



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
19-01-2005
(23525-23509)

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S. Mulvaney

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 19 January 2005

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

JUDICIAL RECORDS/ARCHIVES
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**DECISION ON THE DEFENCE MOTIONS FOR THE REINSTATEMENT OF JEAN
YAOVI DEGLI AS LEAD COUNSEL FOR GRATIEN KABILIGI**

The Office of the Prosecutor

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

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the "Joint Defence Motion for the Reinstatement of Jean Yaovi Degli as Counsel for General Gratien Kabiligi", filed on 18 November 2004; and Kabiligi's "Requête en extrême urgence en recours contre la décision du 26 octobre 2004", filed on 20 December 2004;

CONSIDERING the Registrar's representations under Article 33 (B), filed on 8 December 2004; the Kabiligi Defence Reply, filed on 16 December 2004; and the Ntabakuze Defence Reply, filed on 20 December 2004;

HAVING RECEIVED submissions from the "Association des Avocats de la Defence", entitled "Demande d'intervention volontaire et soumissions de l'ADAD au titre de l'amicus curiae", filed on 30 November 2004;

HAVING HEARD the parties on 20 December 2004 and rendered an oral decision on the same date;

HEREBY RENDERS its written decision.

INTRODUCTION

1. The Prosecution case against the four Accused concluded on 14 October 2004 after eighty-two witnesses had testified. In a decision of 26 October 2004, the Registrar withdrew the assignment of Mr. Jean Yaovi Degli as Lead Counsel for the Defence of Gratien Kabiligi under the framework of the legal aid system. The decision was based on evidence that he played a major role in an elaborate fraud scheme.¹ The Defence case for all four Accused was originally scheduled to start on 12 January 2005. During a status conference on 21 December 2004, the Chamber postponed the commencement of the Defence case to 30 March 2004.²

2. The Registrar's withdrawal of Mr. Degli as Lead Counsel was based on Article 19 (A)(iii) of the Directive on the Assignment of Defence Counsel ("the Directive"), following findings by the Investigations Division of the Office of Internal Oversight Services of the United Nations ("OIOS") that Mr. Degli had misappropriated Tribunal funds, in excess of USD 300,000. The investigation of Mr. Degli was triggered in May 2003, after his Co-Counsel, Mrs. Sylvia Olympia, informed the Registry that her bar qualifications had been falsified. The Registry referred the matter to OIOS, which interviewed all parties concerned and reviewed various billing statements and bank documents, including alleged transfers from Mrs. Olympia's account to Mr. Degli's wife. The Registrar received the OIOS report in August 2004. On 15 October 2004, the Registry provided a summary of the report to Mr. Degli for his comment and invited him to make observations and offer a defence within eight days. Mr. Degli's response was received by the Registry on 22 October 2004. In his decision of 26 October 2004, the Registrar ordered Mr. Degli to deliver to the Accused or the present Co-Counsel, all original documents in the file within fifteen days of the decision. The Accused

¹ Decision to Withdraw the Assignment of Mr. Jean Yaovi Degli as Defence Counsel for Gratien Kabiligi (Registrar), 26 October 2004. The Registrar's decision fully recounts the procedural history of the investigation of Mr. Degli as well as the nature of the allegations against him. The Chamber will only recount salient aspects here.

² T. 21 December 2004 p. 27.

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was invited to submit without delay a list of three names of individuals who could be assigned as new Lead Counsel.

3. On 2 November 2004, Mr. Kabiligi requested the President to suspend the Registrar's decision to withdraw Mr. Degli in order to ensure that his rights as an Accused be respected. The Registrar filed submissions on Mr. Kabiligi's request pursuant to Rule 33 (B) on 18 November 2004. In a letter of 13 December 2004 to Mr. Kabiligi, the President stated that Mr. Kabiligi had raised issues that were virtually identical to matters raised in a joint motion by all four Defence teams which was then pending before the Trial Chamber (see paras. 4 and 5 below). Under these circumstances, it would not be appropriate for the President to intervene in the matter. The Chamber has been informed that Mr. Degli has later pursued the matter before the Secretary-General of the United Nations.

4. In a joint motion, filed on 18 November 2004, all Defence teams challenged the Registrar's decision, arguing that it detrimentally affected the fair trial of the four Accused.³ On 30 November 2004, the "Association des Avocats de la Defence" (ADAD) filed a request to make submissions as *amicus curiae* in connection with Mr. Kabiligi's request to the President and the joint Defence motion. On 8 December 2004, the Registrar made written submissions, pursuant to Rule 33 (B), on the joint Defence motion as well as ADAD's request to be heard as *amicus curiae*. The Kabiligi Defence, through Co-Counsel, filed a reply on 16 December 2004. A reply from the Ntabakuze Defence was filed on 20 December 2004. Mr. Kabiligi filed a motion on 20 December 2004. The Prosecution made no written submissions.

5. At the request of the Defence, a status conference was scheduled for 20 December 2004. On that date, the Chamber, sitting under Rule 15 *bis* in Judge Reddy's absence, decided to hold a public hearing and heard oral submissions from Mr. Kabiligi, the four Defence teams and the Registrar. The Prosecution stated that it took no position on the motion.⁴ ADAD was present during the hearing and was given the opportunity to make further written submissions.⁵ After deliberating, the Chamber made an oral decision denying the request to reinstate Mr. Degli and stated that its written reasons would follow. A status conference was scheduled for the following day.

6. During this status conference on 21 December 2004, Mr. Kabiligi proposed that Mr. Skolnik, presently Co-Counsel for Bagosora, be appointed his Lead Counsel given his knowledge of the case. The Bagosora Defence stated that this was acceptable. The Registry indicated that it was favourable to the solution proposed by the Accused. The Chamber postponed the commencement of the Defence case until 30 March 2005. The Chamber also postponed the date for the filing of Kabiligi's pre-Defence brief and witness list until 28 February 2005, subject to further representations from Mr. Skolnik if named Lead Counsel. The deadlines for the other three Accused to file the pre-Defence brief and the witness statements were also postponed, until 3 January and 7 February 2005, respectively. The Chamber scheduled a status conference for 28 February 2004 to assess the situation.

7. On 27 December 2004, following correspondence from the Registry and Mr. Skolnik, Mr. Kabiligi requested the Registry to suspend all proceedings concerning the nomination of a new Lead Counsel and formally withdrew his proposal made on 21 December 2004 to the effect that Mr. Skolnik should represent him.

³ Mr. Degli filed a motion before the Chamber on 3 November 2004 but withdrew it the next day.

⁴ T. 20 December 2004 p. 25.

⁵ T. 20 December 2004 pp. 73-74. The Chamber reserved its position as to whether ADAD would be given status as *amicus curiae* (p. 1).

SUBMISSIONS

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Joint Defence Motion

8. The joint Defence motion seeks the suspension of the decision to withdraw the assignment of Mr. Degli and his re-appointment as Lead Counsel for the Kabiligi Defence until the trial judgement is rendered. The Defence asserts that the Registrar failed to follow the proper procedure for removal of Counsel set forth in the Statute and the Rules of Procedure and Evidence ("the Rules"). The illegal withdrawal of the assignment of Mr. Degli at this late stage of the proceedings during the final preparations for a jointly prepared defence denies Kabiligi the right to counsel of his choice and further substantially disrupts the trial strategy and preparations of all Defence teams.

9. The Defence argues that Article 19 (A)(iii) of the Directive, upon which the Registrar based his decision, is not specifically sanctioned in the Statute or the Rules. The Directive is subsidiary to the Statute and the Rules and conflicts with Rules 45 (H), (I), 45 *quater*, 46, and 54 which indicate that only the President, the Bureau, and the Chamber have the power to order the removal of counsel. The Registrar's role is strictly administrative. He has no power to take action on his own. It is for the Chamber to ensure that the trial is fair and issue all necessary orders. The Code of Professional Conduct for Defence Counsel ("the Code of Conduct") refers to the Rules as the basis for disciplinary action. The Registrar's role in removing counsel is limited to bringing misconduct to the Chamber's attention and to carrying out the Chamber's instructions. The Defence therefore asks the Chamber to consider the Registrar's decision to be only a "report" to the President or Bureau, in conformity with the principles behind Rule 46 (D).

10. The Defence also raises specific concerns related to the nature of the procedure utilized by the Registrar in removing Mr. Degli. The Registrar failed to disclose the entire OIOS report and the nature of all his consultations, and he did not convoke a formal hearing before a neutral adjudicator. Therefore, Mr. Degli is entitled to a new procedure that is fair and transparent.

11. The four Defence teams emphasize that they have a "highly integrated" joint defence in the interest of trial efficiency and in order to avoid unnecessary overlap. Each Defence team has its own witnesses to bring, but certain very important witnesses have only spoken to Mr. Degli and have predicated their willingness to testify on the basis of their working relationship with him. All Defence teams are relying on these witnesses to cover certain vital ground in each of their defences. No other Defence team has a relationship with these witnesses comparable to Mr. Degli. Witnesses who should have been called in January 2005 are now reluctant to appear. The absence of Mr. Degli will significantly disrupt the strategy of all teams and necessitate significant time to prepare and to adjust in an effort to fill the newly created gaps in evidence by identifying and interviewing additional witnesses. Mr. Degli's knowledge of the Kabiligi dossier is unmatched after having been involved in the case for seven years. Proceeding with the Defence case in January 2005 without Mr. Degli leaves all teams in an inadequate state of preparation leading to an unfair trial due to lack of adequate time to prepare. Postponing the trial by several months to allow for re-preparation and integration of new counsel would also lead to an unfair trial by denying the rights of the Accused to an expeditious trial.

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Kabiligi's Motion

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12. Referring to his request to the President of 2 November 2004 and the response of 13 December 2004, Mr. Kabiligi asks the Chamber to suspend the Registrar's decision to withdraw the assignment of his Lead Counsel. The timing of the decision was intended not to disturb the presentation of the Prosecution case, but has greatly disrupted the preparations for his defence case. Mr. Degli has been the sole lawyer to follow the case since its inception, and all the principal witnesses have primarily dealt with and been interviewed by him. The present Co-Counsel is not familiar with the case and is not therefore capable of representing the Accused. Members of Mr. Kabiligi's family have informed him that his principal witnesses are aware of the removal of Mr. Degli and no longer wish to appear. In order to ensure a fair trial and in the interests of justice, the Chamber should maintain Mr. Degli as Lead Counsel until the completion of the trial at first instance. Mr. Kabiligi agrees with the submissions in the joint Defence motion and ADAD.

ADAD

13. ADAD, an association of over sixty Defence lawyers practicing before the Tribunal and seven legal assistants qualified to practice as lawyers in their national jurisdictions, seeks to intervene in this matter given its interests in the right to an effective defence and to a trial without undue delay as well as in the procedures used by the Registry to discipline and withdraw Defence lawyers. ADAD recalls that it has submitted proposals to revise the disciplinary procedures of Defence Counsel before the Tribunal and was invited to the last Plenary session to present its proposals.

14. Referring to Article 19 of the Statute, which provides for a fair trial, ADAD reiterates the submissions made in the joint Defence motion concerning the alleged prejudice faced by the four Accused if Mr. Degli is not reinstated. The core of ADAD's submissions, however, concern the procedure followed by the Registry in investigating and removing Mr. Degli. In ADAD's view, the Registry has no authority to sanction the misconduct of counsel. Pursuant to Rule 46 (D) and Article 21 of the Code of Conduct, the Registry may only bring misconduct to the attention of the President and Bureau or a counsel's national bar. Therefore, the Registry erred in requesting the OIOS to investigate Mr. Degli. According to ADAD, Defence counsel before the Tribunal are not bound by the Code of Conduct because the Registry has never consulted the organisation in connection with amendments, contrary to Rule 46 (D). The Advisory Panel envisaged in Article 29 of the Directive is not sufficient in this context.

15. In withdrawing the assignment of Mr. Degli, the Registry failed to take proper consideration of the impact the decision would have on the fairness of the trial to all four Accused or the Tribunal's Completion Strategy. Referring to the Niyitegeka case, the Defence also argues that the Registrar's decision results in discriminatory treatment between counsel for the Prosecution and for the Defence who are both bound by the Code of Conduct. ADAD also notes that a Co-Counsel is not automatically entitled to take over the defence, and Mr. Kabiligi has confirmed his confidence in Lead Counsel. Moreover, Article 20 (A) of the Directive provides that where the assignment of Defence Counsel is withdrawn by the Registrar, he may not withdraw until a replacement has been found.

16. General concern is raised about the present disciplinary procedure before the Tribunal which provides less procedural guarantees for counsel than in national bars or at other international systems such as the one in effect at the International Criminal Tribunal for the former Yugoslavia ("the ICTY"). ADAD requests the Chamber to find that the Code of Conduct is not in conformity with the Rules; that Rule 46 (D) of the Rules and Article 21 of

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the Code of Conduct have not been respected; that the Registrar's decision represented an untimely intervention in the proceedings; and that it should be declared invalid and the matter referred to a disciplinary body possessing sufficient guarantees, such as the Paris Bar. In the alternative, it is requested that the Registrar's decision be suspended until judgement has been rendered by the Trial Chamber.

The Registrar

17. The Registrar submits that the joint Defence motion should be dismissed because the remaining Defence Counsel only are authorized to represent their clients and hence lack standing to represent Mr. Degli. The motion is also inadmissible because the appropriate forum for reviewing the Registrar's decision is the office of the President. ADAD's request to act as *amicus curiae* should also be dismissed because it has not been formally recognized by the Tribunal nor properly incorporated under Tanzanian law. The purpose of an *amicus curiae* intervention is to enlighten the Chamber on a legal issue in dispute, not to advocate a particular side. ADAD's submissions simply reiterate the arguments made in the joint Defence motion.

18. On the merits, the Registrar recalls his submissions filed on 18 November 2004 in connection with Mr. Kabiligi's application for presidential review. It is true that Mr. Degli has the greatest familiarity with the Kabiligi dossier. However, any possible efficiency gained by continuing with him cannot be used as a shield against disciplinary action based on fraudulent conduct. Mr. Degli's own past actions of requesting the dismissal of his second Co-Counsel and putting off the assignment of his present Co-Counsel have largely contributed to the present problems concerning continuity. The Registry notes that the best remedy is for the Accused to immediately select a new Lead Counsel as the Accused's further delay only compounds the situation.

19. The Registrar notes that it is difficult to imagine, and indeed an abdication of responsibility, for one Defence team to delegate the preparation of an important witness to a different Defence team. Moreover, the various Defence teams seem to concede that Mr. Degli will not cooperate with them and provide them with his contacts and preparatory material. Rather than challenge the Registry's decision, the Defence teams should seek an order requiring Mr. Degli to communicate to his successor all information in his possession. The relevant witnesses to be called are Mr. Kabiligi's witnesses and not Mr. Degli's. The Defence arguments in favour of retaining Mr. Degli based on their planned joint defence are not genuine.

20. According to the Registrar, the complaints concerning the procedure employed to remove Mr. Degli are without merit. Article 19 (A)(iii) of the Directive gives the Registrar the authority to withdraw the assignment of counsel. It was adopted at the Plenary by the Judges under the same conditions as any amendment to the Rules and is thus not inferior. The references to criminal law standards and adversarial proceedings concerning the removal of Mr. Degli are also misplaced. The Registrar simply administers the legal aid system in a contractual manner and does not discipline counsel in the same way that a national bar would do. A lawyer removed from the list is still entitled to practice law elsewhere until his national bar states otherwise.

Kabiligi Defence Reply

21. The Kabiligi Defence, through Co-Counsel, emphasizes a reading of the Rules that allows only the Chamber, the Bureau, or the President to sanction counsel in accordance with Rule 46.

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Ntabakuze Defence Reply

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22. The Ntabakuze Defence points out that the signatories to the joint Defence motion are representing their clients, rather than Mr. Degli. Nothing in Article 19 of the Directive states that review of the Registrar's actions are the exclusive domain of the President.

DELIBERATIONS

Admissibility

23. Before considering the merits of the motion, the Chamber will address issues of admissibility. First, the Registry argues that the joint Defence motion should be dismissed because the remaining Defence Counsel lack standing to represent Mr. Degli. According to the Defence, the removal of Mr. Degli at this stage of the proceedings has disrupted the preparations of all four Defence teams, because of their highly integrated strategy. In particular, reference is made to Mr. Degli's exclusive contact with certain witnesses that are material to the defence of all four Accused. The Chamber will consider the substance of the Defence submissions below. In relation to the issue of standing, the Chamber accepts that these arguments potentially affect the position of all four Accused, including their right to be tried with undue delay and to have adequate time and facilities to prepare for their defence. Consequently, the Chamber is satisfied that not only the Kabiligi Defence, but also the other three teams, may challenge the Registrar's decision to withdraw Mr. Degli.

24. Second, the Registry has asserted that the appropriate forum for reviewing the Registrar's decision is the office of the President, not the Chamber. The Chamber observes that there is authority for Trial Chambers to review a decision by the Registrar pursuant to their inherent powers to ensure the fair and expeditious trial of accused persons. The Appeals Chamber has stated that where the Directive expressly provides for a review of the Registrar's decision, a Trial Chamber cannot interfere in the Registrar's decision, and its only option is to stay the trial until that procedure has been completed. Where, however, the Directive does not expressly provide for a review of the Registrar's decision, the Trial Chamber, pursuant to its statutory obligation to ensure the fairness of the trial, is competent to review the decision in the light of its effect upon the fairness of the trial.⁶

25. In the present case, the Registrar made his decision pursuant to Article 19 (A)(iii) of the Directive. Article 19 (E), which provides for review of decisions made under Article 19 (A), does not contain any explicit provision for review of decisions pursuant to Article 19 (A) (iii). Presidential review is only expressly provided when the Registrar denies a "request for withdrawal" emanating from the Accused or Counsel.⁷ In reviewing the Registrar's decision, the Chamber will not appropriate any power that has been conferred elsewhere.⁸ Consequently, the Chamber is satisfied that it has authority to entertain the motion in order to ensure a fair trial in conformity with Articles 19 and 20 of the Statute.⁹ The extent of this

⁶ *Blagojevic*, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojevic to Replace His Defence Team (AC), 7 November 2003, para. 7; *Milutinovic et al.*, Decision on Interlocutory Appeal on Motion for Additional Funds (AC), 13 November 2003, para. 19. These two decisions departed from previous case-law. See also *Mejakic et al.*, Decision on Appeal by the Prosecution to Resolve Conflict of Interest Regarding Attorney Jovan Simic (AC), 6 October 2004, para. 7.

⁷ Article 19 is quoted in full below (para. 30).

⁸ *Blagojevic*, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojevic to Replace His Defence Team (AC), 7 November 2003, para. 7; *Mejakic et al.*, Decision on Appeal by the Prosecution to Resolve Conflict of Interest Regarding Attorney Jovan Simic (AC), 6 October 2004, para. 7.

⁹ *Milutinovic et al.*, Decision on Interlocutory Appeal on Motion for Additional Funds (AC), 13 November 2003, paras. 19-20. The propriety of the Chamber exercising jurisdiction in this case is also supported by Articles 12 (C) and 18 (E) of the Directive, the closest parallel to the instant case, which contemplate review

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review will be considered below. Finally, the Chamber notes that Mr. Degli, who is directly affected by the Registrar's decision, has not brought the matter before the President in pursuance of the general principles in Rules 19 and 33 of the Rules but has sought the intervention of the Secretary-General (see para. 3 above).

26. The last procedural issue is whether ADAD should be granted standing as *amicus curiae*. The Registry opposes ADAD's application and argues that the organisation has not been formally recognized by the Tribunal or the Tanzanian Government, and it has taken a partisan position in its submissions. In the Chamber's view, it follows from the wording of Rule 74 that these are not relevant considerations. According to this provision, "[a] Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organization or person to appear before it and make submissions on any issue specified by the Chamber". For leave to be granted, the proposed submissions must be relevant to the case and assist the Chamber in the proper determination of it.¹⁰ The Chamber is of the view that in the present case, ADAD should be granted leave to make submissions in connection with the current procedures to withdraw and discipline counsel at the Tribunal and comparative remedies in place in national jurisdictions and in the ICTY. ADAD's submissions supplement those in the joint Defence motion. These issues are relevant to the case to the extent that they suggest the proper procedure to be followed under the Tribunal's present legal regime, and the submissions may assist the Chamber in the proper determination of the case.¹¹

Merits

27. The Registrar's decision to withdraw the assignment of Mr. Degli under the legal aid system as Lead Counsel for the Kabiligi Defence raises three principal issues: (i) whether the Tribunal's governing instruments grant the Registrar this authority; (ii) if it so exists, whether the Registrar properly exercised this authority; and (iii) the implications that the exercise of this authority during an ongoing trial has on the fair trial rights of the four Accused. The Chamber will consider these questions below, as well as matters relating to Mr. Kabiligi's Defence (iv).

(i) Did the Registrar Have Authority to Withdraw the Assignment?

28. Referring to Rules 45 (H) and (I), 45 *quater*, 46, and 54 of the Rules as well as Article 21 (2) of the Code of Conduct, the Defence argues that only the Chamber, the President, or the Bureau is competent to discipline or withdraw the assignment of counsel.¹² It follows that the

before the Trial Chamber if the Registrar denies an assignment of counsel or withdraws an assignment based on a later finding that the Accused had sufficient means to pay for his defence.

¹⁰ *Bagosora et al.*, Decision on *Amicus Curiae* Request by the Rwandan Government (TC), 13 October 2004, para. 4; *Bagosora et al.*, Decision on *Amicus Curiae* Request by African Concern (TC), 23 March 2004 para. 4; *Bagosora et al.*, Decision on the *Amicus Curiae* Application by the Government of the Kingdom of Belgium (TC), 6 June 1998, which also makes the point that the general definition of *amicus curiae* does not call for impartiality on the part of the filing party.

¹¹ The appropriate forum for advocating broad based reform of the administration of the legal aid system is the Plenary and not the Trial Chamber. See *Milutinovic et al.*, Decision on Interlocutory Appeal on Motion for Additional Funds (AC), 13 November 2003, paras. 17-18.

¹² The provisions referred to by the Defence read as follows:

Rule 45: Assignment of Counsel

... (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.

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Registrar's functions under Article 19 of the Directive are administrative in nature, and that he only has authority to report to competent authorities or to implement their decision to sanction counsel. The Defence's proposed reading is based at least in part on the view that the Directive is somehow subsidiary to the Rules.

29. This argument challenges the legal basis for the withdrawal of Mr. Degli and not directly the fairness of the procedure by which he was withdrawn. It may be argued that such submissions should be dealt with in administrative review instituted by Mr. Degli, who is directly affected by the Registrar's decision. The Chamber observes, however, that the submissions, albeit of a preliminary nature, raise legal issues and require interpretation of

(I) It is understood that Counsel will represent the accused and conduct the case to finality. Failure to do so, absent just cause approved by the Chamber, may result in forfeiture of fees in whole or in part. In such circumstances the Chamber may make an order accordingly. Counsel shall only be permitted to withdraw from the case to which he has been assigned in the most exceptional circumstances.

Rule 45 *quater*: Assignment of Counsel in the Interests of Justice

The Trial Chamber may, if it decides that it is in the interests of justice instruct the Registrar to assign a counsel to represent the interests of the accused.

Rule 46: Misconduct of Counsel

(A) A Chamber may, after a warning, impose sanctions against a counsel if, in its opinion, his conduct remains offensive or abusive, obstructs the proceedings, or is otherwise contrary to the interests of justice. This provision is applicable *mutatis mutandis* to Counsel for the prosecution.

(B) A Judge or a Chamber may also, with the approval of the President, communicate any misconduct of counsel to the professional body regulating the conduct of counsel in his State of admission or, if a professor and not otherwise admitted to the profession, to the governing body of his University.

(C) If a counsel assigned pursuant to Rule 45 is sanctioned in accordance with Sub-Rule (A) by being refused audience, the Chamber shall instruct the Registrar to replace counsel.

(D) The Registrar may set up a Code of Professional Conduct enunciating the principles of professional ethics to be observed by counsel appearing before the Tribunal, subject to adoption by the Plenary Meeting. Amendments to the Code shall be made in consultation with the representatives of the Prosecutor and Defence counsel, and subject to adoption by the Plenary Meeting. If the Registrar has strong grounds for believing that Counsel has committed a serious violation of the Code of Professional Conduct so adopted, he may report the matter to the President or the Bureau for appropriate action under this rule.

Rule 54: General Provision

At the request of either party or *proprio motu*, a Judge or Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

Article 21: Reporting Misconduct

... (2) The Registrar may also communicate any misconduct of Counsel to the professional body regulating the conduct of Counsel in his State of admission or, if a Professor and not otherwise admitted to the profession, to the governing body of his University.

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provisions adopted by the Judges.¹³ They involve questions of principle and would, if accepted, imply that the Registrar acted *ultra vires*. Case law has accepted that the Trial Chambers, when reviewing the Registrar's decision under the Directive, control whether he has failed to comply with the legal requirements of the Directive, and the review may include the proper interpretation of the Directive.¹⁴ The Chamber will therefore consider the submissions as part of its fair trial review.

30. Article 19 (A) of the Directive reads as follows:

Article 19: Withdrawal of Assignment in Other Situations

(A) The Registrar may:

- (i) In exceptional circumstances, at the request of the accused, or his Counsel, withdraw the assignment of Counsel;
- (ii) In exceptional circumstances, at the request of Lead Counsel withdraw the assignment of co-Counsel;
- (iii) In the case of a serious violation of the Code of Conduct, withdraw the assignment of Counsel or co-Counsel

(B) The Registrar shall withdraw the assignment of Counsel:

- (i) Upon the decision by a Chamber to refuse audience to assigned Counsel for misconduct under Rule 46 (A) of the Rules;
- (ii) Where Counsel no longer satisfies the requirements of Article 13 (i) of this Directive;
- (iii) Where Counsel or co-Counsel fails to observe the undertaking by him pursuant to Rule 45 *ter*.

(C) The Accused, the Counsel concerned and his respective professional or governing body shall be notified of the withdrawal.

(D) The Registrar shall immediately assign a new Counsel to the suspect or accused, and where appropriate, a co-Counsel.

(E) Where a request for withdrawal, made pursuant to paragraph (A), has been denied, the person making the request may seek the President's review of the decision of the Registrar.

31. Contrary to submissions by the Defence, it follows clearly from the wording of Article 19 (A)(iii) that the Registrar can withdraw *proprio motu* the assignment of Defence counsel appointed under the legal aid system. It is not correct, as argued by the Defence, that this is the "sole exception to the explicit requirement" that withdrawal by the Registrar requires the request or order of someone else.¹⁵ Indeed, Article 19 B(ii) and (B)(iii) explicitly authorize

¹³ See, *mutatis mutandis*, Decision (Appeal of the family of Félicien Kabuga against Decisions of the Prosecutor and President of the Tribunal), 22 November 2002 (AC): "CONSIDERING moreover that the action of the Prosecutor was taken pursuant to a Rule made by the Judges and that, by implication, the Judges, through the appropriate mechanism of a Trial Chamber, retain a responsibility to review the working of such action, particularly where hardship is alleged by a non-party." Unlike the present case, that decision affected "the liberty of individuals or their property", but it was taken by a non-judicial body, as here.

¹⁴ *Kvočka et al.*, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Zigic (AC), 7 February 2003, para. 13.

¹⁵ Joint Defence motion para. 15.

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the Registrar to withdraw assignment at his own initiative. Furthermore, Article 18 (A) and (B) of the Directive allows him to withdraw assignment *proprio motu* when a suspect or accused is no longer indigent. Case law has confirmed this competence of the Registrar.¹⁶

32. The authoritative nature of the Directive along with its subsequent amendments flows from its adoption by the Judges during Plenary meetings (Article 32 of the Directive) under the same conditions as the Rules of Procedure and Evidence. The fact that the text is prepared and proposed by the Registry, rather than the Judges, is of no consequence to its legal status.¹⁷

33. Not only the Directive, but also the Rules clearly envision the possibility that the Registrar takes independent action. If a counsel fails to appear before the Tribunal, as undertaken, the Registrar may withdraw his assignment in parallel to other sanctions taken by the Tribunal or the Chamber. Rule 45 *ter* (B) states:

Failure by Counsel or Co-Counsel to appear before the Tribunal, as undertaken, shall be a ground for withdrawal by the Registrar of the assignment of such Counsel or Co-Counsel or the refusal of audience by the Tribunal or the imposition of any other sanction by the Chamber concerned. (Emphasis added.)

34. The Defence is also wrong that the Code of Conduct does not contemplate the Registrar taking independent action to remove counsel appointed under the legal aid system. According to Article 5 *bis* (5) of the Code of Conduct, the Registrar shall take action in accordance with Article 19 (A)(iii) of the Directive if Counsel is found to have engaged in a practice of fee splitting or to have entered into a fee splitting arrangement with his client. The Chamber notes that the Code of Conduct can only be amended by the Registrar after consultation with the Judges (Article 23). The Appeals Chamber has confirmed that the Code is binding.¹⁸

35. The interpretation suggested by the Defence that the Registrar is not authorized to withdraw assignment of Counsel but shall submit reports to the competent authorities of the Tribunal or implement their decisions is not supported by the Statute of the Tribunal, which is silent on the issue. Neither is there any basis for this view in the Directive, the Rules, or the Code of Conduct, when read in context. The various instruments supplement each other and reflect the functions of the Registrar, the Chamber, the Bureau, and the President. To some extent, their competence overlaps, but there is no conflict which requires an interpretation establishing a hierarchy between the various sets of provisions. Under Rule 45 and the Directive, the Registrar has the primary responsibility to administer the legal aid system. He therefore has particular interest in the conduct of assigned Defence counsel that does not exist in relation to engaged counsel or counsel for the Prosecution. The Chambers have primary responsibility to administer its cases and may issue orders for the conduct of the trial (Rule 54). Like all courts, they must have the discretion, independent of the Registrar, to deal appropriately with all counsel who appear before them. This is reflected in Rule 46

¹⁶ *Kvocka et al.*, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Zigic (AC), 7 February 2003, para. 2. See also *Nahimana et al.*, Decision on Jean-Bosco Barayagwiza's Motion for Appointment of Counsel or a Stay of Proceedings (AC), 22 October 2004 ("Noting that under Article 18 of the Directive, the Registrar may withdraw the assignment of Counsel if he finds that the accused is no longer in fact indigent ...")

¹⁷ Indeed, proposals for amendments to the Rules emanate from Judges, the Prosecutor, the Registry, or Defence Counsel. Moreover, the hierarchical reading proposed by the Defence is based primarily on an analogy to a national law distinction between statutes passed by a legislature, elected by the people, and administrative regulations, passed by an agency. This hierarchy is typically justified by the fact that administrative regulations are adopted by administrative bodies, not by the legislature itself. Here, the Judges, not the Registrar, have approved the Directive.

¹⁸ *Niyitegeka*, Judgement(AC), 9 July 2004, para. 16.

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concerning misconduct of counsel. In addition, Chambers may, under Rule 45 (H) and (I) and Rule 45 *quater* issue instructions to the Registrar concerning Defence counsel. The President, assisted by the Bureau (Rule 23), has a general supervisory role under Rules 19 and 33. This explains why the Registrar, under Rule 46 (D), may wish to report serious violations of the Code of Conduct to the President and the Bureau.

36. The Chamber concludes that the Registrar had authority to withdraw the assignment under the legal aid system of Mr. Degli pursuant to Article 19 (A)(iii) of the Directive. The Registrar's authority to withdraw the assignment of counsel *proprio motu* pursuant to Article 19 (A)(iii) is entirely consistent with what the Appeals Chamber has described as his "primary responsibility of determining matters relating to the assignment of counsel under the legal aid system".¹⁹

(ii) Did the Registrar Exercise His Authority Properly?

37. The Chamber will now consider whether the Registrar exercised his authority properly when he decided to withdraw the assignment of Mr. Degli under the legal aid system. The standard of review has been described as follows:

Judicial review of an administrative decision made by the Registrar in relation to legal aid. . . is concerned initially with the propriety of the procedure by which the Registrar reached the particular decision and the manner in which he reached it. The administrative decision will be quashed if the Registrar has failed to comply with the legal requirements of the Directive The administrative decision will also be quashed if the Registrar has failed . . . to act with procedural fairness towards the person affected by the decision, or if he has taken into account irrelevant material or failed to take into account relevant material, or if he has reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached . . . there can be no interference with the margin of appreciation of the facts or the merits of that case to which the maker of such an administrative decision is entitled.²⁰

38. Article 19 (A)(iii) of the Directive requires "serious violations of the Code of Conduct" but does not set forth a particular procedure that the Registrar must follow in withdrawing the assignment of a counsel. The Defence has not disputed that the alleged acts reproached in the Registrar's decision would, if true, represent a serious violation of the Code of Conduct.²¹ In assessing the nature of the procedure employed, the Chamber is mindful that a basic legal principle is that a deprivation of some protected interest must be preceded by notice and an opportunity for the person concerned to make known his views before a decision is taken.

39. The Registrar's decision was based on the OIOS report of August 2004, following investigations after he referred the matter to this agency in May 2003. OIOS submitted its report after hearing all relevant parties, including Mr. Degli. On 15 October 2004, the Registrar served on Mr. Degli a summary of the investigative report and gave him eight days to respond. Mr. Degli indicated that he could not respond until provided with the full report, but in any case he requested the Registrar to make his decision as quickly as possible so that he could appeal.

¹⁹ *Mejakic et al.*, Decision on Appeal by the Prosecution to Resolve Conflict of Interest Regarding Attorney Jovan Simic (AC), 6 October 2004, para. 7; *Milutinovic et al.*, Decision on Interlocutory Appeal on Motion for Additional Funds (AC), 13 November 2003, para. 19.

²⁰ *Sljivancanin*, Decision on Assignment of Defence Counsel (ICTY President), 20 August 2003, para. 22, quoting *Kvočka et al.*, Decision on Review of Registrar's Decision to withdraw Legal Aid from Zoran Zigic (AC), 7 February 2003, para. 12.

²¹ Joint Defence motion para. 19.

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40. The Defence has argued that the Registrar should have entrusted the investigation to a different entity than OIOS, in particular to the Paris Bar association. The Chamber disagrees. The Registrar, who is responsible for the administration of the legal aid system, funded by the United Nations budget, was at liberty to submit this task to OIOS, which is an independent United Nations agency tasked with oversight functions. The Defence has emphasized that Mr. Degli should have been given the entire report, and not only a summary. According to the Registrar's decision, this was not done because "OIOS informed the Registrar that it was neither necessary nor usual to share its report with persons other than the few people who had received copies thereof".²² Whatever view one may hold about this practice, the Chamber observes that the Registrar took the initiative to provide a summary of the report which contained the material facts on which the decision of 26 October 2004 was based. Accordingly, Mr. Degli was informed of the nature of the evidence against him. In other cases concerning assignment of counsel, case law has considered a summary as sufficient, and an oral hearing has not been a requirement.²³ As for the time afforded to Mr. Degli to respond, the Chamber notes that he elected not to respond to the merits. He did not indicate that the time was insufficient or ask for more time to respond but requested that a decision be taken as soon as possible. Nothing in the decision suggests that the Registrar took account of irrelevant material.

41. The Defence and *amicus* suggest that the Registrar erred in failing to take proper consideration of the impact his decision would have on the trial or the Tribunal's Completion Strategy. However, the Appeals Chamber has established that a decision's impact on the Tribunal's Completion Strategy is an irrelevant consideration.²⁴ On the other hand, the Registrar did take into consideration the impact of his decision on the trial by refraining from action until a suitable break in the proceedings.²⁵ The Chamber does not consider this an improper consideration. Once he had received the OIOS report, the Registrar had to act on it, given the serious allegations contained in it. He decided to do so in the three months break between the presentation of the Prosecution and the Defence case. Whether he should have waited until the end of the trial, several months later, is a matter of appreciation. In the present context, it does not fall under the Chamber's review to substitute its discretion to that

²² See Registrar's decision para. 16 with footnote 1.

²³ *Kvočka et al.*, Decision on Review of Registrar's Decision to withdraw Legal Aid from Zoran Zigic (AC), 7 February 2003, para 39-40 (Para. 39: "The Directive does not impose upon the Registrar an obligation to hold a formal hearing, and the nature of the inquiry to be conducted in accordance with the Directive does not attract such an obligation. Where, however, action pursuant to the Directive detrimental to an accused is contemplated, procedural fairness dictates that the accused be afforded the right to be heard. Bearing in mind that the withdrawal of legal aid may well impact negatively upon the accused's ability to conduct his defence in the relevant criminal proceedings in the Tribunal, such a right entitles the accused to be given (a) notice of the allegations against him, (b) notice in reasonable detail of the nature of the material upon which the contemplated action is to be based, and (c) the opportunity to respond to that material." In that case, meetings were held between Zigic and representatives of the Registry, see para. 40.); *Sljivancanin*, Decision on Assignment of Defence Counsel (ICTY President), 20 August 2003, para.23 ("The Registrar, of course, cannot be required to conduct a mini-trial each time a defendant seeks assignment of a particular lawyer. He need not hold a hearing of any kind. But the Registrar must provide the accused with at least a summary of the evidence upon which the Registrar intends to rely, and he must take into account whatever materials the accused (in consultation with his preferred attorney) wishes to submit within some very short period to be determined by the Registrar so as to avoid undue delay. It is important to emphasize that the requirement to give the affected accused an opportunity to respond to at least a summary of the evidence upon which the Registrar intends to rely does not in any way relieve the accused of the burden of establishing that the interests of justice demand the assignment of the preferred attorney."); Footnote 17 ("It should be emphasized that the accused (and thus his preferred attorney) need not be given an opportunity to respond to all the materials collected by the Registrar, only to those upon which the Registrar intends actually to rely in making his decision.").

²⁴ *Milosevic*, Decision on the Interlocutory Appeal by the *Amici Curiae* against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case (AC), 20 January 2004, paras. 17, 18.

²⁵ Registrar's decision para. 16 ("... also making sure not to abruptly interrupt the course of justice").

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of the Registrar. The Chamber will consider below under (iii) whether the timing of the decision interfered with the right of the four accused to a fair trial.

42. The Chamber recalls that Mr. Degli is not being criminally sanctioned, prevented from practicing law in general, nor from appearing before the ICTR as a counsel privately engaged by an Accused. He is being barred from participating in the Tribunal's legal aid system. As such, analogies to more extensive protections in national systems are not directly applicable here. The fact that different disciplinary procedures exist at the ICTY does not imply that the present system, established by the Judges and applied for a considerable period, is insufficient and should be set aside. More specifically, the Chamber observes that although a disciplinary panel at the ICTY makes a finding concerning the violation of the Code of Conduct, the Registrar still retains the authority to "suspend the assignment of counsel" if a disciplinary procedure has been initiated.²⁶ Case law suggests that counsel in a comparable situation at the ICTY could have been removed from the case and prevented from any future assignments before the disciplinary panel reached a decision on the merits.²⁷

43. After carefully reviewing the decision and the arguments of the parties, the Chamber does not find that the Registrar failed to comply with the requirements of the Directive or that he acted without procedural fairness. Furthermore, he did not reach a conclusion which no reasonable person, properly informed, could have reached.

(iii) Did the Registrar's Decision Violate the Right of the Accused to a Fair Trial?

44. The Defence asserts that the removal of Mr. Degli, particularly at this stage of the proceedings, denies Mr. Kabiligi the right to counsel of his choice. All four Accused are denied the right to adequate time and facilities to prepare for their Defence and to be tried with undue delay, as guaranteed by Articles 19 and 20 of the Statute.

45. The Chamber does not accept the assertion that Mr. Kabiligi is being denied the right to counsel of his choosing. According to Article 20 (A) of the Directive, Mr. Degli remains Lead Counsel for Mr. Kabiligi and is required to continue acting until a replacement counsel has been provided.²⁸ The Registrar's decision ordered Mr. Degli to deliver all the original documents in the file which are in his possession to Mr. Kabiligi or to Co-Counsel, and Mr. Kabiligi to submit three names for a new Lead Counsel. These orders were made in conformity with Article 20 of the Directive and were aimed at ensuring continuation at the level of Lead Counsel. Mr. Kabiligi also has a Co-Counsel, who continues to represent him. The Appeals Chamber has consistently stated that "the right to choose counsel applies only to those accused who can financially bear the costs of counsel" and that "the right to free legal assistance by counsel does not confer the right to choose one's counsel".²⁹ Mr. Kabiligi's insistence on having Mr. Degli as Lead Counsel and his alleged lack of confidence in his present Co-Counsel do not implicate his right to counsel.³⁰

²⁶ Article 19 (B) of the ICTY Directive on the Assignment of Counsel.

²⁷ See *Rasevic*, Decision on the Assignment of Defence Counsel (ICTY President), 16 October 2003, para. 4.

²⁸ Article 20 (A) of the Directive states: "Where the assignment of Counsel is withdrawn by the Registrar or where the services of assigned Counsel are discontinued, the Counsel assigned may not withdraw from acting until either a replacement Counsel has been provided by the Tribunal or by the suspect or accused, or the suspect or accused has declared his intention in writing to conduct his own defence."

²⁹ *Akayesu*, Judgement (AC), 1 June 2001, para. 61; *Kambanda*, Judgement (AC), 19 October 2000, para. 33. See also *Blagojevic*, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojevic to Replace His Defence Team (AC), 7 November 2003, para. 22.

³⁰ *Blagojevic*, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojevic to Replace His Defence Team (AC), 7 November 2003, para. 54.

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46. The next question is whether the removal of Mr. Degli jeopardizes the right of Mr. Kabiligi, or any of the other Accused, to have adequate time and facilities to prepare their Defence and to be tried without undue delay. The Chamber is mindful that Mr. Degli has conducted the Kabiligi Defence since 8 August 1997. Since the trial started in April 2002, he has been assisted by three Co-Counsel.³¹ The present Co-Counsel, Mr. René Saint-Léger, is relatively new. He was appointed on 15 June 2004 and has participated in the final two trial segments of the Prosecution's case, although he has been on mission at various points. The Chamber accepts that Mr. Degli had exclusive contact with some witnesses that were relevant to all four accused. The Defence has not identified these prospective witnesses or even the general area of their proposed testimony, but the Chamber realizes that the integration of a new Lead Counsel would result in some delay of the proceedings for all four Accused, because of the remaining Counsels' lack of familiarity with these witnesses and the reluctance of some of them to appear.

47. In response to the changed circumstances facing all four Defence teams, in particular for Mr. Kabiligi, the Chamber has postponed the commencement of the Defence case from 12 January 2005 until 30 March 2005. This was done in order to enable the Defence teams to adjust and to undertake any additional investigations or preparatory work. Other relevant filing deadlines have also been postponed to meet these new circumstances (para. 6 above).³² The Chamber notes that Mr. Kabiligi's witnesses need not be called until later during the presentation of the Defence case. It is willing to consider further requests for relevant relief should the circumstances warrant it, such as the recall of Defence witnesses to allow further cross-examination by the Kabiligi Defence. In the Chamber's view, these measures adequately address the fair trial concerns of all four Accused based on the present circumstances. The Chamber is mindful of the need to continually follow the situation. Finally, it is recalled that the Defence may make appropriate requests to the Chamber in connection with witnesses who are reluctant to appear.

48. In view of the particular circumstances that have arisen in connection with the withdrawal of Mr. Degli's assignment, the postponement of the Defence case was inevitable in order to ensure sufficient time for the Defence to prepare and does not affect the four Accused's right to a trial without undue delay. At this juncture, the Chamber is not faced with a situation where it may have to consider severance of Mr. Kabiligi's case in order to ensure the right of the other three Accused to trial without undue delay.

49. The Chamber concludes that the right of the four Accused to a fair trial without undue delay has not been affected by the Registrar's decision of 26 October 2004. In reaching this decision and modifying the trial schedule in view of the changed circumstances, the Chamber has not been guided by the ICTR Completion Strategy nor the desirability of a rapidly progressing trial but simply the need to ensure a fair trial.

³¹ Mrs. Sylvia Olympio, was assigned as Co-Counsel on 15 February 2002, but withdrew on 27 April 2003 after acknowledging that her Paris bar qualifications had been forged. See Decision to Withdraw the Assignment of Mr. Jean Yaovi Degli as Defence Counsel for Gratien Kabiligi (Registrar), 26 October 2004, paras. 1-3. The next Co-Counsel, Mr. David Martin-Sperry, served from 8 August 2003 until 11 February 2004 when his assignment was withdrawn at Mr. Degli's request for conducting plea negotiations with the Prosecution without Lead Counsel's approval. See Decision of Withdrawal of David Martin-Sperry as Co-Counsel of the Accused Gratien Kabiligi (Registrar), 11 February 2004.

³² As a consequence, the Kabiligi Defence request of 4 November 2004 for a postponement of the proceedings and certain filing deadlines is moot.

(iv) *New Lead Counsel*

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50. During the status conference on 21 December 2004, Mr. Kabiligi requested the Chamber to order the Registrar to appoint Mr. Skolnik, the present Co-Counsel in the Bagosora Defence, to serve as his new Lead Counsel given his familiarity with the case. The Bagosora Defence concurred with this proposed solution. Both suggested that the Chamber act pursuant to Rule 45 *quater* to facilitate the appointment immediately.³³ The Registry indicated that it was favorable to appointing Mr. Skolnik.³⁴ The Chamber left it to the Registry to pursue this option.³⁵

51. In furtherance of Mr. Kabiligi's request, the Registry corresponded with Mr. Kabiligi and Mr. Skolnik to gain further assurances and information related to the proposed solution prior to making an appointment. In a letter dated 22 December 2004, Mr. Skolnik expressed his willingness to accept the appointment as Lead Counsel for Mr. Kabiligi. However, he also indicated a measure of uncertainty due to possible certification to appeal the Trial Chamber's decision as well as Mr. Degli's pursuit of a separate administrative appeal with the Secretary General. Mr. Skolnik proposed that he be named interim Lead Counsel until the situation was clarified. Subsequently, Mr. Kabiligi withdrew his proposal, stating that it had caused confusion and indicating his desire for Lead Counsel to act in his interests exclusively. He asked that the process of assigning a new Lead Counsel be suspended until the various avenues for reinstating Mr. Degli had been exhausted.

52. The Chamber finds that there is now an immediate need for clarity and action. As mentioned above (para. 45), the Registrar's decision requested Mr. Kabiligi to propose three names for a new Lead Counsel. This has not been done. The Registrar's decision also required Mr. Degli to provide the case file to Co-Counsel or the Accused. In addition, Article 20 (A) of the Directive further mandated that he actively continue until replaced. From the submissions as well as his apparent lack of participation in the case since the Registrar's decision, the Chamber notes that it seems that Mr. Degli has not fulfilled these obligations. The Chamber recalls that Co-Counsel is relatively new (para. 46). He is presently undergoing a medical procedure.³⁶ Therefore, Mr. Kabiligi has been without adequate representation capable of assisting him in the preparation of his Defence case since 26 October 2004.³⁷ He appears reluctant to take the necessary steps to facilitate the appointment of a new counsel.

53. In order to ensure that Mr. Kabiligi is adequately represented at this critical juncture of the trial, the Chamber, pursuant to Rule 45 *quater*, instructs the Registrar to appoint immediately Mr. Skolnik as Lead Counsel for the Kabiligi Defence.³⁸ The Chamber is aware that the assignment of a particular counsel is typically within the province of the Registry, but

³³ T. 21 December 2004 p. 2 (Kabiligi: ... "I would like to propose to you ... that you order the Registrar to appoint a counsel, a co-counsel ... the name I would like to propose ... is that of Counsel Paul Skolnik, of course, subject to his assent and the assent of Mr. Constant, as well as the agreement of Mr. Constant's client".) and p. 6 (Constant: ... "... and I think it is in the interest of all Defence teams that the Chamber orders the Registrar to appoint Paul Skolnik pursuant to Rule 45 *quater*".).

³⁴ T. 21 December 2004 p. 12 ("... in the circumstances of this case, we would support and act expeditiously to get Mr. Skolnik ... as counsel in this case, because it eases a lot of problems which we usually encounter when we have to make that decision.").

³⁵ T. 21 December 2004 pp. 12-13.

³⁶ According to medical attestations, Mr. Saint-Léger is presently undergoing surgery in his Achilles tendon. He is unable to work and travel for several weeks.

³⁷ In the Chamber's view, Mr. Saint-Léger's familiarity with the case has been sufficient to respond to pending motions.

³⁸ Even if Rule 45 *quater* may have been adopted to address situations similar to the one faced by the Chamber in *Barayagwiza*, Decision on Defence Counsel Motion to Withdraw (TC), 2 November 2000, Mr. Kabiligi's reluctance to facilitate the assignment of a new Lead Counsel is similar to such a situation, and, in any event, the plain language of the Rule covers the situation in the present case.

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recalls the Registry's previously expressed amenability to this solution. This assignment is in the interests of justice in view of the circumstances noted above; Mr. Skolnik's familiarity with the case and willingness to accept the assignment; the fact that the proposal originated from Mr. Kabiligi; and that Mr. Bagosora as well as his Lead Counsel supported the proposal.³⁹ Mr. Kabiligi's subsequent withdrawal of his proposal stems largely from the confusion flowing from the complicated situation. The present decision, however, reduces that lack of clarity. It implies that Mr. Skolnik will assist Mr. Kabiligi exclusively and that the Registry must find a new Co-Counsel for Mr. Bagosora. It also addresses Mr. Kabiligi's concern about a possible conflict of interest in connection with the previously suggested interim solution.

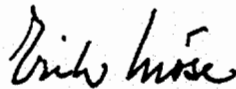
54. Mr. Kabiligi's request to suspend the process of appointing a new Lead Counsel in the hope that Mr. Degli will be reinstated is not justifiable. Given the present circumstances, Mr. Kabiligi is in need of immediate additional legal assistance. Staying the procedures further only results in undue delay which implicates fair trial concerns. Mr. Kabiligi has previously indicated that he wants to appeal the Chamber's decision not to reinstate Mr. Degli.⁴⁰ It follows from Rule 73 (B) that the decision is, as a general rule, not subject to interlocutory appeal. Mr. Degli's request for review by the Secretary-General is not contemplated in the Tribunal's Statute or Rules.

FOR THE ABOVE REASONS, THE CHAMBER

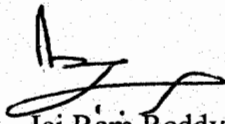
DENIES the Defence motions for the reinstatement of Mr. Jean Yaovi Degli as Lead Counsel for Mr Kabiligi.

INSTRUCTS the Registrar to assign immediately Mr. Paul Skolnik as new Lead Counsel for Mr. Kabiligi.

Arusha, 19 January 2005



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



³⁹ T. 21 December 2004 pp. 2, 4, 12.

⁴⁰ T. 21 December 2004 p. 2.