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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Inés Mónica Weinberg de Roca, Presiding  
Khalida Rachid Khan  
Lee Gacuiga Muthoga

**Registrar:** Adama Dieng

**Date:** 31 January 2006

**THE PROSECUTOR**

v.

**Protais ZIGIRANYIRAZO**

*Case No. ICTR-2001-73-T*

*[Handwritten signature]*  
09/01/06

**DECISION ON PROSECUTOR'S MOTION FOR RECONSIDERATION OF  
THE ORAL DECISION EXCLUDING EVIDENCE ON THE MEETING OF  
22 NOVEMBER 1992, OR FOR CERTIFICATION TO APPEAL THE SAME**

*Rules 73(A) and (B) of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Wallace Kapaya  
Gina Butler  
Iskandar Ismail  
Jane Mukangira

**Defence Counsel:**

John Philpot  
Peter Zaduk

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** ("Tribunal"),

**SITTING** as Trial Chamber III, composed of Judges Inés Mónica Weinberg de Roca, Presiding, Khalida Rachid Khan, and Lee Gacuiga Muthoga ("Chamber");

**BEING SEIZED** of the "Prosecutor's Motion for Reconsideration of a Decision, or for Certification of Appeal, in the Alternative" filed on 25 October 2005 ("Motion");

**CONSIDERING** the Defence "Reply to Prosecutor's Motion for Reconsideration of a Decision, or for Certification of Appeal, in the Alternative"; filed on 31 October 2005; and the Prosecutor's Rejoinder filed on 31 October 2005;

**RECALLING** the Oral Decisions made by the Chamber during the hearings on 5 and 18 October 2005;<sup>1</sup>

**NOW DECIDES** the matters solely based on the written briefs of the Parties pursuant to Rule 73(A) of the Rules of Procedure and Evidence ("Rules").

### INTRODUCTION AND PARTIES' ARGUMENTS

1. On 5 October 2005, Witness APJ testified about two meetings which took place in Giciye in 1992. The Accused was allegedly invited to the first one and took the floor to say that the population had to fight the enemy ("First Meeting"). The second meeting was between the bourgmestre and the *conseillers* as a follow-up to the First Meeting ("Second Meeting"). The Defence objected to the meetings being admitted into evidence. In the Oral Decision of 5 October 2005, the Chamber allowed evidence only on the First Meeting, where the Accused is alleged to have made a speech, because there is a general allegation in the Amended Indictment, the pre-trial brief, and the witness statement, of meetings that took place in 1994.<sup>2</sup> The Chamber chose to allow evidence from the First Meeting as it is alleged that the Accused was present.

2. On 18 October 2005, Witness SGP testified about a well-known meeting convened by Léon Mugesera which took place on 22 November 1992. The Defence raised an objection which was granted ("Oral Decision of 18 October 2005") ("Impugned Decision") because this meeting was well-known and material to the case and should have been pleaded in the Indictment which the Prosecutor had adequate opportunity to amend at different occasions. The Chamber agreed with the Defence, as the Prosecutor was aware of the existence of this meeting since at least 2001.<sup>3</sup>

3. ~~The Prosecutor now seeks reconsideration of the Chamber's Oral Decision of 18 October 2005 on the ground that this later decision is not consistent with the one of 5 October 2005 and with the jurisprudence of the Tribunal, based on Rule 89(C) of the Rules. In the alternative, the Prosecutor seeks certification to appeal the Oral Decision of 18 October 2005.~~

4. The Defence objects to the Motion in its two alternatives.

<sup>1</sup> T. 5 October 2005, pp. 42-58. T. 18 October 2005, p. 40.

<sup>2</sup> T. 5 October 2005, pp. 42-58.

<sup>3</sup> T. 18 October 2005, p. 40.

### DELIBERATIONS

5. According to the jurisprudence of the Tribunal, a Chamber can reconsider its own Decision (i) when a new fact has been discovered that was not previously known to the Chamber;<sup>4</sup> (ii) where new circumstances have arisen since the filing of the impugned decision that affect the premise of the impugned decision;<sup>5</sup> or (iii) where a party has successfully shown an error of law or that the Chamber has abused its discretion,<sup>6</sup> and an injustice has been occasioned.<sup>7</sup> In the present case, none of those requirements have been met by the Prosecutor in his arguments. As such, the Chamber will not reconsider the Oral Decision of 18 October 2005.

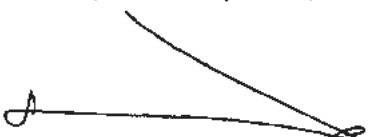
6. Rule 73(B) of the Rules provides for certification to appeal when (i) the impugned decision involves an issue that would significantly affect (a) the fair and expeditious conduct of the proceedings or (b) the outcome of the trial and (ii) for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

7. The Chamber, having considered the arguments of the Prosecutor, found that none of those requirements in Rule 73(B) have been met, and consequently the Motion shall be dismissed.


### FOR THE ABOVE REASONS, THE CHAMBER

**DENIES** the Prosecutor's Motion in all respects.

Arusha, 31 January 2006, done in English.

  
Inés Mónica Weinberg de Roca  
Presiding Judge

  
Khalida Rachid Khan  
Judge

  
Lec Gacuga Muthoga  
Judge

[Seal of the Tribunal]

<sup>4</sup> *Nyiramasuhuko*, Decision on Nyiramasuhuko's Motion for reconsideration of the "Decision on Defence Motion for Certificate to Appeal the 'Decision on Defence Motion for a Stay of Proceedings and Abuse of Process'" (TC), 20 May 2004.

<sup>5</sup> *Bagosora et al.*, Decision on Defence Motion for Reconsideration of the Trial Chamber's Decision and Scheduling Order of 5 December 2001 (TC), 18 July 2003; *Ferdinand Nahimana Jean-Bosco Barayagwiza, Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Ngeze's Motion for reconsideration of the Decision Denying an Extension of Page Limits His Appellant Brief (AC), 11 March 2004, p. 2.

<sup>6</sup> *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Decision on Defence Extremely Urgent Motion for Reconsideration of Decision dated 16 December 2003 (AC), 19 December 2003; *Niyitegeka*, Decision on Eliézer Niyitegeka's Urgent Motion for Reconsideration of Appeals Chamber Decision dated 3 December 2003 (AC), 4 February 2004; *Bagosora et al.*, Decision on Reconsideration of Order to Reduce Witness List and on Motion for Contempt for Violation of that order (TC), 1 March 2004, para. 11.

<sup>7</sup> *Mucic et al.*, Judgment on Sentence Appeal (AC), 8 April 2003, para. 49; *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision on Application for Reconsideration of Amicus Curiae Application of Paul Bisengimana (AC), 19 May 2004; *Bagosora et al.*, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecutor's Motion for Leave to vary the Witness List Pursuant to Rule 73Bis (E)" (TC), 15 June 2004, para. 15.