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HAM

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Case No: ICTR-98-44-T

ENGLISH

Original: FRENCH

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

Registrar: Adama Dieng

Date: 5 January 2011

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THE PROSECUTOR

v.

ÉDOUARD KAREMERA and
MATTHIEU NGIRUMPATSE

DECISION ON MATTHIEU NGIRUMPATSE'S MOTION
CONCERNING REA AND BU

Article 28 of the Statute of the Tribunal, Rule 54 of the Rules of Procedure and Evidence

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CIII11-0001 (E)

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INTRODUCTION

1. On 13 December 2010, Matthieu Ngirumpatse filed a motion requesting the Chamber to reconsider its decision not to allow REA to testify by means of a video-conference. Matthieu Ngirumpatse also requested a change in the conditions of BU's testimony by video-conference.¹ The Prosecutor objects to the request concerning REA and leaves the issue of BU to the discretion of the Chamber.²

DELIBERATIONS

Reconsideration of the decision concerning REA

2. The Chamber recalls that on 29 October 2010, it rejected Matthieu Ngirumpatse's request for REA to testify by means of a video-conference.³ In the instant motion, Matthieu Ngirumpatse is requesting a reconsideration of that decision. The Chamber notes, however, that Matthieu Ngirumpatse has filed the instant motion whereas another motion filed on 1 December 2010 requesting the same measures is still pending.⁴ The Chamber has now ruled on that request for reconsideration,⁵ and finds that the present motion impinges on judicial economy. The Chamber advises Matthieu Ngirumpatse to desist from this approach and rejects the repeated request for reconsideration.

Testimony of BU by video-conference

3. The Chamber notes as a preliminary observation that BU does not enjoy any protective measures. However, in view of the affidavit from BU⁶ and the Chamber's order of 11 November 2009⁷ concerning Matthieu Ngirumpatse's witnesses, the Chamber has decided to extend its witness protection order of 11 November 2009 to include BU.

4. The Chamber recalls that on 27 October 2010, it ordered BU to testify by video-conference.⁸ Nonetheless, it emerges from the correspondence between the State in which the witness resides and the Tribunal Registry that the State is reluctant to assist the Tribunal in

¹ *Requête de M. Ngirumpatse concernant l'audition des témoins BU et REA et annexe confidentielle*, filed on 13 December 2010 (the "Motion").

² Prosecutor's Response to "*Requête de M. Ngirumpatse concernant l'audition des témoins BU et REA*," filed on 14 December 2010.

³ *The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T ("*Karemera et al.*"), "Decision on Matthieu Ngirumpatse's Urgent Motion to Hear Witnesses", 29 October 2010.

⁴ See *Requête de M. Ngirumpatse en modification de sa liste de témoins et récapitulatif des témoins restant à auditionner et Annexes confidentielles*, filed on 1 December 2010.

⁵ *Karemera et al., Décision relative à la requête de Matthieu Ngirumpatse aux fins de modification de sa liste de témoins et en reconsidération*, 28 December 2010.

⁶ *Annexes confidentielles à la Requête de M. Ngirumpatse en modification de sa liste de témoins et récapitulatif des témoins restant à auditionner*, filed on 1 December 2010.

⁷ *Karemera et al., Décision sur la Requête de Matthieu Ngirumpatse visant à l'admission de déclarations sur le fondement de l'article 92 bis du Règlement et à la protection de témoins*, 11 November 2009.

⁸ *Karemera et al., "Decision on Matthieu Ngirumpatse's Motion Relating to his Witnesses and the Admission of Written Statements"*, 27 October 2010.

organizing the video-conference, and has instead advised that the video-conference be conducted from an identified neighbouring State (the “neighbouring State.”)

5. As a result of his personal situation, BU is unable to travel to Arusha because he runs the risk of being apprehended during his trip. The State in which BU resides has suggested that the video-conference be organized from the neighbouring State where he would not be arrested. On the strength of this assertion, Matthieu Ngirumpatse now requests that the testimony by video-conference be conducted from the neighbouring State.⁹

6. The Chamber recalls that Article 28 of the Statute obliges States to cooperate “with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.” Article 28 (2) (b) of the Statute provides that States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber concerning the taking of testimonies. Rule 54 of the Rules of Procedure and Evidence specifies that “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.” On that basis, the Chamber may issue an order to a State requesting its cooperation to facilitate the organization of testimony by video-conference.

7. The Chamber notes that neither the country in which BU resides nor Matthieu Ngirumpatse has provided any legal basis for asserting that the witness would not be apprehended if he travelled to the neighbouring State. The Chamber notes that only Article XVIII of the Agreement between the United Nations and the United Republic of Tanzania concerning the Headquarters of the International Tribunal for Rwanda guarantees temporary immunity to persons who come to testify before the Tribunal.¹⁰ Such an agreement does not exist between the Tribunal and the neighbouring State. The Chamber believes that travel by a witness from one country to another to testify before the Tribunal should not prejudice the witness. Consequently, the Chamber reiterates that BU should testify by video-conference and believes that he shall do so on 17 January 2011 from the country in which he resides.

For these reasons, the Chamber:

- I. Rejects** Matthieu Ngirumpatse's motion in respect of REA.
- II. Orders** that the protective measures ordered on 11 November 2009 in respect of Matthieu Ngirumpatse's witnesses shall apply to BU.
- III. Reiterates** that BU's testimony shall be heard by video-conference.

⁹ Motion, para. 15.

¹⁰ Agreement between the United Nations and the United Republic of Tanzania concerning the Headquarters of the International Tribunal for Rwanda, 24 September 1996.

- IV. **Orders** that the said video-conference shall be conducted from the State in which BU resides; the name of the said State is indicated in a confidential annex to this decision.
- V. **Requests**, by virtue of Article 28 of the Statute of the Tribunal, the cooperation of the State in which BU resides in assisting the Tribunal to organize the video-conference scheduled for 17 January 2011.
- VI. **Requests** the Registrar to notify the Government of the State in which BU resides of this request for cooperation. And,
- VII. **Requests** the Registrar to make all the necessary arrangements to facilitate the organization of the hearing of BU's testimony by video-conference.

Arusha, 5 January 2011

[Signed]
Dennis C. M. Byron
Presiding Judge

[Signed]
Judge Gberdao Gustave Kam

[Signed]
Judge Vagn Joensen

[Seal of the Tribunal]

