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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: 16 July 2008

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

JUDICIAL RECORDS ARCHIVES
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**DECISION ON NZUWONEMEYE'S REQUEST FOR RECONSIDERATION OF
THE CHAMBER'S DECISION DATED 9 JUNE 2008**

Office of the Prosecutor:

Mr. Alphonse Van
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Mr. Abubacarr Tambadou
Ms. Felistas Mushi
Ms. Faria Rekkas
Ms. Marlize Keefer

Counsel for the Defence:

Mr. Gilles St-Laurent 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

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INTRODUCTION

1. The Defence for Nzuwonemeye began the presentation of its case on 23 June 2008. In its Decision of 9 June 2008 ("Impugned Decision"), the Chamber denied Nzuwonemeye's request to hear the testimonies of Witnesses F10 and F11 via video-link on the grounds that the submissions regarding the witnesses' security concerns were too general and unsupported by any documentation.¹ The Chamber further noted that at the time that the Defence requested a variation of its witness list so as to add Witnesses F10 and F11, it never disclosed that these witnesses would be available to testify in Arusha even though that information seemed to have been available to the Defence.²

2. On 9 July 2008, the Defence filed the current Motion seeking reconsideration of the Impugned Decision. Annexed to the Defence Motion are documents from the French Government explaining the security concerns of the Government of France and the Witnesses and confirming their willingness to testify by video-link from a European country.³

DELIBERATIONS

3. Although the Rules do not explicitly provide for it, the Chamber has an inherent power to reconsider its own decisions. Reconsideration, however, is an exceptional measure that is available only in particular circumstances.⁴ According to the well-established jurisprudence, the moving party must show the discovery of a new fact, which, had it been known by the Chamber at the time, would not have allowed it to render the decision; or that there has been a material change in circumstances; or finally, that the previous decision was erroneous and therefore prejudicial to either party.⁵

4. The Defence asserts that the French Government's intervention by means of a letter confirming the witnesses' security fears, constitutes a new fact and a material change in circumstances that warrant reconsideration of the Impugned Decision.

5. Having considered the letter from the French government, which expounds on the situations of Witnesses F10 and F11 and the reasons for their insecurity, as well as the fears of the French Government, the Chamber finds that there has been a material change in circumstances. The Chamber had already found that the testimonies of Witnesses F10 and F11 could be important to the allegations against Nzuwonemeye⁶ and now finds that

¹ *Prosecutor v. Nindiliyimana et al.*, Decision on Nzuwonemeye's Extremely Urgent and Confidential Request for Video-Link Testimony of Witnesses Y1, S2, Y3, F10 and F11 (TC), 9 June 2008.

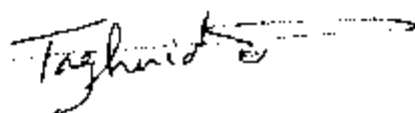
² *Id.*

³ Nzuwonemeye Extremely Urgent Confidential Motion for Reconsideration of the Trial Chamber's Decision, Dated 9 June 2008. Denying the Defence Request for the Testimony of Witnesses F10 and F11 to be Heard Via Video-Link, Pursuant to Rules 54 and 71 (Rules of Procedure and Evidence), filed 9 July 2008.

⁴ *Prosecutor v. Nsengimana*, ICTR-2001-69, Decision on Hormisdas Nsengimana's Motion For Reconsideration of the Decision of 26 April 2007 (TC), 10 May 2007, para. 11; *Prosecutor v. Nyiramasuhuko et al.*, Decision on Ntahobali's Motion for Reconsideration of the Decision of 2 March 2006 (TC), 11 June 2007, para. 9.

⁵ See for example, *Prosecutor v. Nindiliyimana et al.*, Decision on Nzuwonemeye's Motion for Reconsideration of the Chamber's Oral Decision dated 11 May 2007 Regarding Admission of Exhibits P.132 and P.135 (TC), 25 July 2007, para. 4; *Nindiliyimana et al.*, Decision on Nzuwonemeye's Motion for Reconsideration of the Chamber's Oral Decision of 14 September 2005 on Admissibility of Witness XXO's Testimony in the Military I Case in Evidence (TC), 10 October 2005, para. 11.

⁶ *Prosecutor v. Nindiliyimana et al.*, Decision on Nzuwonemeye's Request to Vary His Witness List (TC), 31 January 2008, para. 4.



sufficient bases exist for the witnesses' inability and unwillingness to travel to Arusha to testify.⁷ The Chamber therefore reconsiders its prior Decision and permits Witnesses F10 and F11 to testify via video-link.

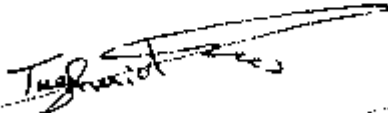
FOR THE ABOVE REASONS, THE CHAMBER

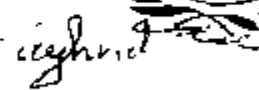
GRANTS the Defence Motion; and

DIRECTS the Registry, in consultation with the Parties, to make the necessary arrangements for Witnesses F10 and F11 to testify via video-link from a suitable location in Europe on a suitable date on or after 15 September 2008.

Arusha, 16 July 2008




Asoka de Silva
Presiding Judge
[Absent at the time of signature]


Taghrid Hikmet
Judge


Seon Ki Park
Judge

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⁷ The Impugned Decision states the requirements for granting testimony via video-link as "consider[ing] the following factors: i) the importance of the testimony; ii) the inability or unwillingness of the witness to travel to Arusha to testify; and iii) whether a good justification has been adduced for that inability and/or unwillingness. The burden of proof lies with the moving party. A video-link testimony is an exceptional measure and is granted only upon sound and legitimate justification based on proper documentation."

