

45

ICTR-97-21-I
02-03-2000



0145
6132-6298

6132

UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER I

OR: ENG

Before: Judge Laïty Kama, Presiding
Judge William H. Sekule
Judge Mehmet Güney

Registry: Mr. John Kiyeyu

Decision of: 2 March 2000

ICTR
COURT MGMT.
RECEIVED
20 MAR -2 A 10:54

THE PROSECUTOR

v.

PAULINE NYIRAMASUHUKO AND ARSENE SHALOM NTAHOBALI

Case No. ICTR-97-21-I

**DECISION ON THE DEFENSE MOTION TO ADJOURN HEARING ON THE
PRELIMINARY MOTION BASED ON DEFECTS IN THE FORM AND
SUBSTANCE OF THE INDICTMENT**

The Office of the Prosecutor:

Mr. Japhet Mono
Ms Andra Mobberley

Counsel for the Accused:

Ms Nicole Bergevin
Mr. Guy Poupart

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II of the International Tribunal for Rwanda ("Tribunal") composed of Judge Laïty Kama, presiding, Judge William H. Sekule, and Judge Mehmet Güney;

CONSIDERING the Indictment of 22 May 1997 against Pauline Nyiramasuhuko ("Nyiramasuhuko") and Arsène Shalom Ntahobali ("Ntahobali"), confirmed on 29 May 1997 by Judge Yakov Ostrovsky;

CONSIDERING the initial appearance of Nyiramasuhuko on 3 September 1997 and her plea of not guilty to all five counts brought against her by the Prosecutor;

CONSIDERING the initial appearance of Ntahobali on 17 October 1997 entering a plea of not guilty to each of the counts in the Indictment;

NOTING the Prosecutor's motions, filed on 18 August 1998, for the joinder of this case with the cases of Sylvain Nsabimana, Alphonse Ntezirirayo, Joseph Kanyabashi and Elie Ndayambaje and for leave to amend the Indictments of all of the above-mentioned accused;

CONSIDERING that during the hearing for the said motions on 24 September 1998, both motions were postponed *sine die* following an oral decision rendered by Trial Chamber I on an objection based on lack of jurisdiction raised by the Defense of Joseph Kanyabashi;

CONSIDERING that the said decision was appealed, and that the Appeals Chamber passed judgement on 3 June 1999;

NOTING that, on 9 August 1999, the Prosecutor's request for leave to amend the Indictment of Nyiramasuhuko was heard and that, on 11 August 1999, the Chamber having granted the said motion, Nyiramasuhuko was then charged with six new counts, on which she appeared on 12 August 1999;

NOTING that, on 10 August 1999, the Trial Chamber orally granted the Prosecutor's request for leave to amend the Indictment of Ntahobali, who was consequently charged with five new counts, on which he appeared on 12 August 1999;

CONSIDERING that, on 13 August 1999 the Prosecutor's motion for joinder was heard and subsequently granted, on 5 October 1999;

CONSIDERING that, following the receipt of the decision admitting the Prosecutor's request for joinder, the Defense of Nyiramasuhuko contested this decision in a Notice of Appeal relating to an objection based on lack of jurisdiction, filed on 1 November 1999;

BEING SEIZED of a motion of the Defense, dated 3 February 2000, to adjourn the hearing of the preliminary motion based on defects in the form and the substance of the Indictment;



HAVING HEARD the parties on the said Defense motion at a hearing on 10 February 2000;

ARGUMENTS OF THE PARTIES

Motion

In her motion, the Defense asks the Chamber to adjourn the hearing and the Decision on the preliminary motion based on defects in the form and substance of the Indictment, filed on 27 October 1999, pending a ruling by the Appeals Chamber on her Notice of Appeal dated 1 November 1999 relating to an objection based on lack of jurisdiction and also on her request that Trial Chamber II be ruled to be without jurisdiction to hear any future motions and to conduct the trial of this case on account of an alleged appearance of partiality of the said Chamber.

Hearing of 10 February 2000

Prior to any finding, the Chamber deems it necessary to review the arguments presented during the hearing of 10 February 2000.

Defense Counsel for Ntahobali

During the 10 February 2000 hearing, the new Defense Counsel of Ntahobali, Mr. René Saint-Léger, asked the Chamber for leave to withdraw the initial motion filed by the previous Counsel, so as to enable him to consider, together with the Counsel for Nyiramasuhuko, issues on which they could possibly make a joint application before the Chamber.

He also asked the Chamber to grant him more or less two weeks to enable him to look through the documents and prepare a new motion.

Defense Counsel for Nyiramasuhuko

The Counsel for Nyiramasuhuko appeared to agree with the new Counsel for Ntahobali that there was a possibility for them to raise joint issues in the new preliminary motion or motions which were to be filed.

Prosecutor

In response to the present motion the Prosecutor, during the hearing of 10 February 2000, submitted that the leave sought by the Defense to adjourn these proceedings on the basis that there is notice filed in the Appeals Chamber, is not sufficiently elaborated to justify the suspension of the hearing. Furthermore, the Prosecutor stated that time and again the Trial Chambers of this Tribunal have held that the mere fact that a Notice of Appeal was filed did not, in any way, justify the suspension of the hearing of the proceedings of the Trial Chamber, as whether or not the Appeal decision is going to affect the proceedings is a subject that no party can speculate about.



On the prayer by the new Defense Counsel for Ntahobali to withdraw the initial motion and to file a new one, the Prosecutor had no objections as it was well-founded and in the interests of justice. The Prosecutor further submitted that if the intention of the Defense Counsel for Ntahobali would be to make a joint motion with Counsel for Nyiramasuhuko, that could entail the withdrawal of the motion filed by Counsel for Nyiramasuhuko.

AFTER HAVING DELIBERATED,

THE CHAMBER,

CONSIDERING that, during the hearing of 10 February 2000, the Chamber granted leave to withdraw the initial motion of the Defense for Ntahobali and agreed that he could have appropriate time to be able to file a new motion;

NOTING that during the said hearing, the Defense Counsel for Ntahobali affirmed that he would consider, together with the Counsel for Nyiramasuhuko, issues on which they would make a joint application before the Chamber;

CONSIDERING that Defense Counsel for Nyiramasuhuko confirmed this intention;

CONSIDERING that, as both Counsels are envisaging the possibility to submit a new joint motion, the present motion is, in the current circumstances, premature and does not provide a basis on which to act upon;

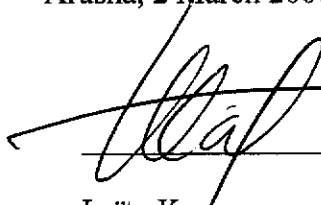
FOR THESE REASONS,

THE CHAMBER,

Without going into the substance of the matter of the present motion, deems it necessary to wait for both motions to be filed and to be ready for hearing, before making any decision upon them;

Instructs the Registrar to notify all parties concerned of this decision;

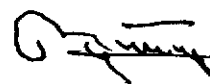
Arusha, 2 March 2000,



Laity Kama
Presiding Judge



William H. Sekule
Judge



Mehmet Güney
Judge

Seal of the Tribunal



5a 2990

International Criminal Tribunal for Rwanda Tribunal Pénal International pour le Rwanda

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie
Tel: 255 57 4207-11/4367-72 or 1 212 963 2850 Fax: 255 57 4000/4373 or 1 212 963 2848/49

TRANSMISSION SHEET

Date: 02 - 03 - 2000

CaseNo./AffaireN° ICTR-97-21-I: NYIRAMASUHUKO & NTAHOBALI

From/De:

- ☐ Deputy Registrar
- ☐ Jean-Pele Fomete, Legal Advisor, OIC, Court Management Section/ *Juriste administrateur en charge de la CMS*
- ☒ Aminatta L. R N'gum, Deputy Chief Court Management/Adjoint Chef de la CMS *Aminatta 02/03/2000*
- ☐ Mindua Antoine, Legal Officer/Juriste
- ☐ John Kiyeyeu, Legal Officer/Juriste
- ☐ Felicite Talon Ahouandogbo, Legal Officer/Juriste,

To/A

☐ President Pillay/
Président Pillay

☒ Prosecutor Carla Del Ponte
Procureur Carla Del Ponte
Fax

☒ Accused
NYIRAMASUHUKO

☐ Trial Chamber I/
Chambre de première instance I

☒ Procureur Adjoint
Deputy Prosecutor
Fax

☒ Defence Counsel/
Conseil de la Défense
BERGEVIN/POUPART

☒ Trial Chamber II/
Chambre de première instance II

☐ Chief of VWSS
ICTR- Arusha

☐ Office of Legal
Affairs- New York
Attn: Mr. Anthony
Miller

☐ Trial Chamber III/*Chambre de première
instance III*

☐ ICTR- Spokesman
Mr. Kingsley Moghalu

☐ Appeals Chamber/
Chambre d'appel -Fax

☐ Chief of Press and Public Affairs
Chef, Bureau Presse et information

☒ Senior Legal Officer/
Juriste hors classe

Please find attached/ *Veuillez trouver ci-joint:*

- ☐ Application for deferral/ *Demande de dessaisissement*
- ☐ Notice of designation of the Trial Chamber/
Notification de désignation d'une Chambre de première instance
- ☐ Notice of the hearing on/ *Notification de l'audience du Tuesday 29 February 2000*
- ☐ Notice of appeal :
- ☐ Observations to be submitted by/ *Observations présentées par*
- ☐ Order/warrant issued by a Trial Chamber or a Judge on/
Ordonnance/mandat émis par une Chambre de première instance ou un Juge le/...../.....
- ☐ Advertisement of indictment/ *Publicité de l'acte d'accusation*
- ☐ Communication from
- ☐ Submission by a State/Amicus curiae/ *Déclaration d'un Etat/Amicus curiae*
- ☐ Motion submitted by Prosecution/Defence Counsel on
Motion présentée par l'Accusation/le Conseil de la Défense le/...../.....
- ☐ Judgement pronounced on/ *Jugement rendu le/...../.....*
- ☐ Sentence pronounced on/ *Sentence rendue le/...../.....*

☒ Other : **DECISION ON THE DEFENSE MOTION TO ADJOURN HEARING ON THE PRELIMINARY MOTION BASED ON DEFECTS IN THE FORM AND SUBSTANCE OF THE INDICTMENT.**

Hawa
02/03/00

[Signature]
2/3/00
pamela
2/3/00

[Signature]
2/3/00

[Signature]
SAC
03-03-2000

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO 1995
 CONNECTION TEL 1400
 SUBADDRESS
 CONNECTION ID ICTR KIGALI
 ST. TIME 03/03 11:05
 USAGE T 02'53
 PGS. SENT 5
 RESULT OK



International Criminal Tribunal for Rwanda Tribunal Pénal International pour le Rwanda

Arusha International Conference Centre
 P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzania
 Tel: 255 57 4207-11/4367-72 or 1 212 963 2850 Fax: 255 57 4000/4373 or 1 212 963 2848/49

TRANSMISSION SHEET

Date: 02 - 03 - 2000

CaseNo./Affaire N° ICTR-97-21-I: NYIRAMASUHUKO & NTAHOBALI

From/De:

- ☐ Deputy Registrar
- ☐ Jean-Pele Fomete, Legal Advisor, OJC, Court Management Section/ *Juriste administrateur en charge de la CMS*
- ☒ Aminatta L. R N'gum, Deputy Chief Court Management/Adjoint Chef de la CMS *Aminatta 02/03/2000*
- ☐ Mindua Antoine, Legal Officer/Juriste
- ☐ John Kiycyeu, Legal Officer/Juriste
- ☐ Felicité Talon Ahouandogbo, Legal Officer/Juriste

To/A

☐ President Pillay/
Président Pillay

☒ Prosecutor Carla Del Ponte
Procureur Carla Del Ponte
 Fax

☒ Accused
NYIRAMASUHUKO

☐ Trial Chamber I/
Chambre de première instance I

☒ Procureur Adjoint
Deputy Prosecutor
 Fax

☒ Defence Counsel/
Conseil de la Défense
BERGEVIN/POUPART

☒ Trial Chamber II/
Chambre de première instance II

☐ Chief of VWSS
ICTR- Arusha

☐ Office of Legal
 Affairs- New York
 Attn: Mr. Anthony
 Miller

☐ Trial Chamber III/Chambre de première
instance III

☒ ICTR- Spokesman
Mr. Kingsley Moghalu

☐ Appeals Chamber/
Chambre d'appel -Fax

☐ Chief of Press and Public Affairs
Chef, Bureau Presse et information

☒ Senior Legal Officer/
Juriste hors classe

Please find attached/ Veuillez trouver ci-joint:

- ☐ Application for deferral/ *Demande de dessaisissement*
- ☐ Notice of designation of the Trial Chamber/
Notification de désignation d'une Chambre de première instance
- ☐ Notice of the hearing on/Notification de l'audience du Tuesday 29 February 2000

TX/RX NO	1999
CONNECTION TEL	1998# 91 514 5269646
SUBADDRESS	
CONNECTION ID	BERGEVIN N
ST. TIME	03/03 10:53
USAGE T	02'38
PGS. SENT	5
RESULT	OK



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzania
Tel: 255 57 4207-11/4367-72 or 1 212 953 2850 Fax: 255 57 4000/4373 or 1 212 963 2848/49

TRANSMISSION SHEET

Date: 02 - 03 - 2000

Case No./Affaire N° ICTR-97-21-I: NYIRAMASUHUKO & NTAHOBALI

From/De:

- ☐ Deputy Registrar
☐ Jean-Pele Fomete, Legal Advisor, OIC, Court Management Section/ *Juriste administrateur en charge de la CMS*
☒ Aminatta L. R N'gum, Deputy Chief Court Management/Adjoint Chef de la CMS. *A. N'gum 02/03/2000*
☐ Mindua Antoine, Legal Officer/Juriste
☐ John Kiyeyen, Legal Officer/Juriste
☐ Felicite Talon Ahouandogbo, Legal Officer/Juriste.

To/A

- | | | |
|---|---|---|
| <input type="checkbox"/> President Pillay/
<i>Président Pillay</i> | <input checked="" type="checkbox"/> Prosecutor Carla Del Ponte
<i>Procureur Carla Del Ponte</i>
Fax | <input checked="" type="checkbox"/> Accused
NYIRAMASUHU |
| <input type="checkbox"/> Trial Chamber I/
<i>Chambre de première instance I</i> | <input checked="" type="checkbox"/> Procureur Adjoint
<i>Deputy Prosecutor</i>
Fax | <input checked="" type="checkbox"/> Defence Counsel/
<i>Conseil de la Défense</i>
BERGEVIN/POUPART |
| <input checked="" type="checkbox"/> Trial Chamber II/
<i>Chambre de première instance II</i> | <input type="checkbox"/> Chief of VWSS
<i>ICTR- Arusha</i> | <input checked="" type="checkbox"/> Office of Legal
Affairs- New York
Attn: Mr. Anthony
Miller |
| <input type="checkbox"/> Trial Chamber III/ <i>Chambre de première
instance III</i> | <input type="checkbox"/> ICTR- Spokesman
Mr. Kingsley Moghalu | |
| <input type="checkbox"/> Appeals Chamber/
<i>Chambre d'appel -Fax</i> | <input type="checkbox"/> Chief of Press and Public Affairs
<i>Chef, Bureau Presse et information</i> | <input checked="" type="checkbox"/> Senior Legal Officer/
<i>Juriste hors classe</i> |

Please find attached/ Veuillez trouver ci-joint:

- ☐ Application for deferral/ *Demande de dessaisissement*
☐ Notice of designation of the Trial Chamber/
Notification de désignation d'une Chambre de première instance
☐ Notice of the hearing on/ *Notification de l'audience de* Tuesday 20 February 2000

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO 1996
 CONNECTION TEL 8# 90 3170 416 5325P
 SUBADDRESS
 CONNECTION ID ICTR HAGUE
 ST. TIME 03/03 10:39
 USAGE T 03'04
 PGS. SENT 5
 RESULT OK



**International Criminal Tribunal for Rwanda
 Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre
 P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzania
 Tel: 255 57 4207-11/4367-72 or 1 212 963 2850 Fax: 255 57 4000/4373 or 1 212 963 2848/49

TRANSMISSION SHEET

Date: 02 - 03 - 2000

CaseNo./Affaire N° ICTR-97-21-I: NYIRAMASUHUKE & NTAHOBALI

From/De:

- ☐ Deputy Registrar
- ☐ Jean-Pol Fomete, Legal Advisor, OIC, Court Management Section/ *Juriste administrateur en charge de la CMS*
- ☒ Aminatta L. R N'gum, Deputy Chief Court Management/Adjoint Chef de la CMS. *Aminatta 02/03/2000.*
- ☐ Mindua Antoinet, Legal Officer/Juriste
- ☐ John Kiyeyu, Legal Officer/Juriste
- ☐ Felicite Talon Ahouandogbo, Legal Officer/Juriste,

To/A

☐ President Pillay/
Président Pillay

☒ Prosecutor Carla Del Ponte
Procureur Carla Del Ponte
 Fax

☒ Accused
 NYIRAMASUHUKE

☐ Trial Chamber I/
Chambre de première instance I

☒ Procureur Adjoint
Deputy Prosecutor
 Fax

☒ Defence Counsel/
Conseil de la Défense
 BERGEVIN/POUPART

☒ Trial Chamber II/
Chambre de première instance II

☐ Chief of VWSS
ICTR- Arusha

☐ Office of Legal
 Affairs- New York
 Attn: Mr. Anthony
 Miller

☐ Trial Chamber III/Chambre de première
instance III

☐ ICTR- Spokesman
 Mr. Kingsley Moghalu

☐ Appeals Chamber/
Chambre d'appel -Fax

☐ Chief of Press and Public Affairs
Chef, Bureau Presse et information

☒ Senior Legal Officer/
Juriste hors classe

Please find attached/ Veuillez trouver ci-joint:

- ☒ Application for deferral/ *Demande de dessaisissement*
- ☐ Notice of designation of the Trial Chamber/
Notification de désignation d'une Chambre de première instance

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO 1998
 CONNECTION TEL # 90 3170 416 8932P
 SUBADDRESS
 CONNECTION ID ICTR APPEALS
 ST. TIME 03/03 10:32
 USAGE T 02'50
 PGS. SENT 5
 RESULT OK



**International Criminal Tribunal for Rwanda
 Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre
 P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzania
 Tel: 255 57 4207-11/4367-72 or 1 212 963 2850 Fax: 255 57 4000/4373 or 1 212 963 2848/49

TRANSMISSION SHEET

Date: 02 - 03 - 2000

CaseNo./Affaire N° ICTR-97-21-I: NYIRAMASUHUKE & NTAHOBALI

From/De:

- ☐ Deputy Registrar
- ☐ Jean-Pele Fomete, Legal Advisor, OIC, Court Management Section/ *Juriste administrateur en charge de la CMS*
- ☒ Aminatia L. R N'gum, Deputy Chief Court Management/Adjoint Chef de la CMS *Aminatia 02/03/2000*
- ☐ Mindua Antoine, Legal Officer/Juriste
- ☐ John Kiyeyu, Legal Officer/Juriste
- ☐ Felicité Talon Abouandogo, Legal Officer/Juriste,

To/A

☐ President Pillay/
Président Pillay

☒ Prosecutor Carla Del Ponte
Procureur Carla Del Ponte
 Fax

☒ Accused
 NYIRAMASUHUKE

☐ Trial Chamber I/
Chambre de première instance I

☒ Procureur Adjoint
Deputy Prosecutor
 Fax

☒ Defence Counsel/
Conseil de la Défense
 BERGEVIN/POUPART

☒ Trial Chamber IV/
Chambre de première instance II

☐ Chief of VWSS
ICTR- Arusha

☐ Office of Legal
 Affairs- New York
 Attn: Mr. Anthony
 Miller

☐ Trial Chamber III/Chambre de première
instance III

☐ ICTR- Spokesman
 Mr. Kingsley Moghalu

☐ Appeals Chamber/
Chambre d'appel -Fax

☐ Chief of Press and Public Affairs
Chef, Bureau Presse et information

☒ Senior Legal Officer/
Juriste hors classe

Please find attached/ Veuillez trouver ci-joint:

- ☐ Application for deferral/ *Demande de dessaisissement*
- ☐ Notice of designation of the Trial Chamber/
Notification de désignation d'une Chambre de première instance