



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER II

Before Judges: Asoka de Silva Presiding
Taghrid Hikmet
Seon Ki Park

Registrar: Adama Dieng

Date: 3 November 2006

THE PROSECUTOR

v.

AUGUSTIN NDINDILYIMANA

AUGUSTIN BIZIMUNGU

FRANÇOIS-XAVIER NZUWONOMEYE

INNOCENT SAGAHUTU

CASE NO. ICTR-2000-56-T

**DECISION ON PROSECUTOR'S EXTREMELY URGENT MOTION FOR A
RESCHEDULING ORDER**

Office of the Prosecutor:

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Gilles St. Laurent & Ronnie Macdonald

Defence Counsel for François-Xavier

Nzuwonemeye

Charles Taku & Hamuli Rety

Defence Counsel for Innocent Sagahutu

Fabien Segatwa & Seydou Doumbia

INTRODUCTION

1. On 15 September 2006, the Chamber issued a Decision denying the Prosecution Motion for General Roméo Dallaire's evidence to be heard by video-link from Canada. On the basis of a Prosecution Motion for reconsideration, the Chamber issued another Decision on 20 October 2006, in which it reconsidered its prior Decision on the ground that General Dallaire's health situation would require that he receives specialist professional care and resources in the course of his testimony, and that unlike Canada, such resources are not available in Arusha. The Chamber granted the Motion for reconsideration and ordered that General Dallaire's testimony will be heard by video-link from Canada, from 15 November to 8 December 2006.
2. On 25 October, the Prosecution filed the current Motion seeking a variation of the dates upon which General Dallaire would testify.¹ Based on correspondence from General Dallaire's lawyer, the Prosecution submits that it is impossible for the General to free himself from certain prior commitments, and that he would therefore be unavailable for testimony from 15 to 19 November, and from 27 November to 4 December inclusive. In the circumstances, the Prosecution requests that General Dallaire's testimony be heard from 20 to 24 November, and from 5 to 8 or 15 December 2006, if necessary. The Defence for Ndindiliyimana, Bizimungu and Nzuwonomeye each filed a Response in which they opposed the Motion; the Prosecutor filed a Reply.²

DELIBERATIONS

3. The only issue raised by the Motion is whether the dates of General Dallaire's testimony by video-link should be varied from those indicated in the Decision of 20 October 2006. The Chamber notes that the newly proposed dates imply that General Dallaire's evidence must be heard within 9 or 13 half-day sessions, rather than 18 half-day sessions as stated in the 20 October Decision. The Chamber notes the submission of the Defence teams that if General Dallaire is allowed to testify on the proposed new dates, they may not have enough

¹ "Prosecutor's Extremely Urgent Motion for a Rescheduling Order", filed on 25 October, 2006.

² "Reponse D'Augustin Ndindiliyimana au 'Prosecutor's Extremely Urgent Motion for a Rescheduling Order'", filed on 26 October 2006; "Reponse D'Augustin Bizimungu à la Requête intitulée – Prosecutor's Extremely Urgent Motion for a Rescheduling Order", filed on 30 October 2006; "Nzuwonomeye's Response to Prosecutor's Extremely Urgent Motion for a Rescheduling Order and Motion to Hold Roméo Dallaire in Contempt of Court", filed on 30 October 2006; *Réplique du Procureur aux réponses introduites par Maitres Christopher Black, Gilles St-Laurent et Charles Taku relativement à la requête en 'Rescheduling Order' du 25 October 2006*, filed on 30 October 2006.

time to adequately cross-examine him, and that the right of the Accused to a full and complete defence would be violated.

4. The Chamber notes that whilst the 20 October Decision indicated that General Dallaire's evidence would be heard from 15 November to 8 December, there is nothing in that Decision to suggest that the entirety of that period would be required for the General's testimony. The period of 18 half-day sessions indicated an upper limit, the maximum time that, in the Chamber's view, would be required for all Parties to conduct their respective examinations of General Dallaire. The Chamber notes that the 9 to 13 days proposed in the Motion, fall squarely within the period envisaged in the Decision of 20 October.
5. The Chamber recognizes the right of the Accused to adequate time and facilities for the preparation of their Defence, including the right to cross-examine all witnesses called to testify for the Prosecution as enshrined in Article 20(4) of the Statute. The Chamber notes, however, that these rights must be exercised in the context of the Chamber's duty to control the proceedings, including the manner of cross-examining witnesses, so as to ascertain the truth and avoid needless consumption of time.³
6. The Chamber reminds all Parties that it must operate within the limits of the temporal and material resources available to it. The Prosecution has indicated that it would not require more than eight or nine hours (or two half-day sessions), to conduct the examination-in-chief of General Dallaire. This will leave a minimum of seven half-days for the Defence to conduct cross-examination. The Defence must properly organize itself to cross-examine the witness during the said period. The Chamber recognizes that it is sometimes hard to accurately predict the course of examination-in-chief or cross-examination, but urges all Parties to sufficiently organize their respective examinations so as to ensure the most efficient utilization of the available time.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Prosecution Motion and

HEREBY REVISES the Order contained in its Decision of 20 October 2006 to the effect that General Dallaire's evidence will now be heard from 20 to 24 November, and from 5 to 8 December 2006;

³ *Prosecutor v. Prlić et al.*, "Decision on Joint Defence Interlocutory Appeal Against the Trial Chamber's Oral Decision of 8 May 2006 Relating to Cross-Examination by Defence and o Association of Defence Counsel's Request for Leave to File an *Amicus Curiae* Brief", 4 July 2006, A.C.

ORDERS that the Prosecution shall have a maximum of two half-days within which to conduct the examination-in-chief of General Dallaire; each of the Defence teams shall have 2 half-days within which to cross-examine General Dallaire.

The Chamber will, in its discretion, determine whether or not any of the Parties would require additional time for cross-examination or re-examination;

The Chamber will, at a later date, issue a Scheduling Order indicating the exact times at which General Dallaire's evidence will be heard.

Arusha, 3 November 2006, done in English.

Asoka de Silva

Taghrid Hikmet

Seon Ki Park

Presiding Judge

Judge

Judge

[Seal of the Tribunal]