

ICTR-96-14-T  
28/02/2001  
(2097 — 2087)

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER II**

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

Registry: John Kiyeyu

Date: 27 February 2001

**THE PROSECUTOR**  
v.  
**Eliézer NIYITEGEKA**  
Case No. ICTR-96-14-T

JUDICIAL RECORDS/ARCHIVES  
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**DECISION ON TWO DEFENCE MOTIONS PURSUANT TO, *INTER ALIA*,  
RULE 5 OF THE RULES AND THE PROSECUTOR'S MOTION FOR EXTENSION  
OF TIME TO FILE THE MODIFIED AMENDED INDICTMENT PURSUANT TO  
THE TRIAL CHAMBER II ORDER OF 20 NOVEMBER 2000**

**WARNING TO THE PROSECUTOR'S COUNSEL PURSUANT TO RULE 46(A)**

The Office of the Prosecutor:  
Ken Flemming  
Melinda Pollard  
Jayantha Jayasuriya

Counsel for the Accused:  
Sylvia Geraghty

28.02.2001

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (The "Tribunal");

SITTING as Trial Chamber II, composed of Judges Laïty Kama, Presiding, William H. Sekule, and Mehmet Güney;

BEING SEIZED of the "Urgent Motion Pursuant to, inter alia, Rule 5 of the Rules of Evidence and Procedure," by the Accused Eliézer Niyitegeka, filed on 8 February 2001, (the "Motion");

CONSIDERING the Oral Response of the Prosecutor made at the hearing of the Motion on 21 February 2001 ("Prosecutor's Response");

BEING SEIZED of the "Extremely Urgent Defense Motion Pursuant to Articles 19(1) and 20 of the Statute, Rules 54 and 5 of the Rules of Procedure and Evidence" filed on 22 February 2001 (the "Second Motion");

CONSIDERING the "Prosecutor's Response to the Extremely Urgent Defense Motion Dated 22 February 2001" filed on 23 February 2001 (the "Prosecutor's Response to the Second Motion");

BEING SEIZED of the Prosecutor's "Extremely Urgent Motion for Extension of Time to File the Modified Indictment in Pursuant to the Trial Chamber II Order of 20 November 2000" filed on 23 February 2001 (the "Prosecutor's Motion");

CONSIDERING the "Defense Response to the Prosecutor's Motion filed on 23 February 2001, Seeking an Extension of Time to File "A Complete Amended Indictment" Pursuant to Order of 20 November 2000" filed on 26 February 2001 (the "Defense Response to the Prosecutor's Motion");

CONSIDERING the provisions of the Statute of the Tribunal ("Statute"), notably Articles 19 and 20 of the Statute, and the Rules of Procedure and Evidence ("Rules"), specifically Rules 5, 46, 54, 66 and 68;

HAVING HEARD the Parties on 21 and 27 February 2001, the Chamber now considers the Motions.

## **SUBMISSIONS OF THE PARTIES**

### ***The Motion***

#### **Main Defense Requests**

1. The Defense brings the Motion pursuant to Rule 5 of the Rules, which states that:

#### **RULE 5: Non-Compliance with Rules**

- (A) Where an objection on the ground of non-compliance with the Rules or Regulations is raised by a party at the earliest opportunity, the Trial Chamber shall grant relief, if it finds that the alleged non-compliance is proved and that it has caused material prejudice to that party.

- (B) Where such an objection is raised otherwise than at the earliest opportunity, the Trial Chamber may in its discretion grant relief, if it finds that the alleged non-compliance is proved and that it has caused material prejudice to the objecting party.
- (C) The relief granted by a Trial Chamber shall be such remedy, as the Trial Chamber considers appropriate to ensure consistency with fundamental principles of fairness.

2. The Defense refers to its facsimile letter dated 16 January 2001 in which it requested the Prosecutor to make full disclosure, at the latest, on 23 January 2001, as the Prosecutor had undertaken to do at the Status Conference of 25 September 2000. The Defense submits that the Prosecutor has not fully complied with the above obligation, in breach of Rules 66 and 68 of the Rules.

3. The Defense enumerates the specific items yet to be disclosed by the Prosecutor, including: inculpatory and exculpatory evidence, all untruncated and redacted witness statements as obtained in their original language, expert reports, certain Rwandan Legislation, certain texts in the public domain but also in the possession of the Prosecutor, audio cassettes and video cassettes requested for in letters dated 30 March and 5 April 2000 and at the Status Conference held on 25 September 2000, a certified copy of the plan outlining the intention to exterminate the Tutsi population and eliminate members of the opposition, complete, official records or minutes of specified meetings, abridged copy of the lists of people to be executed, the diaries of Jean Kambanda for the years 1994, 1995 and 1996, official letters of specific dates and bank documentation. The Defense maintains that the Prosecutor's failure to comply with the obligations laid out in Rules 66 and 68 deprives the Accused of his rights to fully and properly prepare his defense in a timely manner in accordance with Articles 19(1), 20(2) and 20(4)(a), (b), (c) and (d) of the Statute.

4. The Defense submits that the Prosecutor does not respect the Chamber's Decision issued on 4 February 2000 and the Chamber's Oral Ruling of 30 March 2000, directing the Prosecutor to disclose immediately to the Defense any witness statement, or any other evidence, which the Prosecutor intends to use in relation to the then existing indictment, pursuant to Rule 66 (A)(ii) of the Rules.

5. Furthermore, the Defense argues that the Prosecutor has repeatedly disregarded the orders and directions of the Chamber, issued in the Decision of 20 November 2000 that the Prosecutor file the New Amended Indictment, as modified within twenty-one (21) days, a deadline subsequently extended in an order issued on 8 December 2000, ordering the Prosecutor to file the New Amended Indictment by 19 December 2000.

6. Accordingly, the Defense requests that the Chamber dismiss, with prejudice, the Indictment against the Accused and unconditionally grant the release of the Accused, pursuant to Rule 5(A) of the Rules. Alternatively, the Defense requests that the Chamber direct the Prosecutor to fully comply with the Statute and the Rules and to make full and frank disclosure of all inculpatory and exculpatory evidence in her possession.

### **Prosecutor's Response**

7. The Prosecutor orally submitted on Rules 66(A)(i) and (ii), (B) and 68 of the Rules and argued that she has fully complied with all the requirements under Rule 66(A)(i) and (ii) of the Rules. Nonetheless, the Prosecutor states that she will make inquiries with regard to



the Defense request pertaining to interviews of the Accused made by the Prosecutor's investigators in Arusha in February 1999, which may be in her possession, and that if they are, she shall disclose them to the Defense as soon as possible.

8. The Prosecutor further argues that all the other requests made by the Defense pertain to requests under Rule 66(B) of the Rules, which provides that, at the request of the Defense, the Prosecutor shall, subject to Sub-Rule (C), permit the Defense to inspect any books, documents, photographs and tangible objects in his custody or control, which are material to the preparation of the defense. The Prosecutor, however, argues that she does not have these items in her custody, and that even if she did, the Defense has not demonstrated how the items sought will be material to its defense. The Prosecutor states that she will disclose a few video tapes, which she has in her custody, even though the Defense has not demonstrated how they will be material to its defense.

9. As to the requests under Rule 68 of the Rules, the Prosecutor argues that she has no exculpatory evidence in her possession and that if she finds any, she shall disclose them to the Defense.

10. Consequently, the Prosecutor argues that the Defense Motion should be dismissed as frivolous, because it is a recycled form of the Motion the Defense filed on 30 March 2000, which was decided upon and an oral ruling made the same day.

11. As regards the compliance with the Chamber's Orders of 20 November and 8 December 2000, which directed that the Prosecutor file the New Amended Indictment, as modified, by 19 December 2000, the Prosecutor states that, she understands that the document entitled "Prosecutor's Filing in Response to the Trial Chamber II Decision on Defense Motion on Matters Arising from Trial Chamber Decisions and Preliminary Motion Based on Defects in the Form of the Indictment and Lack of Jurisdiction" does not comply with the said Orders of the Chamber. The Prosecutor, subsequently, made an oral request that the Chamber grants her time to bring a Motion to file the New Amended Indictment in compliance with the Chamber's Orders of 20 November 2000.

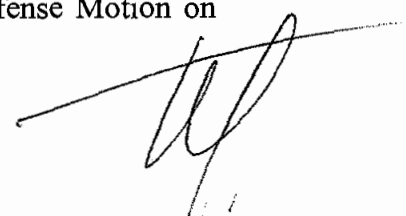
### **Defense's Rejoinder**

12. The Defense orally argues that it has made efforts to get possession of some of the documents, which may be in the public domain, such as books and some Rwandan Legislation from Rwanda, but it has been impossible as the authorities in Rwanda state that they have already given all of these documents to the Prosecutor.

### ***The Second Motion***

13. In the Second Motion, the Defense mainly argues that the Prosecutor has breached the Direction of the Chamber made in the Decisions of 20 November 2000 and the Order of the Chamber made in the Decision of 8 December 2000. The Defense argues that to the date of filing the instant Motion, the Prosecutor has failed or refused to comply with the said Trial Chamber Direction and Order.

14. The Defense submits that the Prosecutor filed a document on 8 January 2001, after the time limits laid out in the Order 8 December 2000. The said document was entitled; "Prosecutor's Filing in Response to the Trial Chamber II Decision on Defense Motion on



Matters Arising from Trial Chamber Decisions and Preliminary Motion Based on Defects in the Form of the Indictment and Lack of Jurisdiction,” and to it were attached two annexes, which were neither signed nor sealed by the Prosecutor and so could not be considered as the New Amended Indictment, as modified, filed pursuant to the Chamber’s Direction and Order.

15. The Defense further argues that the Prosecutor has failed to make full and frank disclosure, in accordance with Rules 66 and 68 of the Rules, and has, therefore, deprived the Accused of his right to fully and properly prepare his defense in a timely manner in accordance with Articles 19(1), 20(2) and 20(4)(a), (b), (c) and (d) of the Statute.

16. On this basis, the Defense requests the Chamber to grant mandatory relief under Rule 5(A) of the Rules by dismissing, with prejudice, the Amended Indictment of 26 June 2000 and grant the unconditional release of the Accused.

17. In response to the Second Motion, the Prosecutor recalls her apology made at the hearing of the initial Motion held on 21 February 2000. At the hearing of 21 February 2001, the Prosecutor made a request to bring a Motion requesting to file the New Amended Indictment, as modified, pursuant to the Chamber’s Orders of 20 November 2000.

18. The Prosecutor, argues that the Defense has repeated, verbatim, its initial Motion, which was heard on 21 February 2000, and has only added paragraph O, which states that the Annexes to the “Prosecutor’s Filing in Response to the Trial Chamber II Decision on Defense Motion on Matters Arising from Trial Chamber Decisions and Preliminary Motion Based on Defects in the Form of the Indictment and Lack of Jurisdiction,” were neither signed nor sealed by the Prosecutor.

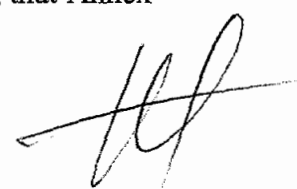
19. The Prosecutor submits that the instant Motion is frivolous and seeks to further delay the proceedings by asking the Chamber to dismiss the 26 June 2000 Amended Indictment. The Prosecutor argues that the improper format of an amendment to an indictment could not substantiate nor justify the dismissal of an earlier amendment to the indictment. The Prosecutor requests the Chamber to consider whether a warning, or other sanction, pursuant to Rule 46, may be issued against the Defense, because of its persistent abuse of process amounting to conduct which is contrary to the interests of justice.

***The Prosecutor’s Motion***

20. By its Motion, the Prosecutor requests an extension of the time limits within which to comply with the Chamber’s Orders made in the Decision of 20 December 2000. The Prosecutor specifically requests an additional two weeks to file a complete Amended Indictment pursuant to the Decision of 20 November 2000.

21. The Prosecutor requests this extension because she states that she experienced difficulties in obtaining the necessary translations as well as other technical difficulties, which prevented her from adhering to the Order of 8 December 2000, which directed her to file the New Amended Indictment, as modified, by 19 December 2000.

22. The Prosecutor points out that she filed the “Prosecutor’s Filing in Response to the Trial Chamber II Decision on Defense Motion on Matters Arising from Trial Chamber Decisions and Preliminary Motion Based on Defects in the Form of the Indictment and Lack of Jurisdiction,” on 4 January 2001, including 2 Annexes. She clarifies by stating that Annex



A contains a revised section 7bis, including all the modifications to the Indictment pursuant to the Chamber's Orders in the Decision of 20 November 2000. The Prosecutor, however, states that she realizes that the said revised section 7bis should formally be incorporated into the Amended Indictment and the Prosecutor should then file a New Amended Indictment, modified pursuant to the Chamber's Order made in the Decision of 20 November 2000.

23. The Defense objects to the Prosecutor's Motion and relies on the matters she raised at the hearing of 21 February 2001 and those raised orally, while arguing its Second Motion, pertaining to *inter alia* the Prosecutor's persistent non-compliance with the orders and directions of the Chamber.

#### **AFTER HAVING DELIBERATED**

24. The Chamber will consider the initial Motion by first laying out the background of this case with respect, in particular, to the Indictment and also dispose of the Second Motion, which requests for *inter alia* the dismissal of the Amended Indictment of 26 June 2000. The Chamber will then review the requests for disclosure on the merits before it considers the Prosecutor's request for an extension of the deadline.

#### **As Regards the background with respect to the Indictment against the Accused**

25. On 15 July 1996, Judge Ostrovsky confirmed the original Indictment against the Accused, which was subsequently served upon him on his arrest in Nairobi on 9 February 1999. The Accused was transferred to the Tribunal's Detention Facility in Arusha on 11 February 1999.

26. On 15 April 1999, at the initial appearance of the Accused, the Prosecutor made an oral application to amend the Original Indictment without adding new facts and new charges, incorporating only corrections of translation, grammar and punctuation. The oral application was granted during the Accused initial appearance, whereupon the Accused entered a plea of not guilty to all counts. The First Amended Indictment was subsequently served upon the Accused on 29 April 1999.

27. On 21 June 2000 the Chamber rendered a Decision granting the Prosecutor's request for leave to amend the Indictment by *inter alia* adding four (4) new charges against the Accused. The Prosecutor was ordered to file a new Amended Indictment by 23 June 2000 so that it is served immediately upon the Accused.

28. On 23 June 2000, the Chamber rendered a Decision, where it *proprio motu* decided to extend the deadline for filing the new Amended Indictment to 26 June 2000 so that it be served upon the Accused in preparation for his initial appearance.

29. On 26 June 2000, the Prosecutor served upon the Defense the new Amended Indictment, (the "Amended Indictment").

30. On 3 July 2000, the Accused made an Initial Appearance on the new charges included in the Amended Indictment.

31. On 20 November 2000, the Chamber rendered a Decision, pursuant to a Defense Motion on *inter alia* Defects in the form of the Indictment. The Decision was in favour of



the Defense, directing the Prosecutor to file with the Registry the New Amended Indictment, modified as ordered, within twenty-one (21) days of the Decision of 20 November 2000, i.e., 11 December 2000. The deadline for filing the New Amended Indictment, modified as ordered, was extended, following the Prosecutor's request for extension of the deadline, to 19 December 2000.

32. On 4 January 2001, the Prosecutor filed the "Prosecutor's Filing in Response to the Trial Chamber II Decision on Defense Motion on Matters Arising from Trial Chamber Decisions and Preliminary Motion Based on Defects in the Form of the Indictment and Lack of Jurisdiction". It is the Chamber's view and the Prosecutor agreed at the hearing of 21 February 2001, that this document, which is incomplete, does not comply with its Order made in the Decision of 20 November 2000.

33. The Chamber, further, notes that, even if the document entitled the "Prosecutor's Filing in Response to the Trial Chamber II Decision on Defense Motion on Matters Arising from Trial Chamber Decisions and Preliminary Motion Based on Defects in the Form of the Indictment and Lack of Jurisdiction," was to be considered as the New Amended Indictment, filed pursuant to the Order made in the Decision of 20 November 2000, which directed that, "[...] the Prosecutor file with the Registry within twenty-one days from the date of this Decision[...]the New Amended Indictment, as modified," it is still filed sixteen (16) days past the deadline prescribed in the Chamber's order made on 8 December 2000.

34. At this point, it is noteworthy to mention that the Prosecutor, in her Motion, seeks two weeks within which to file the New Amended Indictment modified pursuant to the Chamber's Order of 20 November 2000. The Prosecutor makes the request stating that she experienced difficulties in obtaining the necessary translations as well as other technical difficulties, which prevented her from adhering to the Order of 8 December 2000.

35. In objection to the Prosecutor's Motion, the Defense *inter alia* highlights the breaches to the Chamber's Orders committed by the Prosecutor and requests that the motion be dismissed.

36. In considering this matter, the Chamber analyses the Prosecutor's conduct, through her Counsel, in the present case, following the Decision of 20 November 2000. Upon being ordered, at para. 46 in the said Decision, to file, within twenty-one days, the New Amended Indictment, as modified pursuant to the said Decision, the Prosecutor requested an extension of that deadline. On the 8 December 2000, the Chamber granted the said request and set a deadline on the 19 December 2000. From that date, to the hearing the Defense's initial Motion on 21 February 2001, the Chamber notes that the Prosecutor has:

- (i) Failed to seek an extension of the deadline of 19 December 2000;
- (ii) Filed a document it has entitled the "Prosecutor's Filing in Response to the Trial Chamber II Decision on Defense Motion on Matters Arising from Trial Chamber Decisions and Preliminary Motion Based on Defects in the Form of the Indictment and Lack of Jurisdiction," on 4 January 2001, sixteen days past the deadline on 19 December 2000;
- (iii) Failed to comply with the Orders, at para. 46 (a) to (g), made in the Decision of 20 November 2000, with its document entitled "Prosecutor's Filing in Response to the Trial Chamber II Decision on Defense Motion on Matters

Arising from Trial Chamber Decisions and Preliminary Motion Based on Defects in the Form of the Indictment and Lack of Jurisdiction;”

- (iv) And only after being prompted by the Chamber at the hearing of 21 February 2001, the Prosecutor made a request to file a Motion requesting the Chamber to file the New Amended Indictment modified pursuant to the Order in the Decision of 20 November 2000. (See Transcripts of 21 February 2001 at page 50)

37. The Chamber finds that the attitude of the Prosecutor’s Counsel in the matter, as described above, qualifies as a Misconduct of Counsel pursuant to Rule 46(A) of the Rules. Consequently, in accordance with the provisions of the said Rule, the Chamber hereby warns the Prosecution Counsel, in the present case that, were their conduct to remain “offensive” or be otherwise considered “abusive,” or were they to “obstruct the proceedings” or act “contrary to the interests of justice,” the Chamber would be obliged to impose sanctions pursuant to that Rule.

38. In the instant case, however, the Chamber has carefully considered the matter and finds that it is in the interests of justice and for the benefit of the Defense that the Amended Indictment be modified pursuant to the Orders, at para. 46 (a) to (f) in the Decision of 20 November 2000. The Chamber, therefore, directs the Prosecutor to file the New Amended Indictment, as modified, in French and in English, by 15 March 2001, by close of business.

**As Regards the Defense Requests for Disclosure**

39. The Chamber notes that the requests made fall under Rules 66(A)(i) and (ii), 66(B) and 68 of the Rules.

40. With regard to Rule 66(A)(i), the Chamber notes that Parties are in agreement that these include supporting material which accompanied the Indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the Accused. It therefore follows that, if the Prosecutor has in her possession interviews of the Accused made in February 1999, then disclosure in this regard would not have been completed. Consequently, the Chamber orders the Prosecutor to disclose immediately, the interviews of the Accused made in February 1999, pursuant to Rule 66(A)(i) of the Rules, if indeed they are in her possession.

41. The Chamber further notes that the Defense requests *inter alia* that the Prosecutor disclose all untruncated and redacted witness statements, which the Prosecutor intends to use at trial in the original language in which they were obtained. The Prosecutor, in response, states that she has disclosed all the witness statements, which she intends to use at trial, in the original language in which they were obtained from the Accused Niyitegeka.

42. As to the Defense further argument that some of these statements and other materials are heavily redacted and truncated, the Prosecutor responds by stating that the only redacted documents disclosed to the Defense, are those ordered to be redacted in order not to disclose any identifying information to the Defense until 21 days prior to the testimony of the witness at trial. (See, *inter alia*, para. 16 of the “Decision on the Prosecutor’s Motion for Protective Measures for Witnesses” of 12 July 2000 in the present case.)



43. After considering the submissions of the Parties, the Chamber is of the view that the Prosecutor has complied with her obligations under Rule 66(A)(ii) of the Rules that she disclose, no later than sixty days before the date set for trial, copies of the statements of all witnesses whom she intends to call to testify at trial. The Chamber further states that, after this deadline, if the Prosecutor shows good cause, she may be allowed to produce additional witnesses and the Chamber may order that copies of the statements of these additional prosecution witnesses, be made available to the defense within a prescribed time.

44. As regards the other materials requested for by the Defense, the Chamber agrees with the Prosecutor that these are requests that should have been made under Rule 66(B) of the Rules.

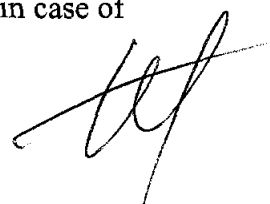
45. It therefore follows that the Defense, pursuant to Rule 66(B) of the Rules, should have made a request to the Prosecutor to inspect the items, if they are in the custody or control of the Prosecutor. The Defense must demonstrate one of the following criteria: (a) that it considers (the items) material to the preparation of its defense, or (b) (the items) are intended for use by the Prosecutor as evidence at trial, or (c) (the items) were obtained from or belonged to the accused. The Prosecutor is obliged to permit the Defense to inspect the items in her custody or control, if; the Prosecutor intends to use them as evidence at trial, and if they were obtained from or belonged to the Accused.

46. As for the documents found in the public domain, and also found in the custody of the Prosecutor, which the Defense seeks stating that she has made efforts to obtain them in Rwanda and elsewhere, without success, the Chamber notes the Prosecutor's undertaking to go beyond her obligations under Rule 66(B) by providing them to the Defense. The Chamber recalls the Prosecutor's undertaking that she will provide these items, the Defense considers necessary, to the extent feasible provided the Defense makes a formal request for them.

47. On the issue of materiality, the Chamber recalls its jurisprudence in *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T in the "Decision on Defense Motion for Disclosure of Evidence," rendered on 1 November 2000. In the said Decision, the Chamber found that it could grant leave to inspect books, documents, photographs and tangible objects, only if the Defense provided specific indications on such items and showed that such items are material to its defense. In the instant case, the Defense has not made such a request, nor has it shown how the items it requests would be material to its defense.

48. As to the Defense other argument that the items it requests could be exculpatory evidence that the Prosecutor is obliged to disclose pursuant to Rule 68 of the Rules, the Chamber recalls the provisions of the said Rule. Rule 68 of the Rules states that; the Prosecutor shall, as soon as practicable, disclose to the defense the existence of evidence known to her which in any way tends to suggest innocence or mitigate the guilt of the Accused or may affect the credibility of prosecution evidence.

49. The Chamber further recalls the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in *Prosecutor v. Blaskic*, (Decision on the Defense Motion for "Sanctions for Prosecutor's Repeated Violations of rule 68 of the Rules of Procedure and evidence")(29 April 1998) which analyzed the issue of disclosure and stated, at para. 14 that: "[...] the Prosecution bore the sole responsibility for disclosing to the Defense the evidence which tends to suggest the innocence or mitigate the guilt of the accused and that it did so under its own responsibility and under the supervision of the Trial Chamber which, in case of



an established failure to comply, would have to draw all the consequences, particularly at trial.” The Decision further went on to state at para 20 that, “[...] by expressly restricting itself to Rule 68, the Defense, while requesting such broad access to Prosecution documentation, is avoiding the reciprocal obligation which it would have pursuant to Rule 66 and 67 of the Rules. Acceding to its request without limitations would consequently disturb the balance of the trial, particularly since such a disclosure would manifestly occur beyond the strict requirements of Rule 68 which requires the disclosure of exculpatory “evidence” and not all...of the Prosecutor’s documentation.”

50. The Chamber is generally persuaded by the reasoning in the *Blaskic Decision*. It, therefore, considers the Defense request for disclosure of items in the custody or control of the Prosecutor, simply because they could be exculpatory, to be without merit.

51. The Chamber, however, orders the Prosecutor to meet her obligations under Rule 68 to disclose items, in her custody or control she considers exculpatory, as well as her obligation under Rule 66(B) to disclose items, in her custody or control, she intends to use at trial, items she obtained from the Accused and items that belong to the Accused, as soon as she comes into possession of such items.

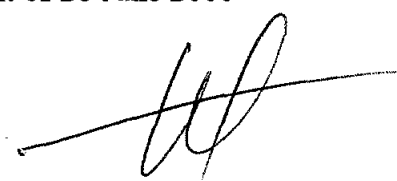
#### **As Regards the Relief Sought Pursuant to Rule 5 of the Rules**

52. The Chamber notes that the Defense seeks in her initial Motion the dismissal, with prejudice, of the Indictment against the Accused and in her Second Motion the dismissal of the Amended Indictment of 26 June 2000 and that he be granted an unconditional release, pursuant to Rule 5 of the Rules. The Defense seeks this relief on grounds of the Prosecutor’s repeated disregard of the orders and directions of the Chambers, specifically issued on 4 February, 30 March, 20 November and 8 December 2000. Alternatively, the Defense requests that the Chamber direct the Prosecutor to fully comply with the Statute and the Rules and to make full and frank disclosure of inculpatory and exculpatory evidence in her possession.

53. The Chamber agrees with the Defense, as it has observed above in this Decision, in so far as the Prosecutor has not complied with its orders pertaining to the timely filing of the New Amended Indictment, as modified and as directed in the Decision of 20 November 2000.

54. At this juncture, the Chamber recalls on its jurisprudence in the *Kanyabashi Decision* it rendered on 23 May 2000 entitled, “Decision on the Defense Extremely Urgent Motion on Habeas Corpus and for Stoppage of Proceedings.” In the said Decision, the Defense requested a stay of proceedings as a remedy for the Prosecutor’s alleged extensive violation of the Accused rights. The Chamber held, at par. 81, that, “[...] even if there is a violation and if the violation is not so extensive, it will not necessitate a remedy of a stay of the proceedings,”

55. In the instant case, the Chamber finds that the Defense’s argument that the Prosecutor has not complied with the Chamber’s Orders pertaining to disclosures pursuant to Rules 66 and 68 of the Rules is misconstrued. Furthermore, the Chamber considers that the Prosecutor’s non-compliance with the Order on the timely filing of the New Amended Indictment would not warrant the remedy sought by the Defense, i.e., the dismissal, with prejudice, of the Indictment against the Accused or the Amended Indictment of 26 June 2000



and that he be granted an unconditional release. The Chamber, therefore, grants the Defense's alternative remedy requested for in the initial Motion, which is that the Chamber direct the Prosecutor to fully comply with the Statute and the Rules, and to make full and frank disclosure of all evidence in her possession as discussed herein above.

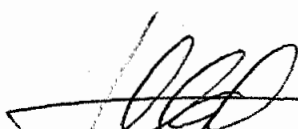
56. Moreover, the Chamber agrees with the Prosecutor's observations that the Defense's Second Motion is similar to its initial Motion, and could well be considered frivolous. The Chamber warns that these kinds of motions would in the future be declared frivolous and attract the denial of fees payment, pursuant to Rule 73(e) of the Rules.

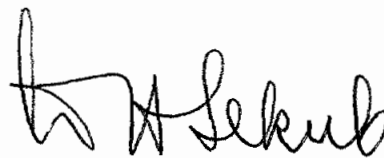
**FOR ALL THESE REASONS,**

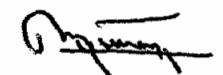
**THE CHAMBER,**

- I. **WARNS** the Prosecutor's Counsel in the matter that, were their conduct to remain "offensive", or otherwise "abusive" or were they to "obstruct the proceedings", or other wise act "contrary to the interests of justice", the Chamber would impose sanctions pursuant to Rule 46 of the Rules.
- II. **ORDERS** the Prosecutor to file the New Amended Indictment, as directed at para. 46(a) to (f) in the Decision of 20 November 2000, in French and in English by 15 March 2001, by close of business.
- III. **DIRECTS** the Prosecutor to fully comply with the Statute and the Rules, and to make full and frank disclosure of all evidence she has undertaken to disclose.
- IV. **ORDERS** the Prosecutor to disclose immediately the interviews of the Accused made in February 1999, pursuant to Rule 66(A)(i) of the Rules, if indeed they are in her possession.

Arusha on 27 February 2001

  
Laity Kama  
Presiding Judge

  
William H. Sekule  
Judge

  
Mehmet Güney  
Judge

(Seal of the Tribunal)v