictment.

8. The Defence submits that Witness Y3's unwillingness to testify in Arusha is based on a reasonable fear for her own safety as well as that of her relatives, who currently reside in Rwanda. The witness is also convinced that her employer would not approve of her testifying in Arusha, which may have adverse effects on her professional career. The Chamber notes that no documentation has been provided in order for it to make an informed determination of the factors making the video-link testimony necessary. The Chamber therefore finds that the Defence has not met the burden of proof for its request in respect of Witness Y3.

9. The Defence submits that Witnesses F10 and F11 are apprehensive to testify directly in Arusha, since they were victims of the conflict in Rwanda and were personally targeted by the RPF. The Chamber notes that Witnesses F10 and F11 were added to the witness list pursuant to the Chamber's Decision of 31 January 2008.¹⁰ The Chamber however notes that at no point in its request to add these witnesses did the Defence disclose to the Chamber that they would be unavailable to testify in Arusha, although that information seems to have been available to the Defence at the time it filed its request. In any event, the Chamber notes that the submissions supporting the concerns for the security of Witnesses F10 and F11 are very general and are not supported by any further documentation. Consequently, the Defence request to hear Witnesses F10 and F11 by video-link is denied.

⁸ Pre-Defence Brief.

⁹ Pre-Defence Brief.

¹⁰ Decision on Nzuwonemeye's Request to vary his Witness list, *Rule 73ter(E) of the Rules of Procedure and Evidence* (TC), 31 January 2008.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS IN PART the Defence Motion;

DIRECTS the Registry, in consultation with the Parties, to make the necessary arrangements for Witnesses Y1 and S2 to testify via video-link from their respective locations on suitable dates;

DENIES the remainder of the Motion.

Arusha, 9 June 2008

Asoka de Silva
Presiding Judge

Taghrid Hikmet
Judge

Seon Ki Park
Judge

[Seal of the Tribunal]