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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

UNITED NATIONS  
NATIONS UNIES

OR: ENG

TRIAL CHAMBER II

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

**Registrar:** Mr Adama Dieng

**Date:** 17 November 2006

ICTR-00-56-T  
17-11-06  
(63560-63557)

**The PROSECUTOR**

v.

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

**DECISION ON DEFENCE REQUESTS FOR CERTIFICATION AND  
RECONSIDERATION OF THE CHAMBER'S RESCHEDULING ORDER OF  
3 NOVEMBER 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 Ndingiliyimana**  
Mr Charles Taku and Mr Hamuli Rety for **François-Xavier Nzuwonemeye**  
Mr Fabien Segatwa and Mr Seydou Doumbia for **Innocent Sagahutu**

JUDICIAL RECORDS ARCHIVES  
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## INTRODUCTION

1. On 15 September 2006, the Chamber denied the Prosecution request for Witness Roméo Dallaire to give testimony by video-link. On 20 October 2006, the Chamber reconsidered its earlier Decision and ordered that Witness Roméo Dallaire's testimony would be taken by video-link from Canada between 15 November and 8 December 2006.<sup>1</sup> On 3 November 2006 and upon a request by the Prosecution, the Chamber varied the dates of General Dallaire's testimony and ordered that his testimony be taken from 20 to 24 November and from 5 to 8 December 2006.<sup>2</sup> The Chamber also ordered that the Prosecution should have a maximum of two half-days within which to conduct the examination-in-chief of General Dallaire and that each of the Defence teams should have two half-days within which to cross-examine the witness. The Chamber further held that it would, at a later stage, decide whether additional time would be required for further cross-examination or re-examination.

2. On 8 November 2006, the Defence for Augustin Ndindiliyimana filed a Motion<sup>3</sup> asking the Chamber to grant certification of Appeal from its Decision of 3 November 2006 (the "Impugned Decision"). On 9 and 13 November 2006 the Defence for Innocent Sagahutu and the Defence for Augustin Bizimungu respectively filed Motions<sup>4</sup> requesting the Chamber to reconsider its Decision of 3 November 2006. The Prosecution did not respond to any of the Motions.

## SUBMISSIONS

3. The Defence for Ndindiliyimana submits that the artificial time limitation imposed on the Defence by the Impugned Decision goes to the heart of the rights of the Accused to have a fair trial, to cross-examine witnesses and to ascertain the truth as set out in the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules"). The Defence argues that the Impugned Decision has the effect of denying the Applicant's right to make full answer and defence to the charges against him and therefore goes to the very outcome of the trial.

4. The Defence further submits that an immediate resolution of this issue by the Appeals Chamber would materially advance the proceedings since a favourable decision would make it easier to authenticate the many UN documents that have been filed as identification [ID] documents in the course of the proceedings. The Defence contends that without enough time for cross-examination, it would be necessary to call several other UN military officers and administrative personnel and other witnesses to speak to matters and issues which could be better dealt with more expeditiously and efficiently by General Dallaire.

5. Both the Defence for Sagahutu and for Bizimungu question also the sufficiency, thus the fairness of the time allocated for cross-examination. They pray the Chamber to revisit the issue and allocate more time to enable a full defence.

<sup>1</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>2</sup> "Decision on Prosecutor's Extremely Urgent Motion for a Rescheduling Order."

<sup>3</sup> "Application for Certification of Interlocutory Appeal Re Trial Chamber's Decision of 3 November on Prosecutor's Extremely Urgent Motion for a Rescheduling Order."

<sup>4</sup> "Requête en Reconsidération de la 'Decision on Prosecutor's Extremely Urgent Motion for a Rescheduling Order'." "Requête de la défense d'Augustin Bizimungu en reconsidération de la 'Decision on Prosecutor's Extremely Urgent Motion for a Rescheduling Order' datée du 3 novembre 2006."

## DELIBERATIONS

6. Since all three Motions relate to the Scheduling Order of 3 November 2006, judicial economy requires that they be dealt with in one single Decision.

### *i) Request for Certification*

7. The Chamber has on several occasions discussed the criteria for certification under Rule 73(B).<sup>5</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. The Chamber agrees with the Ndingiyimana Defence that the right to cross-examine witnesses is a cornerstone of the Accused’s right to a fair trial. The Chamber recalls however the Decision of the ICTY Appeals Chamber in the *Prlic* case, in which the Appeals Chamber found that the Trial Chamber’s allocation to each of the six Defence Counsel of one sixth of the time allocated to the Prosecution, with sufficient flexibility to adjust the timeframes, complies with the right to cross-examine witnesses as stipulated under Article 2[0](4) of the Statute.<sup>6</sup> In reaching that Decision, the Appeals Chamber considered in particular that “time and resource constraints exist in all judicial institutions and that a legitimate concern ... is to ensure that the proceedings do not suffer undue delays and that the trial is completed within a reasonable time, which is recognized as a fundamental right of due process under international human rights law.”<sup>7</sup>

9. In light of the Chamber’s directive to the effect that each Defence team shall have, for cross-examination, the same amount of time as allocated to the Prosecution and its indication that it may, where appropriate, consider granting additional time, the Chamber does not see how deferring the defence grievances to the Appeal Chambers would advance any further the proceedings in the instant case.

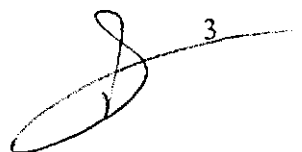
### *ii) Requests for Reconsideration*

10. The Chamber is of the opinion that there is no basis to reconsider its Decision in the present case. No new material fact has been brought to the attention of the Chamber and the decision rendered on 3 November 2006 was neither erroneous nor prejudicial to the Defence, since it complied with the relevant guidelines set forth by the Appeals Chamber in *Prlic*. Furthermore, the Chamber considers that the Defence requests to allocate additional time for cross-examination are moot since the Chamber has already indicated its disposition to consider such an extension under appropriate circumstances.

<sup>5</sup> *The Prosecutor v. Augustin Bizimungu, Augustin Ndingiyimana, 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 Ndingiyimana’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 Ndingiyimana’s Motion for Certification to Appeal the Chamber’s Decision Dated 15 June 2006”, 14 July 2006, para. 7; Decision on the Defence Requests for Certification to Appeal the Chamber’s Decision of 20 October 2006, 7 November 2006, para. 7.

<sup>6</sup> *The Prosecutor v. Jadranko Prlic, Bruno Stojic, Slobodan Praljak, Milivoj Petkovic, Valentin Coric, Berislav Pusic*, Case No. IT-04-74-AR73.2, Decision on Joint Defence Interlocutory Appeal against the Trial Chamber’s oral Decision of 8 May 2006 relating to Cross-examination by Defence and on Association of Defence Counsel’s Request for Leave to File an *Amicus Curiae* Brief, 4 July 2006, p. 4.

<sup>7</sup> *Ibid.*, pp. 4-5.

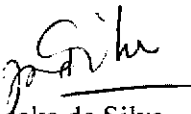
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**FOR THE ABOVE REASONS, THE CHAMBER**


**DENIES** Ndindiliyimana's request for certification;

**DENIES** the requests for reconsideration filed by the Defence for Sagahutu and Bizimungu.

Arusha, 17 November 2006

  
Asoka de Silva  
Presiding Judge

  
  
Taghrid Hikmet  
Judge

  
Seon Ki Park  
Judge

[Seal of the Tribunal]