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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-50-T
29-05-2007
(24136-24126)

OR: ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Emile Francis Short

Registrar: Mr. Adama Dieng

Date: 29 May 2007

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THE PROSECUTOR
v.
CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JÉRÔME-CLÉMENT BICAMUMPAKA
PROSPER MUGIRANEZA

Case No. ICTR-99-50-T

DECISION ON PROSPER MUGIRANEZA'S SECOND MOTION TO DISMISS FOR DEPRIVATION OF HIS RIGHT TO TRIAL WITHOUT UNDUE DELAY

Articles 19 and 20(4)(c) of the Statute of the Tribunal

Office of the Prosecutor:
Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. George William Mugwanya
Mr. Shyamlal Rajapaksa

Counsel for the Defence:
Ms. Michelyne C. St. Laurent and Ms. Alexandra Marcil for **Casimir Bizimungu**
Mr. Ben Gumpert and Mr. Jonathan Kirk for **Justin Mugenzi**
Mr. Pierre Gaudreau and Mr. Michel Croteau for **Jérôme-Clément Bicamumpaka**
Mr. Tom Moran and Ms. Marie-Pierre Poulain for **Prosper Mugiraneza**

24135

INTRODUCTION

1. By Motion dated 11 December 2006,[1] the Defence for Prosper Mugiraneza moves the Chamber to order a permanent stay of proceedings – to dismiss the Indictment in this case with prejudice – as a remedy to the alleged violation of his right to be tried without undue delay, recognised as a minimum guarantee by Article 20(4)(c) of the Statute of the Tribunal. The Defence complains of pre-trial and intra-trial delay, as well as the expected time for any appeal from final judgement.

2. This is the second motion of such nature to be filed by Prosper Mugiraneza during his case,[2] the primary substantive difference being that his First Motion complained solely of a violation of the Accused's right to a trial without undue delay on the basis of pre-trial delay. The Trial Chamber denied Prosper Mugiraneza's First Motion, finding that there had been no violation of the Accused's right guaranteed by Article 20(4)(c) of the Statute.[3]

3. The Prosecution opposes the Defence Motion in light of the previous litigation on this issue in Prosper Mugiraneza's case. The Prosecution submits that the issues raised in the Defence Motion are barred from re-litigation by virtue of the doctrine of *res judicata*. Further, it submits, the Defence's submissions are speculative and an abuse of court process.[4]

DELIBERATIONS

I. Preliminary matter – *res judicata*

4. The Prosecution opposes the Defence Motion on the ground of *res judicata* – that since this issue has already been litigated before the Trial Chamber, it is barred from re-litigation by virtue of the doctrine of *res judicata*. Further, the Prosecution submits, the arguments raised by the Defence in support of its application are identical to those which were raised – and rejected by the Chamber – in its First Motion. The Chamber must therefore determine, as a preliminary matter, whether the issue before it is procedurally barred from

[1] *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, "Prosper Mugiraneza's Second Motion to Dismiss for Deprivation of his Right to Trial Without Undue Delay" ("Defence Motion" or "Second Motion"), dated 11 December 2006, filed on 12 December 2006.

[2] See *Prosecutor v. Prosper Mugiraneza et al.*, Case No. ICTR-99-50-T, "Prosper Mugiraneza's Motion to Dismiss the Indictment for Violation of Article 20(4)(C) of the Statute, Demand for Speedy Trial and for Appropriate Relief" ("First Motion"), filed on 17 July 2003.

[3] See *Prosecutor v. Prosper Mugiraneza et al.*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Application for a Hearing or other Relief on his Motion for Dismissal for Violation of his Right to Trial without Undue Delay (TC), 3 November 2004, generally, and particularly the findings at para. 34. See also *Prosecutor v. Prosper Mugiraneza et al.*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion to Dismiss the Indictment for Violation of Article 20(4)(C) of the Statute, Demand for Speedy Trial and for Appropriate Relief (TC), 2 October 2003. Note that certification to appeal the Trial Chamber's Decision of 2 October 2003 was granted, the Appeals Chamber subsequently vacating the Trial Chamber's Decision and remanding the matter back to the Trial Chamber for reconsideration of its decision (*Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-A73, Decision on Prosper Mugiraneza's Interlocutory Appeal from Trial Chamber II Decision of 2 October 2003 Denying the Motion to Dismiss the Indictment, Demand Speedy Trial and for Appropriate Relief (AC), 27 February 2004). The Trial Chamber's subsequent reconsideration of its Decision of 2 October 2003 led to its Decision of 3 November 2004.

[4] *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, "Prosecutor's Response to Prosper Mugiraneza's Second Motion to Dismiss for Deprivation of his Right to Trial Without Undue Delay", dated 18 December 2006.

consideration. If so, the Chamber will not consider the merits of the Defence Motion. If not, the Chamber will go on to consider the substantive arguments raised by the Parties in determining whether or not there has been undue delay in this case, and, if so, how the Accused should be compensated.

5. In its Reply,[5] the Defence raises three arguments as to why the doctrine of *res judicata* should not apply to its Motion. Firstly, the Defence submits, the doctrine of *res judicata* applies only to cases in which there has been a final judgement; since there has been no final judgement in this case, the Prosecutor's arguments are without merit.[6]

6. The Chamber does not accept the Defence's argument. The Prosecution uses the term *res judicata* synonymously with what is known in some national jurisdictions as *issue estoppel*. As the jurisprudence of this Tribunal demonstrates, the Trial Chambers have often considered and applied arguments concerning the doctrine of *res judicata* (or *issue estoppel*) in relation to interlocutory matters in cases which have not yet reached the stage of final judgement.[7] In fact this Trial Chamber recently addressed – and rejected - an argument of *res judicata* raised by Prosper Mugiraneza's co-Accused, when considering the merits of the Prosecution's Motion for Judicial Notice.[8] The Chamber therefore considers that the Prosecution is not prevented from making an argument of *res judicata* (more accurately *issue estoppel*) in relation to this application despite the case not having yet reached final judgement.

7. A further argument of the Defence as regards the issue of *res judicata* is that the Prosecution should be estopped from asserting *res judicata* in circumstances where it has itself sought reconsideration of other issues previously determined by the Chamber.

8. The Chamber considers this Defence position to be confused and erroneous. The doctrine of *res judicata* is not to be confused with the Trial Chamber's inherent power to reconsider its own decisions, which is well established before this Tribunal. The Prosecution's position is not that the Trial Chamber cannot reconsider its own decisions but rather that the Trial Chamber should not consider the Defence's application because it has already ruled on an identical application previously brought by the Accused; that, by virtue of the doctrine of *res judicata*, the issue has already been ruled upon by the Chamber. The Chamber considers that the Prosecution is in no way "estopped" from arguing that the Defence's application should be rejected on the grounds of the doctrine of *res judicata*.

[5] *Mugiraneza et al*, Prosper Mugiraneza's Reply to the Prosecutor's Response to Prosper Mugiraneza's Second Motion to Dismiss for Deprivation of his Right to Trial Without Undue Delay, 26 December 2006.
[6] Defence Reply, para. 15.
[7] See, for example, *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Decision on Muvunyi's Motion to Include all Testimony of Witness AOG/D/X/006 in the Appellate Record (TC), 5 June 2006, para. 7; *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Decision on Muvunyi's Motion for Judgement of Acquittal Pursuant to Rule 98*bis* (TC), 13 October 2005, para. 21; *Prosecutor v. Pauline Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Defence Motion for Certification to Appeal the "Decision on Defence Motion for a Stay of Proceedings and Abuse of Process" (TC), 19 March 2004, para. 28; *Prosecutor v. Simon Bikindi*, ICTR-2001-72-PT, Decision on the Amended Indictment and the Taking of a Plea Based on the Said Indictment (TC), 11 May 2005, para. 3; *Prosecutor v. Pauline Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Oral Motion Regarding Prosecution's Use of Material Under Seal (TC), 27 April 2004, para. 29; *Prosecutor v. Edouard Karemera et al.*, Case No. ICTR-98-44-PT, Decision on Motion to Vacate Sanctions (TC), 23 February 2005, para. 10.
[8] See *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Prosecutor's Motion for Judicial Notice (TC), 22 September 2006, para. 8.

9. Finally, as regards the issue of *res judicata*, the Defence argues that the doctrine does not apply in these circumstances because the First Motion only complained of pre-trial delay, whereas its Second Motion complains of pre-trial delay, intra-trial delay, and future delay in the determination of the case by the Appeals Chamber.

10. The Chamber is persuaded by this Defence argument and is of the view that it may consider the merits of the Defence Motion on the basis that it is a fresh application due to the time which has lapsed since its previous determination of a similar issue in November 2004. The Chamber therefore rejects the Prosecution argument that the Chamber is barred from considering the issue before it by virtue of the doctrine of *res judicata*.

II. Substance of the Defence Motion

11. Having found that there is no procedural bar to its consideration of the merits of the Defence Motion, the Chamber will now address the substance of the application. Essentially, the Chamber must address two issues: firstly, has the Accused's right to trial without undue delay been violated? Secondly, if yes, is a permanent stay of proceedings – a dismissal of the Indictment in this case with prejudice - the appropriate remedy?

12. The Defence Motion is brought pursuant to Article 20(4)(c) of the Statute of this Tribunal which provides:

> In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
>
> [...]
>
> (c) To be tried without undue delay

13. Article 19 of the Statute further requires the Trial Chamber to ensure that the trial is fair and expeditious, and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

14. The Appeals Chamber jurisprudence of this Tribunal – arising from previous litigation in this case - states that a determination of whether an Accused person's right to be tried without undue delay has been violated must necessarily include a consideration of, *inter alia*, the following factors:[9]

> (1) The length of the delay;
> (2) The complexity of the proceedings, such as the number of charges, the number of accused, the number of witnesses, the volume of evidence, the complexity of facts and law;
> (3) The conduct of the parties;
> (4) The conduct of the relevant authorities; and
> (5) The prejudice to the accused, if any.

[9] *Prosecutor v. Prosper Mugiraneza et al.*, Case No. ICTR-99-50-A73, Decision on Prosper Mugiraneza's Interlocutory Appeal from Trial Chamber II Decision of 2 October 2003 Denying the Motion to Dismiss the Indictment, Demand Speedy Trial and for Appropriate Relief (AC), 27 February 2004, p. 2.

15. As previously outlined by this Chamber, the Appeals Chamber's jurisprudence indicates that there cannot be a determination of whether the right to trial without undue delay was violated without considering the totality of the above-mentioned five criteria.[10] Furthermore, a finding of undue delay will depend on the circumstances of the case.[11]

16. Before going on to assess the merits of the Defence Motion in light of the Appeals Chamber criteria, however, the Chamber must address two arguments raised by the Defence in its Motion – the issue of burden of persuasion, as well as the issue of binding authority on the Trial Chamber.

Burden of Persuasion

17. The Defence contends that, by virtue of the fact that the Prosecution did not respond to the merits of the Defence's Motion – arguing only a procedural bar to the Chamber's consideration of the Motion - the Prosecution has given up its right to provide an explanation for the undue delay alleged in this case.

18. The Chamber considers that, as a matter of law, the onus is on the Defence as the moving party to make out the circumstances which it says amount to undue delay on the basis of those matters, *inter alia*, outlined by the Appeals Chamber Decision.[12] The question for the Chamber is not whether the Prosecution has satisfied a reverse onus, but rather, whether the Defence has made out the undue delay alleged, on the basis of those matters, *inter alia*, outlined by the Appeals Chamber Decision. The Prosecution's failure to respond to the merits of the Defence's claims is a matter which the Chamber will take into consideration in determining whether or not the Defence has succeeded in showing that there has been undue delay in this case. However, the Prosecution's failure to respond to the substance of the Defence's allegations does not automatically lead to a finding in favour of the Defence.

Status of ECHR and HRC Authority on the Trial Chamber

19. In support of its Motion, the Defence relies upon a number of case authorities from the European Court of Human Rights ("ECHR") and the Human Rights Committee ("HRC") (established pursuant to Part IV and Optional Protocol I to the International Covenant on

[10] Note that this position is consistent with this Trial Chamber's previous decisions on this issue; see *Prosecutor v. Prosper Mugiraneza et al.*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Application for a Hearing or other Relief on his Motion for Dismissal for Violation of his Right to Trial without Undue Delay (TC), 3 November 2004, para. 28.

[11] *Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-96-15-I, Decision on the Extremely Urgent Motion on Habeas Corpus and for Stoppage of Proceedings (TC), 23 May 2000.
"The Chamber notes that the issue of reasonable length of proceeding has been addressed by the U.N. Human Rights Committee, the European Court of Human Rights and the Inter-American Commission on Human Rights. "The reasonableness of the period cannot be translated into a fixed number of days, months or years, since it is dependent on other elements which the judge must consider". In the opinion of the European Court of Human Rights, "the reasonableness of the length of proceedings coming within the scope of Article 6(1) must be assessed in each case according to the particular circumstances. The Court has to have regard, *inter alia*, to the complexity of the factual or legal issues raised by the case, to the conduct of the applicants and the competent authorities and to what was at stake for the former, in addition to complying with the "reasonable time" requirement. [four factors]". [Footnotes omitted]

[12] This view is consistent with this Chamber's approach in *Prosecutor v. Prosper Mugiraneza et al.*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Application for a Hearing or other Relief on his Motion for Dismissal for Violation of his Right to Trial without Undue Delay (TC), 3 November 2004, para. 33 – "The burden for proving prejudice does indeed lie with the Defence."

Civil and Political Rights). In addition, the Defence refers extensively to the recent decision of Trial Chamber III in the case of *Prosecutor v. André Rwamakuba,*[13] in which the Trial Chamber relied upon decisions of the HRC and noted the binding nature of "generally accepted norms of human rights" on the Tribunal.

20. Firstly, the Chamber fully accepts the binding nature of "generally accepted norms of human rights" on the Tribunal. Secondly, however, whilst the jurisprudence of the ECHR and HRC may be persuasive in nature to the Tribunal, the Chamber considers that it should only have recourse to such authorities to the extent that the Tribunal's statutory instruments and jurisprudence are deficient. In this respect, the Chamber notes that the fundamental guarantees afforded to the Accused are derived firstly from the Tribunal's statutory instruments – in particular Articles 19 and 20 of the Statute. The Chamber further notes the binding nature of the above-mentioned Appeals Chamber criteria which gives some guidance in the application of the Tribunal's Statute. With respect to the *Rwamakuba* case, the Chamber notes that the Decision had recourse to HRC jurisprudence because there was a deficit in binding Tribunal jurisprudence on the issue under consideration[14] (in that case, since the Chamber had found a violation of Rwamakuba's rights, the question concerned appropriate remedy for that violation); it was therefore necessary in that case to seek guidance from persuasive authorities.

21. For the aforementioned reasons, therefore, the Chamber's Decision will focus on the jurisprudence which is binding upon it in making a determination as to whether the delay in this case – if any - is undue.

Application of the Appeals Chamber criteria to the facts

(1) *The length of the delay*

22. The Defence argues that the undue delay in this case is constituted by:

- the length of time between Mugiraneza's arrest at the request of the Prosecutor in April 1999 to the start of his trial in November 2003;
- the length of the trial, including the estimate of the remaining time given by the President of the Tribunal to the Security Council on 1 June 2006;
- the anticipated length of any post judgement appeals.

23. The Defence submits that Prosper Mugiraneza has been incarcerated since April 1999, and that, therefore, at the time of filing the Motion he had been incarcerated for more than seven years. The Defence speculates that judgement in this case will not be rendered prior to 2008, and that if there is an appeal from final judgement, the Accused will have been incarcerated for 11 years without final determination of the case. It is the Defence's submission that a delay in excess of 10 years constitutes undue delay for the purposes of the Statute no matter what the circumstances.

[13] *Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-T, Decision on Appropriate Remedy (TC) ("*Rwamakuba* Decision"), 31 January 2007.
[14] *Rwamakuba* Decision, 31 January 2007, paras. 21-22.

24. Relying upon General Comment 13 to the International Covenant on Civil and Political Rights,[15] as well as upon jurisprudence of the Human Rights Committee[16] and the European Court of Human Rights,[17] the Defence submits that the right to trial without undue delay "includes not only the pre-trial phase but the trial itself and the following appellate process."[18]

25. It should firstly be noted that an assessment of whether the Accused's right to trial without undue delay has been violated will be made only as at today's date. This means that the Chamber, at the date of signature of this Decision, is making a determination as to whether or not the Accused's right to trial without undue delay has been violated - *to date*. The Chamber will not enter into any speculation about whether – at date of judgement, or at date of appeal from final judgement, if any – the Accused's right to trial without undue delay will have been violated. This Trial Chamber is only empowered to determine whether there has been any violation of the Accused's rights as at the present date.

26. The Chamber notes the authorities relied upon by the Defence in support of its submission that the right to trial without undue delay includes not only the pre-trial phase but the trial itself and the following appellate process. The Chamber's position is not inconsistent with this line of authority because the authorities in question only require the judicial body to consider the totality of the proceedings *which have already transpired* at the time it is making its assessment.[19] For example, if the proceedings are in pre-trial phase, the judicial body must determine whether there has been undue delay up until that point; if, on the other hand, the proceedings are in the phase of appeal from final judgement, the judicial body must determine whether there has been undue delay in the pre-trial, trial, and appeal phases.

27. The Chamber also rejects the Defence's submission that a delay in excess of 10 years constitutes undue delay *per se* for the purposes of the Statute no matter what the circumstances. In this respect, the Chamber notes that the jurisprudence of this Tribunal is clear on this issue - the reasonableness of the period of delay cannot be translated into a fixed number of days, months or years, since it is dependent on other elements which the judge must consider,[20] notably the totality of those matters outlined by the Appeals Chamber. As

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[15] Office of the High Commissioner for Human Rights, General Comment No. 13 (1984), para. 10. http://www.unhchr.ch/tbs/doc.nsf/0/bb722416a295f264c12563ed0049dfbd? Open document (visited 5 December 2006), cited at footnote 17 of the Defence Motion.

[16] UN Doc. CCPR/C/60/D/533/1993, *Elahie v. Trinadad and Tobago*, para. 8.2 (1996), cited at footnote 37 of the Defence Motion.

[17] See, for example, *Bunkate v. The Netherlands*, No. 26/1992/371/445 (ECHR 1993), cited at footnote 18 of the Defence Motion.

[18] Defence Motion, paras. 6-7.

[19] See paragraph 10 of the Office of the High Commissioner for Human Rights, General Comment No. 13 (1984), para. 10. http://www.unhchr.ch/tbs/doc.nsf/0/bb722416a295f264c12563ed0049dfbd? Open document (visited 5 December 2006), cited at footnote 17 of the Defence Motion, which reads: "Subparagraph 3(c) provides that the accused shall be tried without undue delay. This guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgement be rendered; all stages must take place "without undue delay". To make this right effective, a procedure must be available in order to ensure that the trial will proceed "without undue delay", both in first instance and on appeal." See also UN Doc. CCPR/C/60/D/533/1993, *Elahie v. Trinadad and Tobago*, para. 8.2 (1996), cited at footnote 37 of the Defence Motion. In that case, the Committee considers only the history of the "author's" (ie. complainant's) detention. The case of *Bunkate v. The Netherlands*, No. 26/1992/371/445 (ECHR 1993), cited at footnote 18 of the Defence Motion, is also consistent with the Chamber's view.

[20] *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Decision on the Defense Extremely Urgent Motion on Habeas Corpus and For Stoppage of Proceedings (TC), 23 May 2000, par. 68; *Prosecutor v. Joseph Kanyabashi*,

this Chamber previously noted, "the Strasbourg organs have deemed trials that lasted longer than 10 years to be compatible with Article 6(1) of the ECHR, on the other hand holding that undue delay has occurred in others which lasted less than one year."[21]

28. The Chamber notes that it has been some eight years from the date of the Accused's arrest. However, as outlined by the Appeals Chamber, the duration of the proceedings alone will not necessarily give rise to a violation of the Accused's right to trial without undue delay. Rather, the question is whether the duration of the proceedings, in the context of other matters to be considered by the Chamber, gives rise to a violation of the Accused's right.

(2) *The complexity of the proceedings*

29. It is the Defence's submission that this case is *not* a complex case. The Defence submits that this is essentially "an eyewitness case no different than a bank robbery case other than the fact that a large number of witnesses were called by the Prosecutor because it was presenting evidence of numerous events."[22] Further, the Defence submits, even though a large number of exhibits have been introduced in the case, many are of little relevance and few require complex analysis.[23]

30. The Chamber disagrees with the Defence's view as regards the complexity of these proceedings. The Chamber considers - in light of some of the factors highlighted by the Appeals Chamber as relevant to a determination of the complexity of the proceedings (ie. number of charges, the number of accused, the number of witnesses, the volume of evidence, the complexity of facts and law) - that the instant case is a complex one. There are four accused persons in this case, each of whom is answering to an Indictment containing up to eight counts.[24] To date, the Chamber has heard some 57 witnesses for the Prosecution, and more than 40 witnesses for the Defence of two Accused persons. Those witnesses have been a mixture of factual and expert witnesses. The Trial Chamber has rendered more than 200 written decisions in this case. Furthermore, in excess of 25 volumes of documentary exhibits have been tendered into evidence in this trial. The evidence in this case – in terms of both oral testimony and documentary exhibits – is therefore voluminous. The Chamber is of the view that this case is complex both factually and legally, particularly having regard to the Prosecution's case being based on an allegation of conspiracy, and the modes of responsibility attaching to the counts remaining in the Indictment against the Accused.

Case No. ICTR-96-15-T, Decision on the Defense Motion for the Provisional Release of the Accused (TC), 21 February 2001 par. 11; *Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-PT, Decision of Defence Motion for Stay of Proceedings (TC), 3 June 2005, para. 29; *Prosecutor v. Mugiraneza et al.*, Case No.ICTR-99-50-T, Decision on Prosper Mugiraneza's Application for a Hearing or Other Relief on His Motion for Dismissal for Violation of His Right to a Trial without Undue Delay (TC), 3 November 2004, para. 31.

[21] *Prosecutor v. Mugenzi et al.*, Case No. ICTR-99-50-I, Decision on Justin Mugenzi's Motion for Stay of Proceedings or in the Alternative Provisional Release (Rule 65) and in Addition Severance (Rule 82(B) (TC), 8 November 2002, para. 33, citing *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Decision on the Defence Extremely Urgent Motion on Habeas Corpus and For Stoppage of Proceedings (TC), 23 May 2000, para. 68.

[22] Defence Motion, para. 57.

[23] Defence Motion, para. 58.

[24] Pursuant to the Indictment in this case, each of the Accused was charged with 10 counts. However, following the acquittal of certain of the Accused in respect of certain counts in the Indictment and/or modes of responsibility, the Accused Justin Mugenzi is now answering eight counts, the Accused Casimir Bizimungu is now answering eight counts, the Accused Jérôme Bicamumpaka is now answering seven counts, and the Accused Prosper Mugiraneza is now answering seven counts. See *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Defence Motions Pursuant to Rule 98*bis* (TC), 22 November 2005, p. 32.

31. As regards the Defence's submissions concerning the "little relevancy" of many of the exhibits in this case, the Chamber notes, firstly, that in order for any exhibit to be tendered into evidence before this Tribunal, it must satisfy a threshold relevancy requirement pursuant to Rule 89(C) of the Rules. All documents which have become exhibits in this case are therefore "relevant" for the purposes of these proceedings. Secondly, the Chamber will not comment to any degree upon the weight to be afforded to any exhibits nor the level of analysis to be engaged in with respect to those exhibits for the purposes of this application. Such matters are to be deliberated upon in the final stages of these proceedings.

(3) *The conduct of the parties*

32. The Defence alleges a lack of sense of urgency in these proceedings on the part of the Prosecution, mainly prior to the commencement of the trial, and in bringing the case to trial, but also in relation to the filing of the motion seeking to amend the Indictment.[25] The Defence further alleges delays in disclosure on the part of the Prosecution. The Defence submits that of the delay occasioned thus far, only two days are attributable to Mugiraneza.

33. The Chamber notes that none of the issues raised by the Defence – except the issue of the Prosecution's late filing of his motion seeking to amend the Indictment – concerns the conduct of the Prosecution *since* the Chamber rendered its Decision of 3 November 2004 concerning undue delay. Addressing similar arguments raised by the Defence in its Decision of 3 November 2004, the Chamber found that "the delay in this case, if any, is not attributable to the OTP."[26]

34. The Chamber has considered the Defence argument concerning the late filing of the Prosecution's Motion to amend the Indictment (filed in August 2006). The Chamber rejects the argument that the Prosecution in someway contributed to undue delay in this case by the late filing of the said motion. The Chamber recalls that it denied the Prosecution motion on the very basis that granting it may cause delay in the trial. Therefore, to the contrary, the Chamber's denial of the Prosecution's motion to amend the Indictment in this case contributed towards an objective of preventing delay in this case.

(4) *The conduct of the relevant authorities*

35. The Defence submits that the remainder of the delay in this case has been "due to lack of resources such as courtrooms, judges and prosecutors; bureaucratic infighting between the Office of the Prosecutor and the Registry; lack of prompt action by the Security Council and the General Assembly in providing needed resources; and the considered decisions by the Office of the Prosecutor in indicting more persons than could be tried without undue delay and to join accused in multi-defendant trial which take more time than individual trials."[27] The Defence further alleges that the trial has "come to a screeching halt due to lack of witnesses" and says that the Trial Chamber should take "judicial notice" of this allegation.[28]

[25] Defence Motion, paras. 59-60.
[26] *Prosecutor v. Mugiraneza et al.*, Case No.ICTR-99-50-T, Decision on Prosper Mugiraneza's Application for a Hearing or Other Relief on His Motion for Dismissal for Violation of His Right to a Trial without Undue Delay (TC), 3 November 2004, para. 32.
[27] Defence Motion, para. 10.
[28] Defence Motion, para. 67.

36. The Chamber notes that, despite strong allegations, the Defence has failed to give details concerning how the conduct of the relevant authorities has resulted in or contributed to undue delay in this case. For example, as regards the Defence allegation concerning lack of witnesses in this case, the Defence provides the Chamber with only one example of a loss of two days of trial time as the result of witness-related issues. As regards the other far-reaching allegations – such as "bureaucratic infighting", lack of prompt action by the Security Council and the General Assembly, etc. – the Defence fails to show how such issues have translated into delay in this case. The Chamber therefore cannot find that the conduct of the relevant authorities has contributed to delay – if any – in this case.

(5) *The prejudice to the accused, if any*

37. The Defence submits that the prejudice to the Accused is his incarceration since April 1999 while presumptively innocent.[29] The Defence further submits that the delay in this case has impacted upon his ability to present his Defence – "witnesses have died, become unavailable or have disappeared... [and] over time, memories fade."[30]

38. The Chamber has already noted that the Accused has been in custody for some eight years; however, this matter must be considered in light of the totality of the criteria laid down by the Appeals Chamber. As regards the impact of the delay in these proceedings on the Accused's ability to present his Defence, again the Defence has failed to give substantive details concerning its allegation, but the Chamber has taken note of this submission. Furthermore, in its Decision of 3 November 2004 the Chamber found that "the Defence ha[d] failed to show how the delay of four years, six months and 28 days ha[d] prejudiced the Accused such as to prevent a fair trial and necessitate a dismissal of the Indictment against him."[31] Since the date of this Decision, the trial in this case has advanced with the Prosecution closing its case in June 2005 and the completion of the hearing of the defence of one of the accused. The defence of a second accused is now almost nearing completion. Therefore, considering the Chamber's finding of 3 November 2004, as well as the matters put forward by the Accused in his Motion, the Chamber is of the view that the Defence has failed to show that the delay occasioned up to this time in this case has caused prejudice to the Accused.

Conclusion

39. Having considered the submissions of the Parties in the light of the totality of the criteria laid down by the Appeals Chamber (the length of the delay; the complexity of the proceedings, such as the number of charges, the number of accused, the number of witnesses, the volume of evidence, the complexity of facts and law; the conduct of the parties; the conduct of the relevant authorities; and the prejudice to the accused, if any), and taking into account the stage which the trial has now reached, the Chamber is of the view that the Defence has failed to show a violation of the Accused's right to be tried without undue delay,

[29] Defence Motion, para. 76.
[30] Defence Motion, para. 78.
[31] *Prosecutor v. Mugiraneza et al.*, Case No.ICTR-99-50-T, Decision on Prosper Mugiraneza's Application for a Hearing or Other Relief on His Motion for Dismissal for Violation of His Right to a Trial without Undue Delay (TC), 3 November 2004, para. 33.

guaranteed by Article 20(4)(c) of the Statute, having regard to the complexity of the case and the absence of any wrongdoing on the part of the Prosecution or the relevant authorities.

40. Having found that the Defence has failed to show that Prosper Mugiraneza's right to trial without undue delay has been violated, the Chamber need not consider the arguments of the Defence *concerning appropriate remedy for any violation thereof.*

FOR THE FOREGOING REASONS, THE CHAMBER

DENIES the Defence Motion in its entirety.

Arusha, 29 May 2007

Khalida Rachid Khan
Presiding Judge

Lee Gacuiga Muthoga
Judge

Emile Francis Short
Judge

[Seal of the Tribunal]