



ICTR-01-69-T  
10-06-2008  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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(2954 - 2951)

ORIGINAL: ENGLISH

TRIAL CHAMBER I

**Before:** Judge Erik Mose, presiding  
Judge Sergei Alekseevich Egorov  
Judge Florence Rita Arrey

**Registrar:** Adama Dieng

**Date:** 10 June 2008

THE PROSECUTOR

v.

Hormisdas NSENGIMANA

*Case No. ICTR-2001-69-1*

Handwritten signature and date: 10 JUN 2008 P. 2/2

DECISION ON DEFENCE REQUEST FOR VIDEO-LINK TESTIMONY

**The Prosecution**  
Wallace Kapaya  
Sylvester Ntukamazina  
Charity Kagwi-Ndungu  
Brian Wallace  
Iskandar Ismail  
Jane Mukangira

**The Defence**  
Emmanuel Altit  
David Hooper

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

**SITTING** as Trial Chamber I, composed of Judge Erik Mose, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

**BEING SEIZED OF** the Defence Motion, filed on 22 May 2008;

**CONSIDERING** the Prosecution Response, filed on 27 May 2008;

**HEREBY DECIDES** the Motion.

**INTRODUCTION**

1. The Defence requests that the testimony of Witnesses VMB17, FMCD5, IMR5 and RFCD6 be heard by video-conference from The Hague, invoking health considerations as well as professional and parental responsibilities. The Prosecution submits that the reasons are insufficient to allow for video-link transmission instead of appearance in Arusha.<sup>1</sup>

**DELIBERATIONS**

2. Testimony may be heard by video-link pursuant to Rule 54 and 71 (D) of the Rules of Procedure and Evidence when it is in the interests of justice. This depends on an assessment of the importance of the testimony; the inability or unwillingness of the witness to attend; and whether good reason has been provided for that inability or unwillingness. Inability to attend, for example because of reasons of ill-health, is not a prerequisite for granting a request for video-link testimony. But the witness must refuse to testify on the basis of genuinely-held and well-founded reasons which give the Chamber reason to believe that the testimony would not otherwise be heard.<sup>2</sup>

3. Turning to the individual circumstances of the four witnesses, the Chamber notes that Witness VMB17 is expected to testify about the relationship between Father Nsengimana and Father Furaha, the latter's transfer to Save Parish in 1993, the confidence the bishop had in Nsengimana, and the limited room of a manoeuvre of a school director during the genocide. The Chamber considers this evidence to be relevant and important. The witness cites professional responsibilities and health concerns as reasons for not testifying in Arusha.

4. Witness VMB17 refers to professional responsibilities as one of the reasons for not being able to testify in Arusha. The Chamber recalls that according to case law, mere practical inconvenience is not a well-founded reason for not giving evidence at the seat of the

<sup>1</sup> Defence Motion, paras. 6-14; Prosecution Response, paras. 9-12.

<sup>2</sup> *Bagosora et al.*, Decision on Kabiligi Motion for Testimony by Video-Conference and Modalities for Presentation of Witnesses (TC), 14 December 2006; Decision on Video-Conference Testimony of Kabiligi Witness Delta and to Hear Testimony in Closed Session (TC), 1 November 2006; Decision on Video-Conference Testimony of Kabiligi Witnesses KX-38 and KVB-46 (TC), 5 October 2006; Decision on Bagosora Motion for Witness Z-06 to Give Testimony by Video-Link (TC), 20 June 2006; Decision on Ntabakuze Motion to Allow Witness DK 52 to Give Testimony by Video-Conference (TC), 22 February 2005; Decision on Prosecution Motion for Testimony of Witness BI via Video-Link (TC), 8 October 2004; *Vuhimana et al.*, Decision on the Prosecutor's Application to Add Witness X to Its List of Witnesses and for Protective Measures, 14 September 2001.

Tribunal.<sup>3</sup> The witness is a Catholic priest in several parishes and exercises senior religious functions in an entire sector in the city where he resides. As part of his pastoral duties, he performs sacraments, including baptisms and first communions. His workload is particularly heavy at the end of the school year, which coincides with numerous meetings in the parish and the planning of the next school year before the vacation. The Chamber finds that this constitutes good cause for testifying by video-link, taking into account not only his individual workload but also the effect his absence could have on the religious community. Under these circumstances, there is no need to assess his health reasons.<sup>4</sup>

5. Witness FMCD5 has known Nsengimana since childhood and will testify about his personality, development, and his attitude towards the Tutsis, including the bishop. The Chamber accepts that this testimony is significant. The witness is a Catholic priest. He has explained that his workload is particularly heavy during this season and has given further information to support this. His employer will only allow him to be absent for a very short period. The Chamber accepts these explanations for similar reasons as described above in relation to Witness VMB17. It does not find it necessary to consider the submissions relating to his health.<sup>5</sup>

6. Witness IMR5 worked in Nyanza Parish and comes from the same parish as some of the priests whose assassinations are mentioned in the Indictment. His testimony will cover the relationship between Nsengimana and Father Furaha as well as the situation of the parish priests. This evidence is important. At present, he work as a priest includes eight parishes, and this workload makes it difficult for him to travel to Arusha. Although his explanations are brief, the Chamber accepts to hear him by video-link for similar reasons as explained above.

7. Witness RFCD6 was in Nyanza Parish in 1994. The Motion is brief in explaining the significance of her testimony. Further details follow from the Pre-Defence brief.<sup>6</sup> The witness is the daughter of a professor at *Christ-Roi* College and will testify about Nsengimana's religious services, that he was not an extremist and did not discriminate between Hutus and Tutsis, as well as his relationship with Father Mathieu, who was killed in 1994. Her evidence is significant. The witness has recently obtained a new job and risks losing it if she has to be absent. It would have been preferable if the Defence had provided more information, but it will certainly be more than a mere practical inconvenience (above, para. 4) if she were to lose her job as a result of testifying in Arusha.<sup>7</sup> In view of the fact that her potential testimony covers several important areas, the Chamber finds that it is in the interest of justice to hear this witness by video-link from The Hague, together with the other three witnesses.<sup>8</sup>

<sup>3</sup> *Karera*, Decision on Testimony by Video-link (TC), 29 June 2006, para. 6; *Bagosora et al.*, Decision on Ntabakuze Motion to Allow Witness DK 52 to Give Testimony by Video-Conference (TC), 22 February 2005, para. 4. See also *Casimir Bizimungu et al.*, Decision on Casimir Bizimungu's Extremely Urgent Motion to Have Witness WDK Testify Via Video-link (TYC), 7 December 2006, para. 7.

<sup>4</sup> The Defence argues that because of his state of health, the witness will be extremely tired if he has to travel to Arusha, and that this will affect the quality of his testimony (Motion para. 6). It has neither produced a medical attestation nor provided further details.

<sup>5</sup> According to Witness FMCD5, he suffers from diabetes and will be very tired if he has to travel to the seat of the Tribunal (Motion, para. 8 and Annex I).

<sup>6</sup> Defence Motion, para. 13, Pre-Defence Brief, pp. 42 (Annex II, Summary of testimonies) and 90 (statement given to the Defence team).

<sup>7</sup> See e.g. *Karera*, Decision on Testimony by Video-link (TC), 29 June 2006, para. 6 (loss of the source of income of a refugee who supports a family is more than a "practical inconvenience").

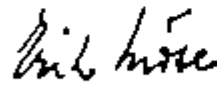
<sup>8</sup> According to the Motion, para. 12, she has a little child, and a long journey would make it difficult to look after it. No further details have been provided, and the Chamber does not find this persuasive.

**FOR THE ABOVE REASONS, THE CHAMBER**

**AUTHORIZES** the taking of the testimony of Witnesses VMB17, FMCD5, IMR5 and RFCD6 by video-link;

**INSTRUCTS** the Registry, in consultation with the parties, to make all necessary arrangements in respect of the testimony of Witnesses VMB17, FMCD5, IMR5 and RFCD6 to be transmitted by video-link, and to videotape the testimony for possible future reference by the Chamber.

Arusha, 10 June 2008



Erik Mose  
Presiding Judge



Sergei Alekseevich Egorov  
Judge



Florence Rita Arrey  
Judge

[Seal of the Tribunal]