



UNITED NATIONS
NATIONS UNIES

**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: 30 November 2007

The PROSECUTOR

v.

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

Case No. ICTR-00-56-T

***PROPRIO MOTU* DECISION CLARIFYING
THE CHAMBER'S ORAL RULING OF 12 NOVEMBER 2007**

Office of the Prosecutor:

Mr. Alphonse Van
Mr. Moussa Sefon
Mr. Segun Jegede
Mr. Lloyd Strickland
Mr. Abubacarr Tambadou
Ms. Felistas Mushi
Ms. Faria Rekkas
Ms. Marlize Keefer

Counsel for the Defence:

Mr. Gilles St-Laurent and Mr. Ronnie MacDonald **for Augustin Bizimungu**
Mr. Christopher Black and Mr. Vincent Lurquin **for Augustin Ndindiliyimana**
Mr. Charles Taku and Ms. Beth Lyons **for François-Xavier Nzuwonemeye**
Mr. Fabien Segatwa and Mr. Seydou Doumbia **for Innocent Sagahutu**

INTRODUCTION

1. On 12 November 2007, the Chamber issued an Oral Decision regarding the contact of Bizimungu witnesses by other Defence teams prior to their testimonies.¹ Subsequently, the Defences for Ndindiliyimana, Bizimungu and Nzuwonemeye filed motions for certification to appeal the Oral Ruling.²

DELIBERATIONS

2. Having had the opportunity to review the transcript of the Oral Ruling and to give further thought to the matter, the Chamber hereunder clarifies and restates its position.

3. The Chamber reiterates that in light of the protective measures granted to the witnesses appearing to testify, Counsel wishing to meet witnesses who are not called by their Defence teams must seek the authorisation of the Chamber beforehand. To give effect to this Order, the Chamber amends the earlier Decision on Defence Motion for Protective Measures for Defence Witnesses.³

4. If the result of the contact leads to two or more Defence teams agreeing to call a particular witness as a common witness, the Defence is expected to request the Chamber to vary its witness list, in order to add the particular witness to its list. Such a request may be made orally before the Chamber to expedite its disposal. If the motion is granted, each of the Defence teams calling the witness will carry out the examination-in-chief of the witness when he/she takes the stand.

5. If a particular Defence team elects not to put the witness contacted in its list as a common witness, the witness may be cross-examined. Although leading questions are permitted during cross examination as a general rule, Counsel are advised that favourable evidence elicited through leading questions from a witness met before his/her testimony may have a bearing on the value to be attached to such evidence.

6. This Decision, which varies the previous Oral Ruling of 12 November 2007, disposes of all the motions filed for certification, without prejudice to any fresh filings.

¹ T. 12 November 2007, p.1.

² Application for Certification to Appeal Decision Prohibiting the Cross-Examination of Defence Witnesses of Other Parties by Defence Counsel who have met with a Co-Accused's Defence Witness, Pursuant to Rule 73(B), filed by Defence for Ndindiliyimana on November 19 2007; Requête aux fins de certification d'appel de la décision orale du 12 novembre 2007 de la Chambre de première instance, filed by Defence for Bizimungu on November 19 2007; Nzuwonemeye Defence Response to Motions Filed by Bizimungu and Ndindiliyimana Defence teams for Certification to Appeal 12 November 2007 Oral Decision, Pursuant to Article 73 (B) (*sic*) (Rules of Procedure and Evidence), filed on 22 November 2007.

³ Decision on Defence Motion for Protective Measures for Defence Witnesses (TC), 8 June 2004.

FOR THE ABOVE REASONS, THE CHAMBER

VARIES its Oral Ruling of 12 November 2007;

AMENDS Para (f) of the Disposition of the Decision on Defence Motion for Protective Measures for Defence Witnesses dated 8 June 2004;

Amended Para (f) of the Disposition will now read as follows:

(f) that the Prosecution or the Defence teams who are not calling a particular Defence witness request the Trial Chamber's authorisation before contacting any such witness whose identity is known to them or any relative of such witness. Following the leave of the Trial Chamber, the Defence calling the particular witness shall take the necessary steps to facilitate such contact after the consent of the protected person has been obtained or, if such person is under 18 years, after the consent of his or her parents or guardian has been obtained;

Arusha, 30 November 2007

Asoka de Silva
Presiding Judge

Taghrid Hikmet
Judge

Seon Ki Park
Judge

[Seal of the Tribunal]