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UNITED NATIONS
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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

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ORIGINAL RECEIVED
ICTR
CRIMINAL REGISTRY

TRIAL CHAMBER II

OR: ENG.

Before: Judge William H. Sekule, Presiding Judge
Judge Pavel Dolenc
Judge Mehmet Güney

Registry: Mr. John Kiyeyu

Date of Decision: 6 October, 1999

**THE PROSECUTOR
VERSUS
JÉRÔME BICAMUMPAKA
Case No. ICTR-99-50-I**

DECISION ON THE MOTION REQUESTING THE ASSIGNMENT OF FRANCINE VEILLEUX AS DEFENCE COUNSEL FOR JÉRÔME CLÉMENT BICAMUMPAKA

The Office of the Prosecutor:
Mr. Frédéric Ossogo

The Accused:
Mr. Jérôme Clément Bicamumpaka

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: AMINATTA L.R. N'GUM
SIGNATURE: [Signature] DATE: 07/10/99

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“The Tribunal”),

SITTING as Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Pavel Dolenc, and Judge Mehmet Güney;

CONSIDERING THAT Jérôme-Clément Bicamumpaka (“the accused”) was arrested on 6 April 1999 in Yaoundé, Cameroon, transferred to the UN Detention Facility on 31 July 1999 and made his initial appearance on 17 August 1999;

NOTING the Indictment by the Prosecutor dated 12 May 1999 against the accused, Casimir Bizimungu, Justin Mugenzi and Prosper Mugiraneza, indicting the accused for Genocide, Crimes Against Humanity, Violations of Article 3 Common to the 1949 Geneva Conventions, and Violations of the 1977 Additional Protocol II thereto on the basis that there was sufficient evidence to provide reasonable grounds pursuant to Rule 47(D) of the Rules of Procedure and Evidence (“The Rules”);

WHEREAS the accused appeared for his initial appearance on 17 August 1999, when the Trial Chamber entered a plea of not guilty to the charges against him pursuant to Rule 62;

WHEREAS also the accused requested the Trial Chamber to assign him a qualified lawyer to enable him to file his preliminary motions to which the Trial Chamber responded by ordering the Registrar to assign a Lead Counsel to the accused;

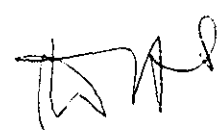
BEING SEIZED OF a Defence motion dated 16 August 1999 requesting, *inter alia*, the assignment of Ms. Francine Veilleux of the Quebec Bar, Canada, to represent him with effect from 20 May 1999;

CONSIDERING Article 19 (1) of the Statute of the Tribunal (“the Tribunal”), on fair and expeditious trial, Article 20, pertaining to the rights of the accused, Rule 45 of the Rules, Articles 5, 10, 11 and 12 of the Directive on the Assignment of Counsel (“the Directive”) and Rules 19 and 23 of the Rules on the Functions of the Tribunal;

HAVING HEARD the Parties on 29 September 1999 and taking into account their submissions, particularly the submissions by the accused to have a Counsel of his choice assigned to him, some of which are articulated in the Submissions below.

SUBMISSIONS

1. **The accused** appeared *pro se* before the Trial Chamber and submitted, *inter alia*, that



1.1 on 18 April 1999, he mandated to Ms Francine Veilleux to represent him and on 20 June 1999, he applied formally to the Registrar requesting the assignment of the said Counsel;

1.2 on 18 August 1999, the Registrar wrote a letter to the accused informing him that his request for assignment of Counsel was still pending due to the on-going investigations into his indigence and the accused interpreted this information to mean that the Registrar would eventually assign Ms. Francine Veilleux as his Counsel;

1.3 moreover, the Registrar's explanation regarding on-going investigations about his indigence does not justify the delay of assignment of a Counsel of his choice because pursuant to Rule 45(G) of the Rules, where an indigent accused is assigned a Counsel and it is subsequently found out to be untrue, the costs of providing him with such a Counsel are recoverable;

1.4 the Registrar did not comply with the Trial Chamber's Order of 17 August to assign him a Counsel, which has violated his right to be represented by a Counsel of his own choice as stipulated in Article 20 of the Statute. Further, he has also been denied a right to be represented by a Counsel who fulfils the requirements to be assigned as Counsel pursuant to Rule 45(ii) of the Rules;

1.5 the Registrar must conduct in a neutral manner and strictly apply the Rules. He cannot embark upon an arbitrary and discriminatory approach by creating two categories of the accused namely, those who are allowed to choose their assigned Counsel and those who are not allowed to do so;

1.6 the exclusion of Canadian advocates from the Registrar's List of Lawyers to be assigned to the accused is discriminatory by reason of nationality and is contrary to practice adopted by the Tribunal for the former Yugoslavia. This practice is arbitrary and affects the credibility of the Tribunal. Moreover, the Registrar had promised that the existing moratorium pertaining to Canadian and French lawyers should be temporary but it has now been in operation for a year;

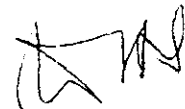
1.7 although the moratorium is in force, it has not been complied with because the Registrar as recent as 30 March 1999 had appointed a Canadian Lawyer to Ignace Bagilishema and to others;

1.8 the well established practice of the Tribunal on the assignment of Counsel requires that the accused should consent to the counsel assigned to him.

2. The Registrar

The Registrar's representative, Mr Alessandro Caldarone, stated that the claims of the accused were unfounded and without basis and submitted *inter alia* that:

2.1 pursuant to Rule 62 of the Rules, the rights of the accused were observed and thus complied with during his initial appearance on 17 August;



- 2.2 initially Ms. Francine Veilleux was representing the accused *pro bono* and pursuant to Rule 58 of the Rules Covering the Detention of Persons awaiting Trial or Appeal Before The Tribunal or Otherwise Detained On The Authority of the Tribunal, 1998, the accused was allowed access to her through telephone calls and correspondence. However, Ms. Francine Veilleux expressed her wish to the Registrar on 19 June 1999 to be assigned as Counsel for the accused and to be paid;
- 2.3 pursuant to Rules 44 of the Rules, an accused may be represented by Counsel whom he would pay or by a Counsel who acts *pro bono* or he may be represented by a Counsel paid for by the Tribunal as provided for in Rule 45 of the Rules on the basis of indigence;
- 2.4 the assignment of Counsel is made at the request of the detainee and not at the request of Counsel as Ms. Francine Veilleux did. Additionally, in assigning Counsel, the Registrar does not generalize cases but considers each request on a case by case basis;
- 2.5 Ms Francine Veilleux is not assigned formally to the accused and the accused is yet to be assigned a Counsel given the on-going investigations by the Registrar of his indigence.

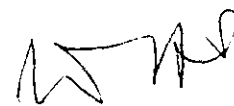
3. The Prosecutor

The Prosecutor, submitted, *inter alia*, that:

- 3.1 the Statute is the paramount law to be relied upon thus Article 20 of the Statute would suffice and there is no need to resort to general principles of law. Additionally, Rule 19, pertaining to the administrative role of the President and Rule 23 of the Rules regarding the role of the Bureau, are clear and provide ample direction on what should be done in cases such as these.
- 3.2 Rule 19, stipulates that the President has to supervise the Registrar and the accused may bring his matter before the President if he is not satisfied with the decision of the Registrar. The accused may also approach the Bureau as provided in Rule 23. However, in the current motion, there is no indication that the accused is actually dissatisfied with the Registrar's decision or that the accused has exhausted the established procedure under the Rules.
- 3.3 the accused should not entrench a particular position at all costs otherwise no progress would be made in this case.

AFTER HAVING DELIBERATED

4. The main issue to be determined in the instant case is whether the Trial Chamber is competent to deal with the issue of the assignment of Counsel to the accused at this stage.



Considering Rule 45 of the Rules, the responsibility for the assignment of Counsel to an indigent accused rests upon the Registrar. The relevant provisions of Rule 45 state that:

(...)

(C) In assigning counsel to an indigent suspect or accused, the following procedure shall be observed:

- (i) a request for assignment of counsel shall be made to the Registrar;*
- (ii) the Registrar shall enquire into the financial means of the suspect or accused and determine whether the criteria of indigence are met;*
- (iii) if he decides that the criteria are met, he shall assign counsel from the list; if he decides to the contrary, he shall inform the suspect or accused that the request is refused.*

(D) If a request is refused, a further reasoned request may be made by the suspect or the accused to the Registrar upon showing a change in circumstances.

(...)

(H) Under exceptional circumstances, at the request of the suspect or accused or his counsel, the Chamber may instruct the Registrar to replace an assigned counsel, upon good cause being shown and after having been satisfied that the request is not designed to delay the proceedings.

5. This provision has been elaborated in the Directive on the Assignment of Counsel dated 9 January 1996 as amended by the Plenary on 6 June 1997, 8 June 1998 and June 1999. Pursuant to Article 5 of the Directive, an accused, using a prescribed form, shall request the Registrar to assign Counsel to him. In the instant case, the accused allegedly submitted his request on 20 May 1999 but to date, the Registrar is yet to assign him a Counsel. Rule 45 of the Rules and Article 10 of the Directive stipulate that the Registrar shall determine whether or not a suspect or accused is indigent. The Registrar is called upon to make a decision either assign Counsel to the accused or to deny the request of the accused to assign him a Counsel. If the Registrar decides to deny the request of the accused, he must accompany his decision with written reasons. Alternatively, the Registrar, instead of taking any decision, may seek more information to support the request of the accused for the purpose of establishing whether a suspect or an accused satisfies the requisite conditions for the assignment of counsel. In accordance with Rule 45(C) of the Rules and Article 11 of the Directive, the Registrar must notify the suspect or accused of his decision to either grant or deny the assignment of Counsel.

6. It is the view of the Trial Chamber that should the Registrar deny the assignment of Counsel, the accused has the liberty to seek the remedy provided in Article 12 of the Directive. The salient provisions in this case are Article 12(A) and 12 (C). Pursuant to article 12(A) of the Directive, a suspect who has been denied assignment of Counsel may seek the President's review of the Registrar's decision. The President has discretionary powers to either confirm the Registrar's decision or to decide that a counsel shall be assigned. By virtue of Article 12(C) of the Directive, the accused

may file a preliminary motion objecting to the denial of his request for the assignment of Counsel, not later than 60 days after the initial appearance and in any event before the hearing of the case on the merits.

7. In the instant case, the Registrar is still investigating thus, so far, no decision has been made on the assignment of Counsel to the accused. The Trial Chamber notes that the major reason for the delay of the assignment of Counsel is due to the on-going investigation of the indigence of the accused. Hence, the process of assigning a Counsel to the accused is still underway. The Chamber is, therefore, of the view that it lacks the competence to deal with the issue of assignment of Counsel to the Accused at this stage and that the relevant organ to handle the issue of assignment of Counsel is still the Registrar. If the Registrar decides not to assign Counsel to the accused and the accused is dissatisfied with that decision, then he may seek the remedies enumerated in Article 12 of the Directive as discussed above. Presently, at this stage the accused may not even seek the available remedy as this would be premature.
8. The Trial Chamber underscores the need to guarantee the rights of the accused, particularly the right to be represented by Counsel, pursuant to Article 20 (4) (d) of the Statute. The Trial Chamber is also not oblivious of its statutory role as stated in Article 19 of the Statute: to ensure that a fair and expeditious trial ensues. In order to have fair trial, the accused must be able to prepare his defence efficiently which may necessitate the engagement of a Defence Counsel. The accused contended that, by not being assigned Counsel of his choice, he is being given differential treatment, which is detrimental to his rights for equal representation before the Tribunal. The Trial Chamber is aware of the right to equality before the Tribunal as stipulated in Article 20(1) of the Statute and is of the opinion that this has not been breached.
9. The Trial Chamber is also aware of the Decisions concerning the assignment of Counsel as cited by the accused in his oral submission. However, the Trial Chamber observes that the cases referred to by the accused covered different aspects of the assignment of Counsel and dealt with change of Counsel, where exceptional circumstances were established. In *The Prosecutor vs. Joseph Kanyabashi*, Case No. ICTR-96-15-T, Kanyabashi and the assigned Counsel had no effective communication and the accused filed a motion for change of Counsel. However, at the hearing of the motion, as a preliminary matter, the Defence Counsel requested to withdraw and in its Decision of 29 October 1997, the Trial Chamber granted his request. It is important to note that after the withdrawal of Counsel, the Trial Chamber did not assign a new Counsel since the assignment of Counsel is to be dealt with by the Registrar.
10. In another case, *The Prosecutor vs. Theoneste Bagosora*, Case No. ICTR-96-7-T, the Trial Chamber, in its Decision of 27 June 1997, granted the request of the accused to change his Counsel. This time the 'exceptional circumstances' were found to be the deliberate refusal to communicate with the accused and the subsequent lack of confidence in his Counsel. The Appeals Chamber decision of 27 July 1999, in the case of *Jean Paul Akayesu vs. The Prosecutor*, Appeals Chamber No. ICTR-96-1-A may contain facts similar to the instant case, but it is still divergent from the instant case. The *Akayesu* case was concerned with the assignment of another Counsel to replace the initially assigned Counsel. Further, unlike those

cases, in the instant case, the accused is at the preliminary stage of seeking Counsel to be assigned to him. In the above mentioned, the Chambers instructed the Registrar to assign Counsel to the accused after granting the motion for withdrawal or replacement of the assigned counsel.

11. Considering these facts, the Registrar must exercise his discretion to either assign Counsel to the accused or deny him Counsel, taking into consideration the relevant factors as articulated in some of the decisions of the Tribunal, particularly, the case of *The Prosecutor vs Nyiramasuhuko* case No. ICTR-97-21-T, where the Trial Chamber set out some of the factors to be considered, which included "the resources of the Tribunal, competence and recognized experience of counsel, geographical distribution, a balance of the principal legal systems of the world, irrespective of the age, gender, race or nationality of the candidates."
12. The Trial Chamber is mindful of the fact that the Rules and the Directive on Assignment of Counsel do not prescribe a specific time limit within which the Registrar should assign a Counsel to the accused. However, in light of the fact that the initial appearance of the accused has been completed, the Trial Chamber demands that the assignment of Counsel be expedited as the accused may wish to file preliminary motions within an established time period.
13. Consequently, the Registrar should finalize the investigations on the indigence of the accused and assign the accused a Counsel. The Trial Chamber recalls the initial appearance of the accused on 17 August 1999, during which the accused orally raised the issue of assignment of Counsel. The Trial Chamber stated that the matter of assignment of Counsel, if the Accused is qualified to be assigned a Counsel, should be considered urgently as the accused had already made his initial appearance and there were a lot of legal consequences arising therefrom, such as, the filing of preliminary motions.¹* Although the Chamber reiterates its Decision of 17 August 1999, it cannot order the Registrar to assign a particular Counsel. The Trial Chamber in the *Nyiramasuhuko* case articulated this matter well and stated that its role was only engage in judicial supervision to ensure the compliance of the Rules. This Chamber agrees with the reasoning in the *Nyiramasuhuko* case on this matter. The other issues raised by the accused are not relevant in the framework of this motion and consequently, there is no need to deal with them.

¹ Reproduced by the accused in the Transcript of 29 September 1999, p. 7



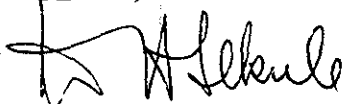
FOR ALL THE FOREGOING REASONS, THE TRIBUNAL

1. **DISMISSES** the Defence Motion requesting for the assignment of Counsel.

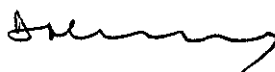
2. **ORDERS** the Registrar to make a determination regarding the indigence of the Accused and accordingly either grant or deny the assignment of a Defence Counsel to the Accused.

3. **INSTRUCTS** the Registrar to notify all parties concerned of this Decision.

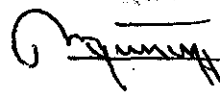
Arusha, 6 October 1999.



William H. Sekule
Presiding Judge



Pavel Dolenc
Judge



Mehmet Güney
Judge

Seal of the Tribunal

