



UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

2334P  
PM

OR: ENG

TRIAL CHAMBER II

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

**Registrar:** Mr Adama Dieng

**Date:** 7 November 2006

ICTR-00-56-T  
07-11-2006  
(23348-23346)

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

DECISION ON THE DEFENCE REQUESTS FOR CERTIFICATION TO APPEAL  
THE CHAMBER'S DECISION OF 20 OCTOBER 2006

**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 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

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## 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.<sup>1</sup> On 20 October 2006, the Chamber granted a Prosecution request to reconsider its Decision of 15 September 2006. The Chamber took particular note of the opinion of General Dallaire's physician that the General may require specialist professional care and resources during his testimony which would not be readily available in Arusha and, on that basis, allowed Witness Roméo Dallaire to give his testimony by video-link.<sup>2</sup> On 26 and 27 October 2006 the Defence for Augustin Ndindiliyimana and the Defence for Augustin Bizimungu respectively filed the present Motions<sup>3</sup> asking the Chamber to grant certification of Appeal from its Decision of 20 October 2006 (the "Impugned Decision").

2. The Defence teams submit that the Chamber, after having found in the Impugned Decision that General Dallaire's health condition does not amount to a new fact, contradicts itself by granting the motion for reconsideration on the basis that during his testimony, the General may require specialist care and resources which would not be readily available in Arusha. The Defence teams argue that since Dallaire's health situation was already known, the incidental fact that he may need professional care was also known and could therefore not be a basis for reconsideration.

3. The Defence teams further submit that there is no evidence that such specialist care is not available in Arusha and therefore there is no basis for denying the applicants' right to cross-examine the witness in person.

4. Referring to Dallaire's testimony in the Military I case, the Defence for Ndindiliyimana brings to the Chamber's attention that the General appeared neither distressed nor actually in need of specialist care, despite a lengthy and intense cross-examination, and he was not accompanied by a medical specialist on that occasion.

5. Finally, the Defence for Ndindiliyimana submits that it is in the interests of a more efficient, effective and speedy trial for General Dallaire to testify in person, since it would avoid all the problems associated with testimony by video-link and prays the Chamber to restore "in the interests of justice" its Decision of 15 September 2006.

## DELIBERATIONS

6. The Chamber recalls Rule 73(B) which reads as follows:

Decisions rendered on such motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

<sup>1</sup> "Decision on the Prosecution Request for Witness Roméo Dallaire to give Testimony by Video-Link", para. 15.

<sup>2</sup> "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", Para. 10.

<sup>3</sup> "Application for Certification of Interlocutory Appeal Re Trial Chamber's Decision of October 20 Granting Video link Testimony of Roméo Dallaire"; "*Demande de Certification d'Appel de la Décision rendue par cette Chambre le 20 Octobre 2006 autorisant que la Déposition du Témoin Roméo Dallaire soit recueillie par Vidéo Conférence.*"

7. The Chamber has on several occasions discussed the criteria for certification under Rule 73(B).<sup>4</sup> In particular, the Chamber stresses the principle that decisions under Rule 73 are “without interlocutory appeal” and that certification to appeal is an exception that the Chamber may grant, if the two criteria under Rule 73(B) are satisfied.

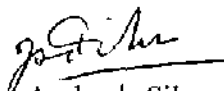
8. Having reviewed the submissions of the applicants, the Chamber notes that the Defence teams essentially reargue the Impugned Decision and reiterate some of the arguments brought forward prior to the rendering of the said Decision rather than demonstrating that the conditions required for certification under Rule 73(B) are met. In fact, the Defence for Ndindiliyimana explicitly prays the Chamber to restore “in the interests of justice” its Decision of 15 September 2006 and, as such, requests the Chamber to reconsider its Decision a second time. This is not the purpose of Rule 73(B).

9. The Motions therefore fail.

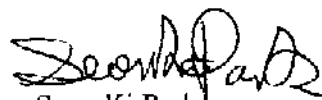
**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the Defence Motions.

Arusha, 7 November 2006

  
Asoka de Silva  
Presiding Judge

  
  
Taghrid Hikmet  
Judge

  
Seon Ki Park  
Judge

[Seal of the Tribunal]

<sup>4</sup> *The Prosecutor v. Augustin Bizimungu, Augustin Ndindiliyimana, François-Xavier Nzuwonemeye, Innocent Sagahutu*, ICTR-00-56-T, “Decision on Sagahutu’s Request for Certification to Appeal”, 9 June 2005, para. 16; “Decision on Bizimungu’s Request for Certification to Appeal the Oral Decision Dated 8 June 2005”, 30 June 2005, para. 17; “Decision on Ndindiliyimana’s Request for Certification to Appeal the Chamber’s Decision Dated 21 September 2005”, 26 October 2005, para. 7; “Decision on Bizimungu’s Motion for Certification to Appeal the Chamber’s Oral Decision of 2 February 2006 Admitting Part of Witness GFA’s Confessional Statement into Evidence”, 27 February 2006, para. 11; “Decision on Ndindiliyimana’s Motion for Certification to Appeal the Chamber’s Decision Dated 15 June 2006”, 14 July 2006, para. 7.