



UNITED NATIONS  
NATIONS UNIES

ICTR-00-56-T  
15-09-2006  
(22851 - 22848)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

22851  
Pm

OR: ENG

**TRIAL CHAMBER II**

**Before:** Judge Asoka de Silva, Presiding  
Judge Taghrid Hikmet  
Judge Seon Ki Park

**Registrar:** Mr Adama Dieng

**Date:** 15 September 2006

**The PROSECUTOR**  
v.  
**Augustin BIZIMUNGU**  
**Augustin NDINDILYIMANA**  
**François-Xavier NZUWONEMEYE**  
**Innocent SAGAHUTU**  
*Case No. ICTR-00-56-T*

JUDICIAL RECORDS ARCHIVES  
2006 SEP 15 P 12 28

**DECISION ON THE PROSECUTION REQUEST FOR WITNESS ROMEO  
DALLAIRE TO GIVE TESTIMONY BY VIDEO-LINK**

**Office of the Prosecutor:**

Mr Ciré Aly Bâ  
Mr Moussa Sefon  
Mr Segun Jegede  
Mr. Lloyd Strickland  
Mr Abubacarr Tambadou  
Ms Felistas Mushi  
Ms Faria Rekkas  
Ms Anne Pauline Bodiey

**Counsel for the Defence:**

Mr Gilles St-Laurent and Mr Ronnie MacDonald for **Augustin Bizimungu**  
Mr Christopher Black and Mr Patrick De Wolf for **Augustin Ndindiliyimana**  
Mr Charles Taku and Mr Hamuli Rety for **François-Xavier Nzuwonemeye**  
Mr Fabien Segatwa and Mr Seydou Doumbia for **Innocent Sagahutu**

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the “Tribunal”),

**SITTING** as Trial Chamber II, composed of Judge Asoka de Silva, Presiding, Judge Taghrid Hikmet and Judge Seon Ki Park (the “Chamber”);

**BEING SEISED OF** the “*Requête du Procureur dans l’intérêt de la justice et sur le fondement des articles 71 et 90 du Règlement de procédure et de preuve en vue d’autoriser le témoin de l’accusation Roméo Dallaire à déposer par voie de vidéoconférence*”<sup>1</sup>, filed on 23 August 2006 (the “Motion”);

**HAVING RECEIVED AND CONSIDERED** the

- (i) “*Réponse de la Défense d’Augustin Bizimungu à la Requête du Procureur intitulée « Requête dans l’intérêt de la justice et sur le fondement des articles 71 et 90 du Règlement de procédure et de preuve en vue d’autoriser le témoin de l’accusation Roméo Dallaire à déposer par voie de vidéoconférence »*”<sup>2</sup>, filed on 29 August 2006;
- (ii) “*Réponse à la « Requête du Procureur dans l’intérêt de la justice et sur le fondement des articles 71 et 90 du Règlement de procédure et de preuve en vue d’autoriser le témoin de l’accusation Roméo Dallaire à déposer par voie de vidéoconférence »*”<sup>3</sup>, filed by the Defence for Augustin Ndindiliyimana on 29 August 2006;

**NOTING** that the Responses by the Defence for Sagahutu and the Defence for Nzuwonemeye were filed out of time without any explanation for the delay;

**CONSIDERING** the Statute of the Tribunal (the “Statute”), and the Rules of Procedure and Evidence (the “Rules”);

**HEREBY DECIDES** the Motion on the basis of the written submissions filed by the Parties pursuant to Rule 73(A) of the Rules.

#### **SUBMISSIONS BY THE PARTIES**

##### ***The Prosecution***

1. The Prosecution requests the Chamber to allow Witness Roméo Dallaire to testify by video-conference.
2. The Prosecution submits that General Dallaire’s activities as a member of the Canadian Senate and his participation in the UN Secretary General’s Advisory Committee on the Prevention of Genocide now make it impossible for him to be absent from Canada for the period during which he would be required to testify in Arusha. However, the Prosecution submits that Roméo Dallaire could be available to testify at any hour of the day or night on

<sup>1</sup> “Prosecution Request, in the Interests of Justice and Pursuant to Rules 71 and 98 of the Rules and Procedure, to allow Prosecution Witness Roméo Dallaire to testify by video-link” (Unofficial Translation).

<sup>2</sup> Response by the Defence for Augustin Bizimungu to the “Prosecution Request, in the Interests of Justice and Pursuant to Rules 71 and 98 of the Rules and Procedure, to allow Prosecution Witness Roméo Dallaire to testify by video-link” (Unofficial Translation).

<sup>3</sup> Response [by the Defence for Augustin Ndindiliyimana] to the “Prosecution Request, in the Interests of Justice and Pursuant to Rules 71 and 98 of the Rules and Procedure, to allow Prosecution Witness Roméo Dallaire to testify by video-link” (Unofficial Translation).

the following dates: 23, 24, 25, 26, 30 and 31 October 2006, as well as 1, 2, 3, 6, 7 and 8 November 2006. The Prosecution further submits that the Canadian Department of National Defence is willing to do whatever may be necessary to facilitate General Dallaire's testimony by video-conference.

3. The Prosecution refers to Rule 71(D) which allows for a witness to be heard by video-link and submits that this procedure would not affect the Chamber's ability to control the proceedings.

4. The Prosecution contends that General Dallaire's testimony is indispensable for the manifestation of the truth.

5. Finally, the Prosecution submits that General Dallaire could be both a Prosecution and a Defence Witness.

#### ***Bizimungu's Response***

6. The Defence for Bizimungu opposes the Motion and contends that the reasons advanced by General Dallaire are not sufficient to allow him to be heard by video-link.

7. The Defence submits that General Dallaire is able to travel to Arusha since he is willing to testify day or night during the dates mentioned in the Motion. The Defence for Bizimungu further submits that the letter by Mr. Yaroski on behalf of General Dallaire, which is the only material in support of the Motion, has no probative or legal value since it is not dated nor does it indicate whether Mr. Yaroski has a mandate to represent General Dallaire. Furthermore, the Defence submits that there is no direct or indirect proof of General Dallaire's inability to travel other than the explanations in the said letter.

8. The Defence refers to Article 20(4)(d) and (e) of the Statute and contends that an Accused has a fundamental right to personally confront his principal accusers.

9. Finally, the Defence submits that the Accused should not suffer prejudice as a result of the Prosecution's strategic decision to call General Dallaire at this stage of the proceedings given that the Motion does not indicate whether any efforts have been made to call the witness at an earlier date.

#### ***Ndindiliyimana's Response***

10. The Defence for Ndindiliyimana prays the Chamber to dismiss the Motion.

11. In addition to the submissions made by the Defence for Bizimungu concerning General Dallaire's inability to travel to Arusha, the Defence for Ndindiliyimana contends that as a practical matter, testimony by video-link would make it impossible for the Defence to confront the witness with any of the numerous United Nations or Rwandan government documents in its possession, which would be chosen depending on the content of General Dallaire's testimony.

12. The Defence further submits that since there is no witness statement, it is not in a position to know the areas that the testimony of General Dallaire will cover and therefore to select any document in advance.

#### **DELIBERATIONS**

13. The Chamber recalls the general principle articulated in Rule 90(A), that "witnesses shall [...] be heard directly by the Chamber." Nonetheless, the Chamber has the discretion to grant the hearing of testimony by video-conference in lieu of physical appearance for purposes of witness protection under Rule 75, or where it is in the interests of justice. In



determining the interests of justice, the Chamber has to assess: i) the importance of the testimony; ii) the inability or unwillingness of the witness to travel to Arusha; and iii) whether a good reason has been adduced for that inability and unwillingness.<sup>4</sup> The burden of proof lies with the Party making the request.<sup>5</sup>

14. With respect to the first criterion, the Chamber is satisfied that General Dallaire's testimony as former UNAMIR Commander, who was based in Kigali between September 1993 and July 1994, might be important to the present case.

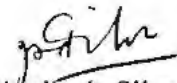
15. With respect to the second and third criteria, the Chamber notes the letter sent by General Dallaire's legal representative stating the reasons for Dallaire's inability to travel to Arusha to testify in person. The Chamber notes that the letter contains no further explanations as to why General Dallaire's activities as a member of the Canadian Senate and his participation in the UN Secretary General's Advisory Committee on the Prevention of Genocide would prevent him from travelling to Arusha in the next few months, and why he is not in a position to travel during the dates suggested for the video-link. The Chamber therefore considers that no good reason has been adduced in support of the inability of the Witness to testify in person. Accordingly, the Chamber finds that the exceptional circumstances required to authorise a testimony by video-link have not been established.

16. Finally, the Chamber notes that it has not been served with the waiver of immunity from the UN-Headquarters in respect of General Dallaire's testimony requested by the Prosecutor on 26 July 2006.

**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the Motion.

Arusha, 15 September 2006

  
Asoka de Silva  
Presiding Judge

  
Taghrid Hikmet  
Judge

  
Seon Ki Park  
Judge

[Seal of the Tribunal]

<sup>4</sup> *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Nsengiyumva Motion for Witness Higaniro to Testify by Video-Conference, 29 August 2006, Para. 3; Decision on prosecution Request for testimony of Witness BT via Video-Link, 8 October 2004, para.6; *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Sylvain Nsabimana's extremely urgent – strictly confidential – under seal-Motion to have Witness AGWA testify via video-link, 17 August 2006, para. 8; Decision on Arsène Shalom Ntahobali's Extremely Urgent Motion for Video Link Testimony of Defence Witness WDUSA in Accordance With Rule 71 (A) and (D) of the Rules of Procedure and Evidence, 15 February 2006, para. 8; *Prosecutor v. Aloys Simba*, Decision Authorizing the Taking of the Evidence of Witnesses IMG, ISG, and BJK1 by Video-Link, Case No. ICTR-01-76-T, 4 February 2005, para. 4.

<sup>5</sup> *Ibid.*