



UNITED NATIONS  
NATIONS UNIES

ICTR-00-56-T  
14-05-2009  
(29296-21294)

29296  
PM

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER II**

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

**Registrar:** Adama Dieng

**Date:** 14 May 2009

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

JUDICIAL RECORDS ARCHIVER  
2009 MAY 14 P 12:07

**REASONS FOR THE CHAMBER'S ORAL RULING OF 17 APRIL 2009  
DENYING BIZIMUNUGU'S MOTION NOT TO TAKE INTO ACCOUNT THE  
PROSECUTION'S SUBMISSIONS REGARDING THE SITE VISIT TO  
RWANDA**

**Office of the Prosecution:**

Mr Alphonse Van  
Mr Moussa Sefon  
Mr Lloyd Strickland  
Mr Abubacarr Tambadou  
Ms Faria Rekkas

**Counsel for the Defence:**

Mr Gilles St-Laurent and Mr Benoît Henry 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**

*spaw*

## INTRODUCTION

1. On 4 December 2008, the Chamber ordered a site visit to Rwanda. On 9 March 2009 it further ordered the Parties to file any submissions they wish to make in respect of locations for the site visit no later than 6 April 2009.<sup>1</sup>
2. The Defence teams for Bizimungu, Ndindiliyimana, Nzuwonemeye and Sagahutu filed their submissions on 6 April 2009 as ordered by the Chamber. The Prosecution filed its submissions on 8 April 2009 without providing any explanation for the late filing or obtaining the Chamber's permission to file out of time.
3. On 14 April 2009, the Defence for Bizimungu filed a motion requesting the Chamber not to take into account the Prosecution's Submissions regarding the site visit to Rwanda ("Defence Motion"). The Defence submits that the Prosecution's consistent failure to comply with the Chamber's Orders is disrespectful to the Chamber, suggests that the Prosecution can disobey the Chamber's rulings without suffering any consequences, and therefore negatively reflects upon the Chamber's ability to enforce compliance with its own rulings.<sup>2</sup>
4. The Defence Motion was brought to the Chamber's attention on 14 April 2009 at the commencement of the site visit to Rwanda. Pursuant to Rule 4 of the Rules of Procedure and Evidence ("Rules"), the Chamber rendered an oral ruling denying the Defence Motion. The Chamber hereby gives its reasons for that oral ruling.

## DELIBERATIONS

5. The Chamber agrees with the Defence submission that this is not the first time the Prosecution has failed to comply with the Chamber's Orders relating to the filing of submissions. The Chamber recalls that the Prosecution also failed to comply with its Order dated 4 December 2009 which required the Parties to file submissions relating to the site visit by 19 January 2009.<sup>3</sup> On that occasion the Prosecution filed its submissions ten days out of time. In a Decision rendered on 9 March 2009, the Chamber expressed its disapproval of the Prosecution's conduct and reminded the Prosecution of its obligation of diligence towards the Chamber.<sup>4</sup>
6. Despite the Prosecution's failure to comply with the Chamber's Orders the Chamber reasoned that the severity of the allegations in the Indictment, the issues that it had to consider during the site visit, and the overall interests of justice required that it consider submissions from all of the Parties.
7. The Chamber's denial of the Defence Motion does not mean that it condones the Prosecution's failure to comply with its Orders. Indeed, the Chamber was fully aware that it was dealing with another case of malfeasance by the Prosecution despite the concerns expressed in the Decision of 9 March 2009.
8. The Chamber strongly disapproves of the Prosecution's conduct. It is the Chamber's firm view that the Prosecution has sufficient resources at its disposal to ensure compliance with its orders within the required time period. The site visit was ordered

<sup>1</sup> Scheduling Order (TC), 4 December 2008; Decision on Locations for the Site Visit to Rwanda (TC), 9 March 2009, Annex II.

<sup>2</sup> Extremely urgent Motion of Bizimungu Augustin not to Take into account the Prosecution's Submissions Regarding the Site Visit to Rwanda, 14 April 2009, paras. 5 and 7.

<sup>3</sup> Scheduling Order (TC), 4 December 2008.

<sup>4</sup> Decision on Locations for the Site Visit, *supra*, para. 2

*Reasons for the Chamber's Oral Ruling of 17 April 2009 Denying Bizimungu's Motion not to Take Into Account the Prosecution's Submissions Regarding the Site Visit to Rwanda*

several months in advance so that the Parties could organize their work sufficiently and ensure the successful conduct of the visit. The Prosecution's continued failure to file its submissions on time demonstrates a lack of respect for the Chamber's Order and poor trial management on the part of the Prosecution.

**FOR THE ABOVE REASONS THE CHAMBER,**

**DENIES** the Defence Motion; and

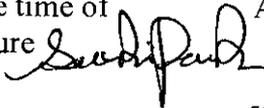
**STRONGLY DISAPPROVES** of the conduct of the Prosecution.

Arusha, 14 May 2009, done in English.

Read and Approved by

Asoka de Silva

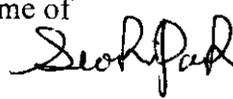
Presiding Judge  
Absent at the time of  
Signature



Read and Approved by

Taghrid Hikmet

Judge  
Absent at the time of  
Signature



Seon Ki Park

Judge



[Seal of the Tribunal]

