



UNITED NATIONS  
NATIONS UNIES

ICTR-00-56-T  
(20-10-2006)  
(23279-23276)

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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:** 20 October 2006

**The PROSECUTOR**

v.

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

*Case No. ICTR-00-56-T*

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**DECISION ON THE PROSECUTION REQUEST FOR RECONSIDERATION OF  
THE CHAMBER'S DECISION OF 15 SEPTEMBER 2006 CONCERNING THE  
TESTIMONY OF WITNESS ROMÉO DALLAIRE BY VIDEO-LINK**

**Office of the Prosecutor:**

Mr Ciré Aly Bâ  
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Mr Abubacarr Tambadou  
Ms Felistas Mushi  
Ms Faria Rekkas  
Ms Anne Pauline Bodley

**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

*[Signature]*

**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 "Prosecutor's Urgent Motion for Reconsideration of the Trial Chamber's Decision on Prosecutor's Request for Witness Roméo Dallaire to give Testimony via Video-Link", filed on 5 October 2006 (the "Motion");

**HAVING RECEIVED AND CONSIDERED** the

- (i) "Reply to the Prosecutor's Urgent Motion for Reconsideration of the Trial Chamber's Decision on Prosecutor's Request for Witness Roméo Dallaire to Give Testimony by Video-Link", filed by the Defence for Nzuwonemeye on 9 October 2006;
- (ii) "Reply to Prosecutor's Urgent Motion for Reconsideration Re Decision Re Video-Link Testimony of Roméo Dallaire and Motion for Cross-Examination of Roméo Dallaire", filed by the Defence for Ndingiyimana on 9 October 2006;
- (iii) "*Réponse de la Défense d'Augustin Bizimungu à la Requête du Procureur intitulée «Prosecutor's Urgent Motion for Reconsideration of the Trial Chamber's Decision on Prosecutor's Request for Witness Roméo Dallaire to give Testimony via Video-Link»*", filed on 10 October 2006;
- (iv) "Prosecutor's Reply to Nzuwonemeye's Response to Prosecutor's Urgent Motion for Reconsideration of the Trial Chamber's Decision on the Prosecutor's Motion for Witness Roméo Dallaire to Testify via Video-Link", filed on 10 October 2006;
- (v) "*Réponse à la Requête du Procureur aux fins de Révision de la Décision de la Chambre de première instance relative à la Requête du Procureur tendant à obtenir la déposition du témoin Roméo Dallaire par voie de vidéoconférence*", filed by the Defence for Sagahutu on 13 October 2006 ;

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

**INTRODUCTION**

1. On 15 September 2006, the Chamber rendered a decision denying the Prosecution request for Witness Roméo Dallaire to give testimony by video-link. The Chamber held that the reasons brought forward by the Prosecution for General Dallaire's inability to travel to Arusha did not meet the criteria established by the jurisprudence of the Tribunal to grant a request for a video-link. On 5 October 2006 the Prosecution filed the present Motion praying the Chamber to reconsider its previous decision and to allow Witness Roméo Dallaire to testify by video-link, or, in the alternative, to order *proprio motu* and in the interest of justice his testimony by the same means.

2. The Prosecution essentially submits that the overriding factor in General Dallaire's inability to travel to Arusha is related to his present health condition. Referring to a letter by General Dallaire's counsel and a medical certificate prepared by General Dallaire's personal physician, the Prosecution contends that living again the horrible events of 1994, both in the process involved in preparing his testimony, and in actually testifying, would be most stressful and would take a serious toll on General Dallaire's health. The Prosecution concedes that this situation would be the same even if the testimony were taken by video-link. However, adds the Prosecutor, if allowed to testify by video-link from Canada, General



Dallaire would have available to him professional support and resources that could not be available in Arusha.

3. Finally, the Prosecution submits that the Trial Chamber may reconsider its Decision of 15 September 2006 in the exercise of its discretion and urges the Chamber to grant the Motion in the interests of justice and pursuant to Article 21 of the Statute and Rules 71, 75 and 90 of the Rules.

4. All four Defence teams oppose the Motion and submit that the criteria for reconsideration, as established by the jurisprudence the Tribunal, have not been met by the Prosecution. The Defence argues in particular that General Dallaire's health situation does not constitute a new fact since it was known well before the Prosecution filed its initial Motion on 23 August 2006.

5. The Defence teams submit further that the medical certificate provided by Roméo Dallaire's physician is contradictory to the General's various activities as Canadian Senator and his engagements in the campaigns to eradicate child soldiers in Africa and to have the International Community intervene effectively in Darfur.

6. The Defence for Ndindiliyimana and the Defence for Bizimungu additionally request to be permitted to cross-examine General Dallaire, *inter alia*, on his health condition and pray the Chamber to differ any decision on the Prosecution Motion until the conclusion of such a cross-examination and until the Chamber has the benefit of all facts.

**DELIBERATIONS**

7. The reconsideration of a previous decision is warranted if the moving party demonstrates the discovery of a new fact, which, if known by the Chamber before making its decision, would have led to a different outcome; or if there has been a material change in circumstances; or finally, when the previous decision was erroneous and therefore prejudicial to either party.<sup>1</sup>

8. The Chamber notes the medical certificate annexed to the Motion which explains that since May 1999, General Dallaire has been under treatment for a health condition arising from his experience in Rwanda in 1994. The Chamber further notes that according to the treating physician, testimony by video-link from Canada, although inadvisable, would be preferable to testimony in Arusha.

9. The Chamber agrees with the Defence submission that the health situation of General Dallaire is not a new fact or circumstance that would warrant reconsideration of the Chamber's prior Decision. As conceded by the Prosecution, this information is publicly known, and the Prosecution could therefore have included it in the earlier motion had it exercised due diligence. Nonetheless, it is the Chamber's considered view that the Defence request to cross-examine General Dallaire on his health situation prior to the commencement of his testimony, is neither necessary nor practical; such cross-examination would require that the witness be made available to testify which is the very issue to the Chamber has to determine.

10. The Chamber, however, notes the opinion of General Dallaire's physician that during his testimony, the General may require specialist professional care and resources which

<sup>1</sup> *The Prosecutor v. Augustin Ndindiliyimana, Augustin Bizimungu, Francois-Xavier Nzuwonemeye and Innocent Sagahutu*, ICTR-00-56-T, Decision on Nzuwonemeye's Motion for Reconsideration of the Chamber's Oral Decision of 14 September 2005 on Admissibility of Witness XXO's Testimony in the Military I Case in Evidence, 10 October 2005, para. 11; Decision on Bizimungu's Motion for Reconsideration of the Chamber's 19 March 2004 Decision on Disclosure of Prosecution Materials, 3 November 2004, para. 21.

would not be readily available in Arusha. Taking this fact into account, the Chamber hereby reconsiders its Decision of 15 September 2006 and allows General Dallaire to testify by video-link.

11. Finally, the Chamber notes that it has now been served with the waiver of immunity from the UN-Headquarters in respect of General Dallaire's testimony.

**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the Motion;

**ORDERS** that the testimony of General Dallaire be taken by video-link from Canada;

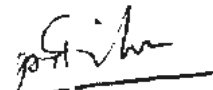
**ORDERS** the Registrar, in consultation with the Prosecution, to organize a video-link conference for the testimony of Roméo Dallaire to be heard from 15 November 2006 to 8 December 2006;

**ORDERS** that all examinations of the witness shall be conducted from the courtroom in Arusha;

**ORDERS** the Parties to make available to the Registry not less than seven days prior to the commencement of General Dallaire's testimony, all documents they intend to tender as exhibits during their respective examinations of the witness;

**DIRECTS** that the Prosecution shall send one representative, and the Defence teams shall jointly nominate one representative to attend to their interests during General Dallaire's testimony. The Defence teams are hereby instructed to consult with each other and designate one representative for this purpose and provide his/her name to the Registry.

Arusha, 20 October 2006

  
Asoka de Silva  
Presiding Judge



[Seal of the Tribunal]

  
Seon Ki Park  
Judge