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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Lee Gacuiga Muthoga, *Presiding*  
Seon Ki Park  
Robert Fremr

**Registrar:** Adama Dieng

**Date:** 15 June 2011

**THE PROSECUTOR**

v.

**Ildéphonse NIZEYIMANA**

*CASE NO. ICTR-00-55C-T*

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**DECISION ON EXTREMELY URGENT MOTION FOR RECONSIDERATION OF  
TRIAL CHAMBER 7 JUNE 2011 DECISION ON PROSECUTOR'S MOTION FOR  
LEAVE TO PRESENT EVIDENCE IN REBUTTAL TO THE ALIBI DEFENCE**

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## INTRODUCTION

1. The trial commenced on 17 January 2011 with the opening statements of both the Prosecution and the Defence. The Prosecution closed its case-in-chief on 25 February 2011, after having called 38 witnesses. The Defence case commenced on 9 May 2011.
2. On 18 November 2009, at an informal meeting with the President of the Tribunal and the parties, Lead Counsel for the Accused stated that he did not foresee a special defence.
3. On 22 September 2010, at a status conference, the Defence team of the Accused, Ildéphonse Nizeyimana, (“Defence” and “the Accused” respectively), demonstrated by means of various comments that it intended to rely on a form of special defence.
4. On 22 December 2010 the Office of the Prosecutor (“Prosecution”) filed the “Prosecution Motion for Disclosure of the Particulars of a Defence Pursuant to Rule 67(A)(ii)”, requesting that the Chamber, acting under Rule 54 of Procedure and Evidence (“Rules”), order the Defence to make the disclosures required under Rule 67(A)(ii) of the Rules.<sup>1</sup>
5. On 23 December 2010, the Defence filed a response to the motion,<sup>2</sup> arguing that it had until the day before trial starts to disclose any special defence.<sup>3</sup> The Defence submitted that its investigations and arrangements for witness protection were not yet complete, and thus that it was not in a position to provide any notice under Rule 67(A)(ii).<sup>4</sup>
6. On 28 December 2010, the Prosecution filed the “Prosecutor’s Reply to Defence Response to Prosecution Motion for Disclosure of the Particulars of a Defence Pursuant to Rule 67(A)(ii)”, asking that the Chamber consider whether to order the Defence to disclose any relevant *ex parte* submissions during the course of in-camera meetings.<sup>5</sup>
7. On 11 January 2011, the Chamber issued its “Decision on Prosecution Motion for Disclosure of the Particulars of a Defence Pursuant to Rule 67(A)(ii)” (“11 January Decision”), in which it denied the First Alibi motion.

<sup>1</sup> Prosecution Motion for Disclosure of the Particulars of a Defence Pursuant to Rule 67(A)(ii) (“First Alibi Motion”), 22 December 2010, para. 23.

<sup>2</sup> Response to Prosecution Motion for Disclosure of the Particulars of a Defence Pursuant to Rule 67(A)(ii) (“First Alibi Response”), 23 December 2010.

<sup>3</sup> First Alibi Response, para. 3.

<sup>4</sup> First Alibi Response, paras. 6-7.

<sup>5</sup> Prosecutor’s Reply to Defence Response to Prosecution Motion for Disclosure of the Particulars of a Defence Pursuant to Rule 67(A)(ii), para. 24.



8. On 12 January 2011, the Defence filed "Ildéphonse Nizeyimana's Notice of Alibi".<sup>6</sup>

9. On 28 January 2011, Prosecution filed the "Prosecutor's Urgent Second Motion for Disclosure of the Particulars of a Defence of Alibi Pursuant to Rules 54 and 67(A)(ii)".<sup>7</sup> The Prosecution argued therein that the Defence submitted insufficient details concerning its alibi.<sup>8</sup> The Prosecution requested that the Chamber order the Defence to make a number of additional disclosures with respect to the Accused's alibi defence. More specifically, these included: providing greater specificity as to the places the Accused may have been during periods of absence from Butare; the date of his return to Butare from Mata; details as to how each witness appearing in the Alibi Notice will support the alibi; other evidence which the Defence plans to rely on to support the alibi; and particulars for each witness, including their activities in 1994, parentage, birthplace, and current or 1994 residence, as well as full geographical information for alibi witnesses residing in Rwanda.<sup>9</sup>

10. On 31 January 2011, the Defence filed a response to the Second Alibi Motion,<sup>10</sup> arguing that the Prosecution should have challenged any insufficiency in the information accompanying the Alibi Notice sooner, and thus that prejudice suffered by the Prosecution because of the delay in the provision of additional alibi information should not be held against the Accused.<sup>11</sup> The Second Alibi Response also noted that the Alibi Notice was filed as soon as the Chamber issued a protective order for relevant defence witnesses.<sup>12</sup> In addition, the Response provided additional information regarding the dates of the Accused's travel between Mata and Butare, briefly summarises the alibi witnesses' expected testimony, and provides their current city and country of residence.<sup>13</sup>

11. On 1 February 2011, the Prosecution filed a reply to the Second Alibi Response.<sup>14</sup> The Second Alibi Reply submitted that the Second Alibi Response failed to explain why information that related to unprotected witnesses was not disclosed earlier.<sup>15</sup> The Prosecution again asserted that the geographical information provided for Rwandan alibi witnesses was

<sup>6</sup> Ildéphonse Nizeyimana's Notice of Alibi ("Alibi Notice"), 12 January 2011.

<sup>7</sup> Prosecutor's Urgent Second Motion for Disclosure of the Particulars of a Defence of Alibi Pursuant to Rules 54 and 67(A)(ii) ("Second Alibi Motion"), 28 January 2011.

<sup>8</sup> Second Alibi Motion, para. 14, *citing* Alibi Notice.

<sup>9</sup> Second Alibi Motion, para. 28; Alibi Notice, pp. 3-4, paras. 10-12.

<sup>10</sup> Response to Prosecutor's Urgent Second Motion for Disclosure of the Particulars of a Defence of Alibi pursuant to Rules 54 and 67(A)(ii) ("Second Alibi Response"), 31 January 2011.

<sup>11</sup> Second Alibi Response, paras. 3-4.

<sup>12</sup> Second Alibi Response, para. 6.

<sup>13</sup> Second Alibi Response, paras. 9, 11.

<sup>14</sup> Prosecutor's Reply to Defence Response to Prosecutor's Urgent Second Motion for Disclosure of the Particulars of a Defence of Alibi pursuant to Rules 54 and 67(A)(ii) ("Second Alibi Reply"), 1 February 2011.

<sup>15</sup> Second Alibi Reply, para. 7.

insufficient, and that more witness particulars should be disclosed.<sup>16</sup> Finally, the Prosecution reiterated that it suffered prejudice because of the incomplete nature and unjustified late filing of the Alibi Notice,<sup>17</sup> and requested that the Chamber order “the Defence to urgently make the necessary disclosures in order to comply with Rule 67(A)(ii)”.<sup>18</sup>

12. On 7 February 2011, the Chamber denied the Second Alibi Motion, finding that the Prosecution had not demonstrated that the Defence was in possession of additional information with respect to alibi witnesses.<sup>19</sup> The Chamber noted that if the interest of justice so required, the Prosecution could exercise “its right to call rebuttal witnesses.”<sup>20</sup>

13. On 28 March 2011, the Defence filed the “Nizeyimana Pre-Defence Brief”, in which it added 11 new alibi witnesses to the original list, totalling 23 alibi witnesses.

14. On 13 April 2011, the Defence filed the “Nizeyimana Defence Supplementary Notice of Alibi”, providing notice that the Defence intended to rely on two additional witnesses to support the Accused’s alibi.<sup>21</sup>

15. On 20 April 2011, the Defence filed the “Nizeyimana Amended Pre-Defen[c]e Brief”, providing additional alibi information for six of the alibi witnesses.<sup>22</sup>

16. On 25 May 2011, the Prosecution filed a motion seeking the Chamber’s leave to present evidence in rebuttal to the Accused’s alibi defence.<sup>23</sup> The Prosecution submitted, *inter alia*, that it did not receive sufficient notice of the Accused’s alibi defence, and that the resulting prejudice would be best cured by the presentation of rebuttal evidence.<sup>24</sup> The Prosecution provided a detailed summary of the three rebuttal witnesses it seeks to call.<sup>25</sup>

17. On 30 May 2011, the Defence filed its response.<sup>26</sup> The Defence submitted that (1) it provided timely and adequate notice of the Accused’s alibi,<sup>27</sup> (2) the Prosecution did not

<sup>16</sup> *Ibid.*

<sup>17</sup> Second Alibi Reply, paras. 9-13.

<sup>18</sup> Second Alibi Reply, para. 15.

<sup>19</sup> Decision on Prosecutor’s Urgent Second Motion for Disclosure of the Particulars of a Defence of Alibi pursuant to Rules 54 and 67(A)(ii) (“Second Alibi Decision”), 7 February 2011, para. 7.

<sup>20</sup> Second Alibi Decision, para. 8.

<sup>21</sup> Nizeyimana Defence Supplementary Notice of Alibi, 13 April 2011. Adding Alphonse Higaniro and SDC01 as alibi witnesses.

<sup>22</sup> Nizeyimana Amended Pre-Defence Brief, 20 April 2011. Adding information for Defence Witnesses CKN10, ZML13, Alphonse Higaniro, SDC01, CKN22, CKN18.

<sup>23</sup> Prosecutor’s Motion for Leave to Present Evidence in Rebuttal to the Alibi Defence (“Motion for Rebuttal”), 25 May 2011.

<sup>24</sup> Motion for Rebuttal, paras. 29-33.

<sup>25</sup> Motion for Rebuttal, paras. 38-40.

<sup>26</sup> Defence Response to Prosecutor’s Motion for Leave to Present Evidence in Rebuttal to the Alibi Defence (“Response to Motion for Rebuttal”), 30 May 2011.

<sup>27</sup> Response to Motion for Rebuttal, paras. 25-26.

demonstrate that it suffered prejudice,<sup>28</sup> (3) the content of the alibi evidence was reasonably foreseeable by the Prosecution,<sup>29</sup> (4) the Prosecution failed to demonstrate that it could not locate the three rebuttal witnesses before the closing of the Prosecution case,<sup>30</sup> and (5) the proposed testimony of the rebuttal witness is cumulative as Prosecution witnesses have already testified on this matter.<sup>31</sup>

18. The Prosecution filed its reply on 31 May 2011.<sup>32</sup> The Prosecution submitted that (1) the notice of the Accused's alibi was not provided as early as was reasonably practicable,<sup>33</sup> (2) the alibi defence was not reasonably foreseeable and could thus not have been investigated beforehand,<sup>34</sup> and (3) rebuttal evidence is not rendered cumulative by virtue of it being corroborative.<sup>35</sup>

19. On 7 June 2011, the Chamber rendered its Decision, in which it granted the Prosecution's Motion for Rebuttal.<sup>36</sup> The Chamber held that it has broad discretion to hear evidence that will assist in the determination of the truth and found it in the interest of justice to allow the Prosecution to present evidence in rebuttal to the alibi defence.<sup>37</sup>

20. On 10 June 2011, the Defence filed a motion for reconsideration of the Impugned Decision.<sup>38</sup> The Defence submits, *inter alia*, that the Impugned Decision misinterprets the facts and the law on the matter of rebuttal and fails to rule on issues raised by the Parties' in their submissions.<sup>39</sup> The Defence further submits that the Impugned Decision constitutes an abuse of power and causes the Accused to suffer injustice and prejudice and that the Prosecution is in violation of its Rule 66(A)(ii) disclosure obligations.<sup>40</sup> The Defence lastly contends that the Impugned Decision causes considerable problems with the management of the case.<sup>41</sup>

<sup>28</sup> Response to Rebuttal Motion, paras. 25-39, 49-53.

<sup>29</sup> Response to Rebuttal Motion, paras. 40-45.

<sup>30</sup> Response to Rebuttal Motion, paras. 46-48.

<sup>31</sup> Response to Rebuttal Motion, paras. 54-57.

<sup>32</sup> Prosecutor's Reply to Defence Response to Prosecutor's Motion for Leave to Present Evidence in Rebuttal to the Alibi Defence Pursuant to Rules 54, 67(A)(ii) and 85(A)(iii) ("Reply to Rebuttal Motion"), 31 May 2011.

<sup>33</sup> Reply to Rebuttal Motion, paras. 10-15.

<sup>34</sup> Reply to Rebuttal Motion, paras. 16-19.

<sup>35</sup> Reply Rebuttal Motion, paras. 20-23.

<sup>36</sup> Decision on Prosecutor's Motion for Leave to Present Evidence in Rebuttal to the Alibi Defence ("Impugned Decision"), 7 June 2011.

<sup>37</sup> Impugned Decision, para. 26.

<sup>38</sup> Extremely Urgent Motion for Reconsideration of the Trial Chamber 7 June 2011 Decision on Prosecutor's Motion for Leave to Present Evidence in Rebuttal to the Alibi Defence ("Defence Motion"), 10 June 2011.

<sup>39</sup> Defence Motion, para. 10.

<sup>40</sup> Defence Motion, paras. 19-32.

<sup>41</sup> Defence Motion, paras. 33-35.

21. On 13 June 2011, the Prosecution filed a response to the Defence Motion.<sup>42</sup> The Prosecution submits, *inter alia*, that the Defence request has not met the standard for reconsideration, as there is “insufficient reason to believe the original decision was erroneous or constituted an abuse of power.”<sup>43</sup>

22. On 14 June 2011, the Defence filed a reply to the Prosecution Response.<sup>44</sup> The Defence submits, *inter alia*, that it cannot commence investigations until the close of the Defence case, due to the limited resources available to it.<sup>45</sup> The Defence further reiterates the fact that it is entitled to a “reasoned opinion” as a part of the Accused’s right to a fair trial.<sup>46</sup> The Defence clarified that where more limited standards are in place as set out in the jurisprudence, the general standard related to the “interest of justice” does not govern.<sup>47</sup>

### DELIBERATIONS

#### *Applicable Law on Reconsideration*

23. The Chamber recalls that according to the Tribunal’s jurisprudence, a Trial Chamber may exercise its discretion to reconsider a decision when one of the following criteria has been met: “(i) a new fact has been discovered that was not known to the Chamber at the time it made its original Decision; (ii) there has been a material change in circumstances since it made its original Decision; or (iii) there is reason to believe that its original Decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an

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<sup>42</sup> Prosecution Response to Extremely Urgent Motion for Reconsideration of the Trial Chamber 7 June 2011 Decision on Prosecutor’s Motion for Leave to Present Evidence in Rebuttal to the Alibi Defence (“Prosecution Response”), 13 June 2011.

<sup>43</sup> Prosecution Response, paras. 7-11.

<sup>44</sup> Defence Reply to Prosecution Response to Extremely Urgent Motion for Reconsideration of the Trial Chamber 7 June 2011 Decision on Prosecutor’s Motion for Leave to Present Evidence in Rebuttal to the Alibi Defence (“Defence Reply”), 14 June 2011.

<sup>45</sup> Defence Reply, paras. 8-9, 16. Page 6, paras. 4-5.

<sup>46</sup> Defence Reply, paras. 13-14.

<sup>47</sup> Defence Reply, para. 17.

injustice.”<sup>48</sup> The party seeking reconsideration bears the burden of demonstrating the existence of the enumerated circumstances.<sup>49</sup>

24. The Chamber recalls and incorporates herein the law on the admission of rebuttal evidence, set out succinctly in the Impugned Decision.<sup>50</sup>

*Relevant and Probative Value of Prosecution Rebuttal Evidence*

25. The Defence submits that the Chamber’s Impugned Decision is erroneous and constitutes an abuse of power, resulting in an injustice, therefore warranting a reconsideration of the Decision.<sup>51</sup> The Defence submits that the Chamber did not make a finding on the probative value of the rebuttal evidence and notes that the Prosecution could have reasonably foreseen the substance of the alibi defence.<sup>52</sup> The Defence further notes that the “interest of justice” standard that is applied when granting the Prosecution leave to present rebuttal evidence is a “very general standard,” and is one that is “inapplicable to the admissibility of rebuttal witnesses,”<sup>53</sup> where a more tailored standard exists.<sup>54</sup>

26. The Chamber finds at the outset, that the “interest of justice” standard applied to the ascertainment of the truth applies to all aspects of the proceedings, including the hearing of rebuttal evidence.<sup>55</sup> Indeed it is one of the guiding principles by which the Chamber is to conduct itself when ascertaining the truth. The Chamber therefore rejects the Defence submission that the standard is inapplicable to the issue surrounding the hearing of rebuttal evidence. The Chamber further notes, contrary to the Defence submission, that the Impugned

<sup>48</sup> *Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-T, Decision on the Defence Motion for Reconsideration of the Chamber’s 13 January 2010 Decision on Video-Link Testimony (TC), 29 January 2010, para. 5; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion for Reconsideration of Decision on Joseph Nzirorera’s Motion for Inspection: Michel Bagaragaza (TC) (“Karemera Decision of 29 September 2008”), 29 September 2008, para. 4. See also *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.14, Decision on Mathieu Ndirumpatse’s Appeal from the Trial Chamber Decision of 17 September 2008 (AC), 30 January 2009, para. 13; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor’s Motion for Reconsideration of the Trial Chamber’s “Decision on Prosecutor’s Motion for Leave to Vary the Witness List Pursuant to Rule 73bis(E)” (TC), 15 June 2004, paras. 8-9.

<sup>49</sup> See e.g., *Prosecutor v. Nindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Prosecution’s Motion for Reconsideration of the Chamber’s Decision Dated 18 February 2009 (TC), 19 March 2009, para. 2; Karemera Decision of 29 September 2008, para. 4.

<sup>50</sup> Impugned Decision, paras. 19-23.

<sup>51</sup> Defence Motion, paras. 10, 19, 23.

<sup>52</sup> Defence Motion, paras. 12-17.

<sup>53</sup> Defence Motion, para. 16.

<sup>54</sup> Defence Reply, para. 17.

<sup>55</sup> See Rule 85(A), which entitles the Chamber to be guided by the “interests of justice” in determining the presentation and sequence of the evidence.

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Decision does in fact discuss the relevant, probative value of the evidence sought to be adduced.<sup>56</sup>

27. The Chamber recalls that it enjoys broad discretion to hear evidence which it deems relevant and probative, pursuant to Rules 54, 89(C) and 98 of the Rules, which includes rebuttal evidence.<sup>57</sup> The Chamber carefully reviewed the content of the proposed rebuttal testimony and determined that it was not cumulative in nature and was highly relevant and probative to the determination of the truth in this case.<sup>58</sup>

28. The Chamber notes that the scope of the three Prosecution witnesses has been strictly limited to the rebuttal of the alibi evidence, namely specific dates upon which the Accused is alleged to have been absent from Butare.<sup>59</sup> The Chamber does not intend to allow the Prosecution to re-open its case by adducing cumulative and marginally relevant material, unrelated to the alibi defence. More specifically, the Chamber notes that Witness A's testimony will be limited to the alleged presence of the Accused in Butare on 21 and 22 April 1994.<sup>60</sup> Witness A is further expected to provide testimony on the presence of the Accused in Butare town towards the end of May 1994.<sup>61</sup> Witness B is to testify to the coming and goings of the Accused with his vehicle to Mata towards the end of May 1994.<sup>62</sup> Witness C is similarly expected to testify regarding the presence of the Accused in Butare towards the end of May 1994.<sup>63</sup>

29. The Chamber finds that the limited scope of the rebuttal testimonies responds to alibi evidence proffered by the Defence. Moreover, the Chamber does not find that the rebuttal evidence is introduced with the intent to challenge the credibility of a Defence witness or other collateral matters in the case.

30. The Chamber, as noted in the Impugned Decision<sup>64</sup> considers alibi a central issue to this case and thus all evidence surrounding alibi to be highly relevant and of probative value. The Chamber considers it crucial in its search for the truth to grant the Prosecution leave to

<sup>56</sup> Impugned Decision, paras. 20, 22, 23, 24, 26.

<sup>57</sup> See also Rule 85(A).

<sup>58</sup> Impugned Decision, paras. 20, 22, 23, 24, 26.

<sup>59</sup> Impugned Decision, para. 26.

<sup>60</sup> Motion for Rebuttal, Confidential Annex A, p. 2.

<sup>61</sup> *Ibid.*

<sup>62</sup> Motion for Rebuttal, Confidential Annex A, p. 3.

<sup>63</sup> Motion for Rebuttal, Confidential Annex A, p. 4.

<sup>64</sup> Impugned Decision, para. 24.

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present evidence in rebuttal by means of Witnesses A, B and C.<sup>65</sup> The Chamber notes that the presentation of rebuttal evidence does not preclude the Defence from applying for leave to present evidence in rejoinder, as foreseen by Rule 85(A).

31. While the Chamber recognizes the additional resources and time required to investigate and prepare for both the cross-examination of the rebuttal witnesses and the search for potential rejoinder witnesses, the Chamber finds that the interest of justice compels it to hear all the evidence surrounding the alibi defence. The Chamber considers the prejudice caused to the Accused by hearing the rebuttal evidence to be mitigated by the Defence's ability to apply for leave to present evidence in rejoinder and the additional time afforded to conduct its investigations as set out below.

*Rule 67(A)(ii)*

32. The Chamber notes that purpose of Rule 67(A)(ii)(a) is to "enable the Prosecution to test the evidence upon which the Accused relies in support of ... the ... alibi."<sup>66</sup> The Appeals Chamber has stated that the Rule "allows the Prosecution to organize its evidence and to prepare its case prior to the commencement of trial on the merits."<sup>67</sup> Indeed, as the Chamber held in the Impugned Decision, the purpose of this reciprocal pre-trial disclosure obligation is to allow the Prosecution to organise its evidence and to prepare its case prior to the commencement of the trial, so as to ensure the efficient administration of justice.<sup>68</sup> After the Defence has provided notice of its intent to rely on an alibi defence, the Prosecution "is entitled to find and call witnesses to rebut the alibi."<sup>69</sup>

33. While the Trial Chamber observes that the Prosecution did receive indications, as early as 12 January 2011 that the Defence intended to adduce alibi evidence of the Accused's absence from Butare on 21 and 22 April 1994 and from 26 April 1994 to 26 May 1994,<sup>70</sup> the

<sup>65</sup> See e.g., *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-A, Judgement, 19 July 2010, para. 49. The Appeals Chamber found, in the context of having denied the Prosecution the opportunity to present witnesses in its case in chief, that "given the potential importance of these witnesses to the Prosecution's case ... the error undermined the fairness of the proceedings as guaranteed by the Statute and Rules and resulted in a miscarriage of justice."

<sup>66</sup> *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Jérôme Bicomumpaka's Notice of Alibi (TC), 7 July 2005, para. 3.

<sup>67</sup> *Rutaganda v. Prosecutor*, Case No. ICTR-96-3-A, Judgement on Appeal (AC) ("Rutaganda Appeal Judgement"), 26 May 2003, para. 241.

<sup>68</sup> Rutaganda Appeal Judgement, para. 241, citing *Kayishema and Ruzindana v. Prosecutor*, Case No. ICTR-95-1-A, Judgement on Appeal (AC), paras. 109-110. See also *Prosecutor v. Karera*, Case No. ICTR-01-74-T, Decision on Motion for Further Alibi Particulars (TC), 7 March 2006, para. 2, footnote 1.

<sup>69</sup> *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Prosecutor's Motion for an Order to File Notice of Alibi (TC), 22 March 2007, para. 13.

<sup>70</sup> Alibi Notice, paras. 9-11.



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Defence provided the Prosecution with full disclosure of the alibi witness particulars and the actual evidence upon which it intended to rely well after the close of the Prosecution case.<sup>71</sup> Notwithstanding the alibi notice provided days before the start of the Prosecution case on 17 January 2011, the Chamber finds that the Prosecution was not able to adequately organize its evidence on the merits of the alibi defence prior to the commencement of trial, and afforded the Prosecution with the opportunity to exercise “its right to call rebuttal witnesses” as early as 7 February 2011.<sup>72</sup>

34. The Chamber thus does not premise the decision to hear the rebuttal evidence on the date upon which the Defence disclosed its notice, but upon the ability of the Prosecution to adequately investigate the alibi defence witnesses and evidence and respond thereto, in accordance with the Appeals Chamber’s findings.<sup>73</sup> Accordingly, the Chamber does not find that it has been erroneous in its interpretation of the law and the facts and does not consider the granting of the Prosecution request for leave to present evidence to be an abuse of its discretion.

#### *Timing of the Hearing of Rebuttal Evidence*

35. The Defence submits that if the rebuttal evidence is to be heard, it cannot properly cross-examine the three Prosecution witnesses immediately following the Defence case, without having adequate time to conduct investigations into the three witnesses.<sup>74</sup> The Chamber is persuaded by the Defence submission that it cannot properly prepare for the cross-examination of the three Prosecution Rebuttal Witnesses without having conducted investigations into the three witnesses. Indeed, articles 20(4)(b) and (c) of the Statute provide the Accused with the right to have “adequate time and facilities for the preparation of his or her defence...” and “[to] be tried without undue delay.”

36. Accordingly, the Chamber finds that the Defence cannot proceed with the cross-examination of the rebuttal witnesses immediately following the Defence case, and thus reconsiders its decision on this matter. The Chamber recognizes the time-consuming nature of the Defence investigations and considers that the Defence is entitled to adequate time. In

<sup>71</sup> See Amended Pre-Defence Brief, 20 April 2011. See also *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Prosecutor’s Motion to Call Rebuttal Evidence (TC), 8 March 2011, para. 42. The Trial Chamber similarly allowed for the presentation of rebuttal evidence, where notice had been given of the alibi defence, but further details about the evidence surrounding the alibi defence had only been provided at a later stage.

<sup>72</sup> Second Alibi Decision, para. 8.

<sup>73</sup> See *Supra* at para. 32.

<sup>74</sup> Defence Motion, paras. 33-35; Defence Reply, paras. 8-9, 16. Page 6, paras 4-5. *The Prosecutor v. Ildéphonse Nizeyimana*, Case No. ICTR-00-55C-T

light of the very limited scope of the rebuttal testimonies, and the time necessary to locate possible rejoinder witnesses, the Chamber orders that the hearing of the rebuttal witnesses take place during on 7 and 8 September 2011. The hearing of Defence Rejoinder Witnesses, should the Defence request for leave to present such evidence, shall take place immediately following the Prosecution Rebuttal Witnesses.

*Rule 66(A)(ii)*

37. Rule 66(A)(ii) imposes upon the Prosecution the obligation to disclose “copies of statements of all witnesses whom the Prosecutor intends to call at trial” no later than 60 days before the commencement of trial. The Rule goes on to state that the Chamber may order the disclosure of copies of statements of additional Prosecution witnesses within a prescribed time. The Chamber finds that the Defence has made a good cause showing of the need for the disclosure of the statements of Witnesses A, B and C. The Chamber therefore orders the Prosecution to disclose any statements by Witnesses A, B and C no later than 60 days before the date upon which the Witnesses are to testify.

38. If the Defence elects to present witnesses in rejoinder, it shall disclose to the Prosecution copies of materials and statements relevant to the witnesses no later than 30 days before the potential witnesses are to testify.

**FOR THESE REASONS, THE CHAMBER**

**GRANTS** the Defence Motion in part;

**ORDERS** that the Prosecution present its rebuttal evidence on 7 and 8 September 2011;

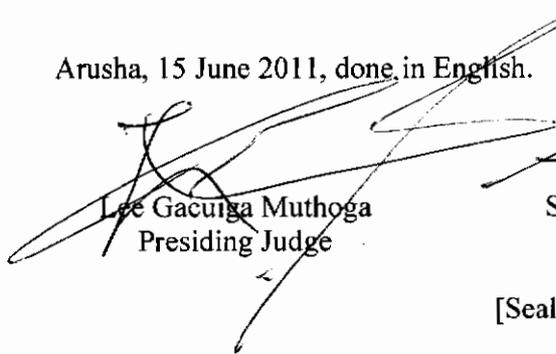
**ORDERS** the Prosecution to disclose copies of three witness statements to the Defence no later than 60 days before the date upon which they are to testify; and

**DENIES** the Defence Motion in all other aspects.

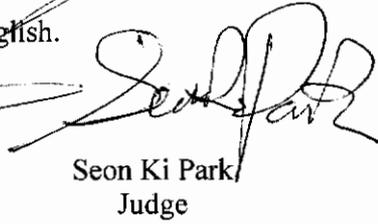


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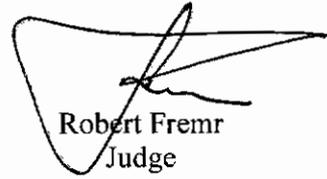
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Lee Gacunga Muthoga  
Presiding Judge



Seon Ki Park  
Judge



Robert Fremr  
Judge

[Seal of the Tribunal]