



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

2244
AM

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramarosan
Judge Solomy Balungi Bossa

Registrar: Mr. Adama Dieng

Date: 7 April 2006

ICTR-97-21-T
07-04-2006
(2244-2222)

The PROSECUTOR

v.

Pauline NYIRAMASUHUKO and Arsène Shalom NTAHOBALI
Case No. ICTR-97-21-T
Joint Case No. ICTR-98-42-T

DECISION ON NYIRAMASUHUKO'S MOTION FOR SEPARATE PROCEEDINGS, A NEW
TRIAL, AND STAY OF PROCEEDINGS
Rules 82 (B) and 72 (D), Rules of Procedure and Evidence

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AMS

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

SITTING as Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Arlette Ramarosan and Judge Solomy Balungi Bossa (the “Chamber”);

BEING SEIZED of the Defence for Nyiramasuhuko’s “*Requête de Pauline Nyiramasuhuko pour procès séparé, nouveau procès et arrêt des procédures (Art. 82 (D) et 72 (D) du Règlement de Procédure et de Preuve*”, filed on 17 February 2006 (the “Motion”);

HAVING RECEIVED the following responses and replies from the Parties:

1. Nteziryayo’s “*Réponse de l’Accusé Alphonse Nteziryayo à la Requête de Pauline Nyiramasuhuko pour procès séparé, nouveau procès et arrêt des procédures déposée le 17 février 2006*”, filed on 22 February 2006 (“Nteziryayo’s Response”);
2. The “Prosecutor’s Response to Nyiramasuhuko’s Motion for Separate Trial, New Trial & Termination of Proceedings”, filed on 23 February 2006 (“Prosecutor’s Response”) and the Addendum thereto, filed on 28 February 2006 (“Prosecutor’s Addendum”);
3. The “*Réplique de Pauline Nyiramasuhuko à la Réponse du Procureur à sa Requête pour procès séparé, nouveau procès et arrêt des procédures et demande reconventionnelle de l’application de l’Article 73 (F) à l’endroit du Procureur*”, filed on 27 February 2006 (“Nyiramasuhuko’s Reply to Nteziryayo’s and the Prosecutor’s Responses”);
4. Ntahobali’s “*Réponse de Arsène Shalom Ntahobali à la Requête de Pauline Nyiramasuhuko pour procès séparé, nouveau procès et arrêt des procédures et Requête pour suspendre le témoignage de l’Accusé Arsène Shalom Ntahobali*”, filed on 27 February 2006 (“Ntahobali’s Response”);
5. Kanyabashi’s “*Réponse de Joseph Kanyabashi à la Requête de Pauline Nyiramasuhuko pour procès séparé, nouveau procès et arrêt des procédures*”, filed on 27 February 2006 (“Kanyabashi’s Response”);
6. Nyiramasuhuko’s “*Réplique de Pauline Nyiramasuhuko à la Réponse de Joseph Kanyabashi à sa Requête pour procès séparé, nouveau procès et arrêt des procédures*”, filed on 3 March 2006 (“Nyiramasuhuko’s Reply to Kanyabashi’s Response”);
7. Nyiramasuhuko’s “*Réplique de Pauline Nyiramasuhuko à l’addendum du Procureur à sa Requête pour procès séparé, nouveau procès et arrêt des procédures*”, filed on 6 March 2006 (“Nyiramasuhuko’s Reply to the Prosecutor’s Addendum”);

RECALLING

1. The “Decision on the Prosecutor’s Motion for Joinder of Trials” of 5 October 1999 (“Decision on Joinder”);
2. The “Decision on the Defence Motion Seeking a Separate Trial for the Accused Sylvain Nsabimana” of 8 September 2000 (“Decision on Nsabimana’s Motion for Severance”);
3. The “Decision on the Defence Motion for Separate Trial” of 25 April 2001 (“Decision on Ndayambaje’s Motion for Severance”);

4. The “Decision on the Motion for Separate Trials” of 8 June 2001 (“Decision on Ntahobali’s Motion for Severance”);
5. The “Decision on Defence Motion for a Stay of Proceedings and Abuse of Process” of 20 February 2004 (“Decision on Nyiramasuhuko’s Motion for Stay of Proceedings”);
6. The “Decision in the Matter of Proceedings Under Rule 15 *bis* (D)” of 15 July 2003 (“15 *bis* Decision”);
7. The “Decision on Defence Motion for Certification to Appeal the “Decision on Defence Motion for a Stay of Proceedings and Abuse of Process”” of 19 March 2004 (“Decision on Nyiramasuhuko’s Motion for Certification to Appeal”);
8. And the “Decision on Ntahobali’s Motion for Separate Trial” of 2 February 2005 (“Decision on Ntahobali’s Motion for Separate Trial”);

CONSIDERING the provisions of the Statute of the Tribunal (the “Statute”), in particular Articles 19 and 20, and the Rules of Procedure and Evidence (the “Rules”), in particular Rules 82 (B) and 72 (D).

SUBMISSIONS BY THE PARTIES

Defence for Nyiramasuhuko

1. The Defence for Nyiramasuhuko brings its Motion pursuant to Rules 82 (B)¹ and 72 (D) of the Rules. The Defence prays for severance of proceedings, for a new trial, and for the stay of proceedings. It argues that Pauline Nyiramasuhuko has suffered serious and irrevocable prejudice caused by a conflict of interests that results from joint proceedings conducted with two other Accused, Sylvain Nsabimana and Joseph Kanyabashi. Nsabimana’s and Kanyabashi’s defence strategies, according to the Defence, are contradictory to Nyiramasuhuko’s, and incriminate her.² Further causes of prejudice are the delays which have become “totally unreasonable”³ and are contrary to the interests of justice. Accordingly, both criteria under Rule 82 (B) have been met.

Applicable Law and Jurisprudence

2. The Defence recalls the provisions of Rule 82, arguing that it limits the possible prejudice an accused may suffer from a joint trial,⁴ since it allows the accused to be tried separately if there is a conflict of interests that might cause serious prejudice to an accused or if it is necessary to protect the interests of justice.⁵ The Defence submits that the possibly

¹ Rule 82 (B) stipulates: “The Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice.”

² The Motion, paras. 47, 52.

³ The Motion, para. 47.

⁴ The Motion, paras. 63-65, 68.

⁵ The Motion, para. 68, quotes *Archbold International Criminal Courts, Practice, Procedure and Evidence*, Carswell, Toronto 2003, pp. 206-207, para. 8-7a, quoting *Prosecutor v. Ngirumpatse et al.*, Decision on Prosecutor’s Motion for Joinder of Accused and on the Prosecutor’s Motion for Severance of the Accused, 29 July 2000, paras. 22-24.

inevitable prejudice resulting from joint proceedings must remain minimal⁶ and may not adversely affect an accused to the point of depriving him or her of a full defence and a fair trial.⁷

3. The Defence submits that considerations in favour of joint proceedings - such as possible savings in expense and time, greater transparency in justice, more consistent and detailed presentation of the evidence, better protection for victims and witnesses who will have to testify only once, and a reduced risk of contradictions in the decisions, when related and indivisible facts are examined - must be balanced against the rights of the accused to a trial without undue delay and any prejudice to the accused that may be caused by joinder.⁸
4. In this context, the Defence recalls that the Chamber has assured Nyiramasuhuko that it would always be vigilant with regard to fair proceedings, respecting the rights of each accused in a joint trial, so that no co-accused loses the rights he or she would have been guaranteed if tried separately.⁹
5. The Defence contends that whilst both the wording of Rule 82 (B) and the cited jurisprudence demonstrate that it is sufficient for an accused to show either the existence of a conflict of interests which might cause serious prejudice resulting from joint proceedings, or that the interests of justice are compromised,¹⁰ it will demonstrate that both elements are met in the present case.

Conflict of Interest that Might Cause Serious Prejudice to Pauline Nyiramasuhuko

6. The Defence submits that while the evaluation of prejudice resulting from a conflict of interests between co-accused demands a case-by-case-analysis, certain decisions indicate the limits of this prejudice.¹¹ In *Kovacevic*, it was held that the emergence of a conflict of interests between the accused in the context of their respective defence strategies could concern their right to a fair trial.¹² In *Ngirumpatse et al.*, the Trial Chamber recalled the elements of a conflict of interests which might cause serious prejudice, such as the "concurrent presentation of evidence of the proposed co-accused".¹³
7. The Defence points out that while there is jurisprudence stating that the existence of antagonistic and accusing defence strategies in joint proceedings does not *prima facie* render

⁶ The Motion, para. 67, quotes *Archbold International Criminal Courts, Practice, Procedure and Evidence*, Carswell, Toronto 2003, pp. 206-207, para. 8-6b, 8-7a, quoting *Prosecutor v. Delalic et al.*, Decision on the Motion by Defendant Delalic Requesting Procedures for Final Determination of the Charges Against Him, 1 July 1998, para. 35.

⁷ The Motion, para. 53.

⁸ The Motion, para. 67, quotes *Archbold International Criminal Courts, Practice, Procedure and Evidence*, Carswell, Toronto 2003, pp. 206-207, para. 8-6b, 8-7a, quoting *Prosecutor v. Bagosora et al.*, Decision on the Prosecutor's Motion for Joinder, 29 June 2000, paras. 145-156.

⁹ The Motion, para. 86.

¹⁰ The Motion, paras 87-88.

¹¹ The Motion, para. 69.

¹² The Motion, paras. 70-71, quoting *Prosecutor v. Kovacevic, Décision relative à la requête aux fins de jonction d'instances et à la présentation simultanée des éléments de preuve*, 14 May 1998, para. 10. The Defence also relies on *Prosecutor v. Bagosora et al.*, Decision on Prosecution's Motion for Joinder, 29 June 2000, paras. 57-58.

¹³ The Motion, para. 75. The Chamber notes that while the Defence seems to be quoting an ICTR decision, there is no reference to the case name or the date on which it was rendered.

Rule 82 (B) applicable,¹⁴ these decisions, too, refer to the possibility of demonstrating that there is a conflict of interests.¹⁵

8. The Defence submits that there is a real and not hypothetical conflict of interests between Nyiramasuhuko's defence strategy and Kanyabashi's and Nsabimana's defence strategies,¹⁶ which accuse Nyiramasuhuko. This conflict has been present throughout the trial,¹⁷ became evident during Nsabimana's and Kanyabashi's cross-examination of Prosecution witnesses,¹⁸ and has intensified during Nyiramasuhuko's defence case, reaching a point where it would be unjust and unfair to continue her trial in the joint proceedings, thus rendering Rule 82 (B) applicable.¹⁹
9. The Defence contends that the conflict of interests is caused by a strategy aiming firstly at attacking Nyiramasuhuko with regard to allegations contained in her Indictment, and secondly at implicating her as a former minister and MRND member.²⁰
10. With regard to the first aim, the Defence submits that these allegations have no relevance to the allegations raised against Kanyabashi and Nsabimana, even if they figure in their Indictments, since some of the factual allegations mentioned there do not implicate these Accused.²¹ This situation is one of the factors which might cause serious prejudice to an accused.²² Since Kanyabashi is not implicated by these allegations, if he fears contamination by the evidence presented against the other accused in his trial, he should take the appropriate steps, rather than interfere in Nyiramasuhuko's defence.²³
11. The Defence submits that the facts of which Nyiramasuhuko and her co-accused are accused are often completely distinct. Nyiramasuhuko has had to answer factual allegations particular to her status as a government minister from April 1992 to July 1994, notably as regards the evidence presented by Prosecution Expert Witnesses Des Forges and Guichaoua.²⁴ Further, Nsabimana and Kanyabashi try to impute responsibility for the events in Butare to the MRND and to hold Nyiramasuhuko responsible for the MRND and for its alleged youth wing, the *Interahamwe*.²⁵ In this context, the Defence points out that Kanyabashi and Nsabimana were both civil administrators in Butare and members of the PSD opposition party.²⁶ Further, even though the counts are more or less the same for all the Accused, this is not the case for the factual allegations which support these counts.²⁷ Apart from the very vague and general paragraphs related to the count of conspiracy to commit genocide, the allegations are distinct.²⁸ As to the allegations of acts committed in Butare

¹⁴ The Motion, para. 83.

¹⁵ The Motion, paras. 84-85, quotes *Prosecutor v. Brdin and Talic, Requête de Momir Talic aux fins de disposition d'instances et aux fins d'autorisation de dépôt d'une Réplique*, 9 March 2000.

¹⁶ The Motion, para. 90.

¹⁷ The Motion, paras. 91, 93.

¹⁸ The Motion, paras. 94, 96, 97, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 12 October 2004, pp. 7-9.

¹⁹ The Motion, paras. 92, 95, 96.

²⁰ The Motion, paras. 109-112.

²¹ The Motion, paras. 109-110, 112, quotes paras. 1.28, 3.10, 5.10, 6.10-6.16, 6.20, 6.24 of Kanyabashi's and Nsabimana's Indictments.

²² The Motion, para. 111.

²³ The Motion, paras. 112-114, quotes *Prosecutor v. Bagosora et al.*, Decision on Prosecution's Motion for Joinder, 29 June 2000.

²⁴ The Motion, para. 76.

²⁵ The Motion, para. 77.

²⁶ The Motion, para. 78.

²⁷ The Motion, para. 79.

²⁸ The Motion, para. 80.

préfecture, the large majority would have been committed in different places, against different victims, and at different times, thus the only thing they have in common is the region delineated by this *préfecture*.²⁹

12. The Defence submits that the strategy also aims at attacking Nyiramasuhuko via her status as member of the MRND and of the interim government, in charge, allegedly, of organising and executing massacres at Butare, in order to discharge PSD members, including Kanyabashi and Nsabimana.³⁰ A conflict of interests between administrators and members of an opposition party, on the one hand, and a MRND minister, on the other, constitutes - according to the jurisprudence cited - a factor leading to the conclusion that there is a conflict of interests that might cause serious prejudice to an accused.³¹
13. In support of the purported serious conflict of interests between Nyiramasuhuko's and Nsabimana's defence strategies, the Defence refers to passages of transcripts.³² These reputedly show that Nsabimana's defence strategy is "totally irreconcilable" with Nyiramasuhuko's, and clearly demonstrate the former's intention of accusing Nyiramasuhuko of being one of "the authorities in charge of the killings".³³ The Defence submits that its own defence strategy has always been to demonstrate that neither she nor the government of which she was a member, has ever planned, organised, or executed killings at any time.³⁴ Further, it is extremely important that when Nsabimana asked the questions which incriminated Nyiramasuhuko, the latter's cross-examination was already concluded. Therefore, she was unable to address the subject again with the witness, which resulted in an additional prejudice to her, caused by the conflict of interests.³⁵
14. As to the conflict of interests between Kanyabashi and Nyiramasuhuko, the Defence contends that a portion of the transcripts underlines the importance of Nyiramasuhuko's status as a government minister and a MRND member, in contrast to Kanyabashi and Nsabimana's status as PSD members.³⁶
15. The Defence also submits that generally, the cross-examinations of Nyiramasuhuko's Defence witnesses conducted by Nsabimana's and Kanyabashi's Defences were aimed at discrediting them.³⁷ This also applies to the Defence for Kanyabashi's cross-examination of Expert Witness Eugène Shimamungu, which tried by all means to damage the witness' credibility.³⁸ These examples demonstrate that the conflict of interests has existed during Nyiramasuhuko's whole defence case but that it has been accentuated in the course of her

²⁹ The Motion, para. 82.

³⁰ The Motion, para. 115.

³¹ The Motion, para. 116.

³² The Motion, para. 98, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 12 October 2004, pp. 7-9; English Transcripts pp. 5-9.

³³ The Motion, para. 98.

³⁴ The Motion, para. 99.

³⁵ The Motion, para. 100. The Defence also submits that the Chamber subsequently forbade the Prosecutor to read out extrajudiciary declarations made by Jean Kambanda. The Defence submits that the Chamber should have considered the prejudice this decision would cause Nyiramasuhuko, since the precise reference, attributed to Ndindabahizi, could not be given, which allowed the Defence for Nsabimana to cover this subject by way of suggestions, without referring to or reading out this part of the report, *see* the Motion, para. 101.

³⁶ The Motion, paras. 102-103, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 31 October 2005, pp. 1-18; English Transcripts pp. 3-12.

³⁷ The Motion, para. 105, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 21 February 2005, pp. 30-32; English Transcripts pp. 26-28.

³⁸ The Motion, para. 106.

own testimony.³⁹ The Chamber therefore cannot deny that such conflict of interests exists between Nyiramasuhuko and Nsabimana and Kanyabashi.⁴⁰ The Defence adds that the existence of a conflict of interests is so flagrant that it is by now recognised and commented upon by the media which follow the proceedings.⁴¹

16. The Defence submits that Nsabimana and Kanyabashi reinforce each other and support the Prosecution's theory as to the MRND's, and therefore Nyiramasuhuko's, implication in the events unfolding at Butare.⁴² The conflict of interests sustained by Nyiramasuhuko is advantageous to the Prosecution, which sees a good part of its theory used against Nyiramasuhuko by her co-accused. This exceptional situation cannot but seriously damage Nyiramasuhuko's fundamental rights.⁴³ A conflict of interests which is caused by antagonistic defence strategies pursued by co-accused *per se* might cause serious prejudice.⁴⁴
17. The Defence submits that while the conflict of interests has been foreseeable since before the opening of proceedings, the Chamber's decisions to order Nyiramasuhuko to cross-examine Prosecution witnesses and to present her defence first, have amplified the prejudice.⁴⁵ This is why Nyiramasuhuko submitted the problem of the conflict of interests at the pre-trial conference, requesting that she be allowed to cross-examine last, or at least after Nsabimana.⁴⁶ This submission was not heeded by the Chamber,⁴⁷ as was the case on numerous other occasions.⁴⁸

Prejudice Sustained by Nyiramasuhuko

18. The Defence submits that there is evidence of a conflict of interests that has prejudiced Nyiramasuhuko, pursuant to Rule 82 (B). This prejudice will only be aggravated during the defence cases of Kanyabashi and Nsabimana.⁴⁹ The conflict of interests has seriously infringed Nyiramasuhuko's right to a fair trial, including her rights to a full defence, to equality before this Tribunal, to be judged on an equal footing with her co-accused, to be informed in a timely and detailed manner about the allegations raised against her, as well as her right to have the necessary time and means for the preparation of her defence.⁵⁰ The Defence submits that the sustained prejudice is already irreparable and must lead to the immediate severance of her trial.⁵¹

³⁹ The Motion, para. 107.

⁴⁰ The Motion, para. 108.

⁴¹ The Motion, paras. 117-118, quotes *Agence de Presse Hirondelle, Les équipes de défense dans le procès des six de Butare étalent leurs divisions*, 28 October 2005.

⁴² The Motion, para. 104, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 25 October 2005, pp. 60-62; English Transcripts pp. 53-55. The Chamber notes that no page numbers had been indicated by the Defence. It also quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 27 October 2005, pp. 19-31; English Transcripts pp. 21-24.

⁴³ The Motion, para. 119.

⁴⁴ The Motion, paras. 120-121, quotes *Prosecutor v. Ngirumpatse, Décision relative à la requête aux fins de jonction d'instances et à la présentation simultanée des éléments de preuve*, 14 May 1998, para. 3.

⁴⁵ The Motion, para. 54.

⁴⁶ The Motion, para. 55.

⁴⁷ The Motion, para. 56.

⁴⁸ The Motion, para. 58.

⁴⁹ The Motion, paras. 122-125.

⁵⁰ The Motion, para. 127.

⁵¹ The Motion, para. 126.

19. As to Nyiramasuhuko's right to a full defence, it is submitted that even if the conflict of interests was noted during the presentation of her defence case, the Defence could not have known in advance, in a precise, specific and detailed manner, the nature of the attacks or the methods used against her by Kanyabashi and Nsabimana, nor could it, as a result, prepare for these.⁵² Further, recalling the equality of all the accused before this Tribunal, the Defence contends that Nyiramasuhuko, who had to present her defence first, does not have the same opportunities as Kanyabashi and Nsabimana, who may prepare and adjust their respective defences after having heard her defence case.⁵³ The Defence submits that Nyiramasuhuko therefore has not had a full defence, because she did not know and still does not know what further incriminating evidence will be presented by Nsabimana and Kanyabashi, who have already heard her defence case and may still amend their list of witnesses and even redirect their defence, if they deem it necessary.⁵⁴
20. The Defence contends that while this situation may be inevitable in joint proceedings, it is still inadmissible in a case where a conflict of interests causes serious violations to the fundamental rights of an accused, pursuant to Articles 19 and 20.⁵⁵ The exceptional circumstances of the case have forced Nyiramasuhuko to present her defence without knowing the evidence that has been used and will yet be used in the course of Nsabimana's and Kanyabashi's defences, preventing her from conducting investigations in order to adequately prepare her defence case.⁵⁶ This very serious prejudice is now irrevocable and irreversible. Even if the Chamber permitted a reopening of evidence to Nyiramasuhuko in order to counter the different allegations made by and forms of evidence used by Nsabimana and Kanyabashi, this would not be sufficient to limit the serious prejudice already sustained.⁵⁷
21. The Defence submits that to conduct the necessary investigations would take time, since it would be necessary to retrace several witnesses, obtain the necessary information and documents, convince some witnesses to come and testify again, and to convince other witnesses, who the Defence has met with but for whom the Chamber denied testimony via video-link, to come.⁵⁸ This remedy would therefore aggravate the violation of Nyiramasuhuko's right to be tried without undue delay and would be contrary to the considerations which have led to the joinder of trials.⁵⁹
22. The Defence submits that Nyiramasuhuko's right to a fair trial is also violated by the fact that the defences for Kanyabashi and Nsabimana may be considered to be additional "Prosecution cases", and that this would not be the case if she was tried separately.⁶⁰ This exceptional situation has caused serious prejudice.⁶¹ If this joint trial is pursued, the already irreversible prejudice would be further aggravated, because Kanyabashi and Nsabimana would add evidence to that of the Prosecution, concerning allegations which are not made against them.⁶² Accordingly, the existence of a conflict of interests, together with Nyiramasuhuko's obligation to present her defence case before Nsabimana's and

⁵² The Motion, para. 128.

⁵³ The Motion, para. 129.

⁵⁴ The Motion, para. 130.

⁵⁵ The Motion, para. 132.

⁵⁶ The Motion, paras. 131-132.

⁵⁷ The Motion, para. 134.

⁵⁸ The Motion, para. 135.

⁵⁹ The Motion, paras. 136-137.

⁶⁰ The Motion, para. 138.

⁶¹ The Motion, para. 139.

⁶² The Motion, para. 140.

Kanyabashi's, has undeniably caused prejudice to her rights, a situation that renders Rule 82 (B) applicable.⁶³

- 23. The Defence also contends that the prejudice caused by the conflict of interests is further aggravated by the Chamber's decision that there is no obligation of prior communication to the Defence of documents that a Party intends to use when cross-examining a witness, even an accused witness.⁶⁴ The Defence quotes a portion of transcripts in support of this argument and submits that it also demonstrates Kanyabashi's intention to implicate the MRND and the *Interahamwe* for the 1994 events in Rwanda, and can thus be added to the extracts which have already been cited to show the existence of the conflict of interests.⁶⁵
- 24. The Defence therefore argues that although the Chamber has stated that "what is important is that the other party must be informed before cross-examination about the documents that will be used during cross-examination, according to habitual practice", this has not been applied on numerous occasions during cross-examinations conducted by Nsabimana and Kanyabashi, not to mention the Prosecution.⁶⁶ This non-communication of the documents further aggravated the already serious prejudice to Nyiramasuhuko and has seriously and irrevocably infringed upon her right to a fair trial.⁶⁷ Thus, the Chamber permitted Kanyabashi to put suggestions to Nyiramasuhuko when she was testifying in her own defence, although it was obvious that her defence did not know the origin, nature, or contents of the document used in questioning, even though a decision had been rendered on timely communication. Allowing such questions to be put to the Accused aggravated the pre-existing prejudice caused by the conflict of interests.⁶⁸
- 25. Finally, the Defence submits that it has several times advised the Chamber of the danger of a conflict of interests, as well as of the existence of this conflict, and of the prejudice this conflict would cause or has already caused.⁶⁹ This was done during the pre-trial conference, has been done throughout trial, and was repeated with regard to Nsabimana's contradictory defence strategy.⁷⁰ The Defence also submitted arguments on this point on 18 October 2004, before Nyiramasuhuko's defence case started.⁷¹ Besides, it has seized the Chamber several times during Nyiramasuhuko's defence case, in order to alert it to the serious prejudice

⁶³ The Motion, para. 141.

⁶⁴ The Motion, para. 142, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 7 November 2005, pp. 14 and following; the Chamber notes that the Defence did not indicate the end of the quote and that the portion mentioned is not contained in the Transcripts of Proceedings for that date. The Defence also quotes French Transcripts of 7 November 2005, pp. 36-39; English Transcripts pp. 29-31.

⁶⁵ The Motion, para. 143, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 7 November 2005, pp. 36-39; English Transcripts pp. 29-31.

⁶⁶ The Motion, para. 144, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 10 November 2005, pp. 72-74, English Transcripts pp. 57-60; French Transcripts of 14 November 2005, pp. 30-33, English Transcripts pp. 22-25.

⁶⁷ The Motion, para. 145, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 7 November 2005, pp. 43-46, English Transcripts pp. 34-37; French Transcripts pp. 50 and following, English Transcripts pp. 40-42). The Chamber notes that the Defence does not indicate the end of the quote.

⁶⁸ The Motion, para. 146.

⁶⁹ The Motion, para. 147.

⁷⁰ The Motion, para. 148, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 20 June 2001, pp. 10-11; English Transcripts, pp. 10-12. The Defence recalls that Kanyabashi at this point had not yet revealed his defence strategy, see the Motion, para. 148.

⁷¹ The Motion, para. 149, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 18 October 2004, p. 17 (HC), English Transcripts pp. 11-17 (CS).

Nyiramasuhuko sustained because of the conflict of interests caused by the contradictory and accusing defence strategies of Kanyabashi and Nsabimana.⁷²

26. The Defence submits that it even requested the Chamber during Nyiramasuhuko's defence case to stop the "haemorrhage" of prejudice, in other words, the constant aggravation of prejudice which the latter sustained because of the conflict of interests, which only worsened in the course of the defence case.⁷³ The Defence refers to an incident where it objected to the use of an unidentified document by the Defence for Kanyabashi, submitting that this was yet another incident with an aggravating effect.⁷⁴ Even when the Defence requested the Chamber at least to order the communication of documents used against her by Kanyabashi in a timely fashion, this remedy was not granted, unlike before.⁷⁵
27. The Defence recalls the Chamber's reassurance: "[T]he Chamber will always remain alive to the need for a fair trial with due considerations given to the rights of the accused within a joint trial, in order to ensure that he or she would not lose the rights that he or she would have if he or she was tried alone."⁷⁶
28. In the present circumstances, the Defence submits that Nyiramasuhuko has lost her right to a fair trial and requests that the Chamber order the only remedy that will enable her to fully exercise her rights pursuant to Articles 19 and 20.⁷⁷ She therefore demands that her trial be separated from Nsabimana's and Kanyabashi's.⁷⁸

Interests of Justice

29. The Defence submits that whilst the conditions of the first element in Rule 82 (B), the conflict of interests causing serious prejudice, have already been demonstrated, the interests of justice equally demand severance of Nyiramasuhuko's trial.⁷⁹ It relies on a decision rendered in *Ngirumpatse et al.* which recalls that the 'elements of justice' criterion has three elements, namely, the right to be tried fairly, the right to be tried without undue delay, as well as the consideration of the complexity of a case in evaluating the necessary delays.⁸⁰ The Defence submits that none of these elements is observed in the instant proceedings.⁸¹
30. The Defence submits that it is in the interests of justice that each accused be accorded the same rights in joint proceedings as if they were tried separately. When assessing judicial economy and efficiency, the accused's right to a trial without undue delay under Article 21

⁷² The Motion, paras. 150-152, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 1 March 2005, pp. 6-13, English Transcripts pp. 5-10. The Chamber notes that the Defence did not indicate either the date or pages of this portion of the Transcripts.

⁷³ The Motion, para. 153.

⁷⁴ The Motion, para. 154, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 7 November 2005, pp. 15-26, English Transcripts, pp. 13-21; see also the Motion, para. 156, which quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 8 November 2005, pp. 68-69, English Transcripts pp. 53-55. The Chamber notes that the Defence quoted the draft Transcripts and that the page numbers mentioned do not correspond.

⁷⁵ The Motion, para. 155.

⁷⁶ The Motion, para. 159, quotes *Prosecutor v. Nyiramasuhuko et al.*, *Décision relative à la requête de Ntahobali en séparation de procès*, 2 February 2005, para. 39.

⁷⁷ The Motion, paras. 160-161.

⁷⁸ The Motion, para. 161.

⁷⁹ The Motion, para. 163.

⁸⁰ The Motion, paras. 74, 164, quoting *Prosecutor v. Ngirumpatse et al.*, Decision on Prosecutor's Motion for Joinder of Accused and on the Prosecutor's Motion for Severance of the Accused, 29 June 2000, paras. 25-26, 31.

⁸¹ The Motion, para. 165.

(4) (c) has to be assessed in light of the same rights of the other accused.⁸² Further elements for consideration include whether the factual allegations against all the accused are similar,⁸³ because this will further judicial efficiency.⁸⁴

31. As to the first element, the right to a fair trial, the Defence relies on a decision in *Prosecutor v. Kovacevic*,⁸⁵ where the Trial Chamber did not join proceedings because this might have infringed upon the Accused's right to a fair trial, as it might cause a conflict of interests among them.⁸⁶ The Defence submits that it has already shown the existence of a conflict of interests, as well as the resulting irreversible violation of Nyiramasuhuko's right to a fair trial. Therefore, the first element of the 'interests of justice' criterion has not been observed.⁸⁷
32. As to the second element, the right to be tried without undue delay, the Defence submits that it has not been observed either, reiterating the arguments in its Motion for Stay of Proceedings, filed on 25 June 2003.⁸⁸ The Defence recalls all the arguments contained in this earlier Motion,⁸⁹ referring to the circumstances of Nyiramasuhuko's arrest and detention; alleged violations of her right to be informed in a timely manner about the charges levelled against her; alleged violations of her procedural rights, especially with regard to excessive delays; and the prejudice suffered by Nyiramasuhuko in consequence, particularly with regard to the conditions in detention. The Defence contends that the arguments, jurisprudence and doctrine contained in its earlier Motion must be fully applied at this stage⁹⁰ and that the Defence is justified in pleading again the contents of its earlier Motion because there is a new fact, namely another two and a half years of detention.⁹¹ The trial against Nyiramasuhuko will not be concluded anytime soon, since the defence case of the second of the six Accused is not yet over. Yet Nyiramasuhuko was arrested eight and a half years ago and her trial started four and a half years ago. These delays have become completely unreasonable with regard to Article 20 (4) (c) and can no longer be justified.⁹² The Defence recalls that Nyiramasuhuko will have to go through four more defence cases before the Chamber will hear the final pleadings, deliberate and render judgement, without counting the delays of an appeal, if any.⁹³
33. As to the third element, the Defence contends that the complexity of the case cannot anymore justify the delays sustained to this day, since the experience of this trial has clearly shown that the joinder has unduly prolonged proceedings and rendered them more complex than if each Accused had been tried separately.⁹⁴ If this had been the case, their trial would

⁸² The Motion, para. 82, quotes *Prosecutor v. Bizimana et al.*, Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Joseph Nzirorera, 12 July 2000.

⁸³ The Motion, para. 75. The Chamber notes that while the Defence seems to be quoting an ICTR decision, there is no reference to the case name or the date on which it was rendered.

⁸⁴ The Motion, para. 82, quotes *Prosecutor v. Bizimana et al.*, Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Joseph Nzirorera, 12 July 2000.

⁸⁵ The Motion, para. 166, quotes *Prosecutor v. Kovacevic*, *Décision relative à la requête aux fins de jonction d'instances et à la présentation simultanée des éléments de preuve*, 14 May 1998.

⁸⁶ The Motion, para. 166.

⁸⁷ The Motion, para. 167.

⁸⁸ The Motion, paras. 168, 174; see annex to the Motion.

⁸⁹ The Motion, paras. 168, 174 specifically refers to paras 44-218 of the Motion for Stay of Proceedings of 25 June 2004.

⁹⁰ The Motion, para. 175.

⁹¹ The Motion, para. 176.

⁹² The Motion, paras. 177-178.

⁹³ The Motion, para. 179.

⁹⁴ The Motion, para. 169.

have been concluded a long time ago, as is demonstrated by those persons who have been tried as single accused.⁹⁵ The Defence further submits that the application and interpretation of international criminal law must adapt and evolve, and the Tribunal, which guarantees this law, must interpret and apply it in the context of the present case.⁹⁶ Therefore, exceptional circumstances also demand that Nyiramasuhuko's trial be separated in the interests of justice.⁹⁷

Conclusion

34. The Defence recalls the Chamber's observation that "there are remedies that are always available should anything of prejudice arise within the course of the trial. There is cross-examination, there are other facilities that can be devoted to, and the Trial Chamber will be open to any – as the case develops, to any issues that can be raised before it".⁹⁸ The Defence requests the Chamber to apply the appropriate remedy, namely, Rule 82 (B), and separate Nyiramasuhuko's trial to allow her to exercise again her fundamental right to a fair trial.⁹⁹ The Defence also submits that even if severed, her trial cannot be continued, because its unfairness has clearly become irreversible during the presentation of her case.¹⁰⁰ Therefore, the Chamber would have to order new proceedings for her to exercise her rights again.¹⁰¹
35. However, whilst severance is the only way to end the conflict of interests, this reparation must necessarily be followed by the termination of proceedings against Nyiramasuhuko, because her right to be tried without undue delay has already been violated, a violation which increases with every trial day and which renders any additional delay unacceptable.¹⁰² It would be unfair, unreasonable and contrary to her right to be tried without undue delay if Nyiramasuhuko had to have her trial at least nine years after being arrested and detained. Therefore, Nyiramasuhuko requests the Chamber to stop proceedings against her, after having ordered the severance of her trial.¹⁰³

Nteziryayo's Response

36. The Defence for Nteziryayo submits that he does not wish to participate in the discussion on whether there should be a separation of the trial, but only on the consequences a decision might have on his rights.¹⁰⁴ As to the phrase contained in the Motion, "evidence against one accused is not evidence against another accused", the Defence argues that in a joint trial this is incomplete, since as a general rule all evidence presented by a party can be used for or against every party and the Prosecutor. It might be the case, however, that some elements of evidence are admissible only against one accused and that certain elements are admissible only for one, and not all, purposes.¹⁰⁵ A different interpretation would necessitate the recall of all witnesses.¹⁰⁶

⁹⁵ The Motion, para. 170.

⁹⁶ The Motion, para. 171.

⁹⁷ The Motion, para. 172.

⁹⁸ The Motion, para. 181, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 18 October 2004, p. 17; English Transcripts p. 16 (CS).

⁹⁹ The Motion, paras. 48, 59, 182.

¹⁰⁰ The Motion, para. 183.

¹⁰¹ The Motion, paras. 49, 184.

¹⁰² The Motion, paras. 50, 60.

¹⁰³ The Motion, para. 188.

¹⁰⁴ Nteziryayo's Response, paras. 1-2.

¹⁰⁵ Nteziryayo's Response, paras. 8-9.

¹⁰⁶ Nteziryayo's Response, para. 10.



37. The Defence questions the consequences for Nteziryayo's trial if Nyiramasuhuko's Motion was granted, such as who will be tried with whom, and who will take these decisions.¹⁰⁷ Accordingly, the Defence prays that if the Motion is granted in part or in all respects, all parties be heard, the Prosecutor first, regarding to the continuation of the trials.¹⁰⁸

Ntahobali's Response

38. The Defence for Ntahobali submits that it "totally agrees" with the points raised in Nteziryayo's Response.¹⁰⁹

Prosecutor's Response and Addendum

39. The Prosecutor submits that Nyiramasuhuko's Motion is a disguised appeal on an issue that Nyiramasuhuko has already appealed twice, is therefore inadmissible and should be dismissed.¹¹⁰ The Motion is frivolous and the Chamber should deny fees.¹¹¹
40. On the merits, the Prosecutor contends that severance can be granted if a moving party can prove serious prejudice, which is a high standard and even higher when considering that the trier of fact is a panel of three judges, rather than a jury.¹¹² Rule 82 (B) is permissive, rather than obligatory.¹¹³ As to the decision in *Kovacevic et al.* cited by Nyiramasuhuko, the Prosecutor submits that it is distinguishable, because it denied a joinder, rather than granting severance. The weighing of interests inherent to the granting of joinder has already been done by this Chamber in 1999. Further, the alleged serious prejudice was not the sole reason of denying the joinder, since "confusion of issues and evidence" was also referred to.¹¹⁴ The Prosecutor submits that the Motion fails to demonstrate concrete prejudice, let alone serious prejudice, caused by Nsabimana and Kanyabashi's cross-examination of Nyiramasuhuko's witnesses, and stresses that incriminating evidence is not *per se* seriously prejudicial within the meaning of Rule 82 (B). As to the non-disclosure of documents used in cross-examination, the Prosecutor points out that Nyiramasuhuko has not appealed these decisions by the Chamber.¹¹⁵
41. The Prosecutor also submits that Nyiramasuhuko has the right to re-examine and to move for recall, rebuttal or rejoinder of witnesses if she so chooses, and that she may appeal any judgment against her that improperly considers evidence.¹¹⁶
42. Further, the Prosecutor stresses that mutually antagonistic defences are not prejudicial *per se*,¹¹⁷ that even those that do cause prejudice do not mandate severance, and that remedies to ensure a fair trial are within the discretion of the trial court.¹¹⁸

¹⁰⁷ Nteziryayo's Response, paras. 17-19.

¹⁰⁸ Nteziryayo's Response, paras. 22-24.

¹⁰⁹ Ntahobali's Response, para. 17.

¹¹⁰ Prosecutor's Response, paras. 6-7.

¹¹¹ Prosecutor's Response, paras. 25-26.

¹¹² Prosecutor's Response, para. 8.

¹¹³ Prosecutor's Response, para. 13, quotes *Prosecutor v. Brdjanin and Talic*, Decision on Request to Appeal, 16 May 2000.

¹¹⁴ Prosecutor's Response, para. 15, quotes *Prosecutor v. Kovacevic et al.*, Decision on Motion for Joinder of Accused and Concurrent Presentation of Evidence, 14 May 1998, para. 10.

¹¹⁵ Prosecutor's Response, para. 16.

¹¹⁶ Prosecutor's Response, para. 17.

¹¹⁷ Prosecutor's Response, paras. 21-23, quotes *Prosecutor v. Blagoje Simic et al.*, Decision on Defence Motion to Sever Defendants and Counts, 15 March 1999; *Prosecutor v. Delalic et al.*, Decision on Motion by Defendant

43. The Prosecutor concurs with Nteziryayo's view that all Parties may rely on all admitted evidence to prove or disprove their cases, save where a court admits evidence but expressly limits its use or scope, including against a particular accused.¹¹⁹

Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses and to the Prosecutor's Addendum

44. The Defence for Nyiramasuhuko prays that the Chamber grant her Motion, declare the Prosecutor's Response frivolous, and order appropriate sanctions in this regard.¹²⁰
45. The Defence submits that contrary to the Prosecutor's submissions, the Motion is not frivolous. It further submits that Rule 82 (B) presupposes the possibility that in joint proceedings the Accused may suffer serious prejudice.¹²¹ Besides, the Chamber's decisions on Motions for separate proceedings filed by other Parties cannot be used to declare Nyiramasuhuko's Motion moot, as alleged by the Prosecutor.¹²² The Defence stresses that it has never questioned the qualification of the three Judges to assess the evidence, and that it does not submit that the evidence is tainted by the prejudice she has suffered.¹²³ As to the lack of appeal against oral decisions issued by the Chamber allowing the use of certain documents, the Defence submits that Rule 73 does not constitute an obligation to appeal.¹²⁴
46. As to the Prosecutor's distinction between the decision in *Kovacevic et al.* and the present situation, the Defence submits that there is no difference between a decision denying joint proceedings and a decision ordering severance to the extent that the reason for the decision is the possibility of a conflict of interests, which may cause prejudice to an accused.¹²⁵ It recalls that the conditions of Rule 82 (B) may be met by two alternative elements, which render baseless the Prosecutor's argument that the decision was not exclusively issued because of the possible conflict of interest.¹²⁶ Further, it is clear from this decision that the invoked motive is the serious prejudice.¹²⁷
47. Besides, the Defence contends that it has never argued that Nyiramasuhuko suffered prejudice because her witnesses were cross-examined by Nsabimana and Kanyabashi.¹²⁸ Rather, the Defence has argued that the serious prejudice was caused by a conflict of interests flowing from contradictory and critical defence strategies.¹²⁹ The Defence notes that the Prosecutor has not presented any argument countering its submissions that Nyiramasuhuko has suffered serious and irreparable prejudice because she had to cross-examine Prosecution witnesses first and to present her defence case first.¹³⁰

Delalic Requesting Procedures for Final Determination of the Charges against him, 1 July 1998, para. 36; *Zafiro v. United States*, 506 U.S. 534 (1993), filed in the Addendum.

¹¹⁸ Prosecutor's Response, para. 23, quotes *Zafiro v. United States*, 506 U.S. 534 (1993), filed in the Addendum.

¹¹⁹ Prosecutor's Response, para. 27.

¹²⁰ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, paras. 61-64.

¹²¹ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 7.

¹²² Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, paras. 18-20.

¹²³ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, paras. 21-22, 34-35.

¹²⁴ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 39.

¹²⁵ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 24.

¹²⁶ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 26.

¹²⁷ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 27.

¹²⁸ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 28.

¹²⁹ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 29.

¹³⁰ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 40.

48. As to Nyiramasuhuko's right to move for recall, rebuttal or rejoinder of witnesses mentioned by the Prosecutor, the Defence replies that this is a possibility on which Nyiramasuhuko cannot rely, and the prejudice has already been sustained.¹³¹ Further, any such motion would be contrary to the protection of witnesses and temporal and financial economy.¹³² Besides, it would aggravate the violation of Nyiramasuhuko's right to a fair trial without undue delay.¹³³
49. With regard to the Prosecution's allegation that the Motion is without merit because the Defence case has been closed since 24 November 2005, the Defence regards its case as ongoing, pointing out that otherwise there would be no reason for the Accused or her Counsel to be present, to cross-examine witnesses, and intervene in other ways. Further, in joint proceedings, a trial is terminated when all defence cases and the final pleadings have been heard.¹³⁴ The Defence for Nyiramasuhuko adds that it is contradictory for the Prosecutor to agree with Nteziryayo's submission regarding the Parties' right to rely on evidence, while contending that Nyiramasuhuko's case is closed, because if her case were closed, she could not rely on further evidence yet to be tendered.¹³⁵
50. In its Reply to the Prosecution's Addendum, the Defence for Nyiramasuhuko reiterates the arguments contained in the Motion,¹³⁶ adding, however, that the Prosecution relies on the same elements as those mentioned in Rule 82 and in the jurisprudence of the ICTR and the International Criminal Tribunal for the Former Yugoslavia with regard to the severance of joint proceedings in conspiracy charges.¹³⁷ According to the Defence, the criterion used by the courts of the United States of America regarding severance in joint proceedings, is evidence of a conflict of interests emanating from antagonistic or contradictory defence strategies and comprising the risk of causing serious damage to a legal right of a joint accused.¹³⁸
51. In the *Zafiro et al.* case cited by the Prosecution,¹³⁹ the judges decided that the conflict of interests was not clearly contradictory or antagonistic and that no legally recognized prejudice had been caused.¹⁴⁰ The Defence submits that the serious violation of a fundamental right of an accused must not be confused with the risk of a jury's incomprehension in joint proceedings, especially if the charges concern conspiracy. It is well aware that Nyiramasuhuko's case is not heard by three judges, and not by a jury, but maintains that her most fundamental right, the right to a fair trial, has been violated in an irreversible manner and that in consequence her trial must be severed.¹⁴¹ Since the prejudice has already been suffered, the judges - however experienced - cannot put her back to a situation minimizing that prejudice, unless they were to grant the Motion.¹⁴² As stated in the remarks of Judge Stevens, the Defence submits that Nyiramasuhuko has to face two "additional Prosecutors", namely, Kanyabashi and Nsabimana and that this has allowed the Prosecution, after the end of its case, to benefit from Kanyabashi's and Nsabimana's defence

¹³¹ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 44.

¹³² Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 45.

¹³³ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 46.

¹³⁴ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, paras. 52-53.

¹³⁵ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, paras. 56-57.

¹³⁶ Nyiramasuhuko's Reply to the Prosecutor's Addendum, para. 18.

¹³⁷ Nyiramasuhuko's Reply to the Prosecutor's Addendum, para. 11.

¹³⁸ Nyiramasuhuko's Reply to the Prosecutor's Addendum, para. 10.

¹³⁹ United States Supreme Court, *Zafiro et al. v. United States*, 25 January 1993, 506 U.S. 534, 113 S.Ct. 933, contained in Prosecutor's Addendum.

¹⁴⁰ Nyiramasuhuko's Reply to the Prosecutor's Addendum, para. 13.

¹⁴¹ Nyiramasuhuko's Reply to the Prosecutor's Addendum, para. 14.

¹⁴² Nyiramasuhuko's Reply to the Prosecutor's Addendum, para. 17.

strategies. This is an unfair advantage for the Prosecution and disadvantages Nyiramasuhuko, whose defence case is closed. The presence of two “additional Prosecutors” *per se* is evidence of proceedings which have become unfair.¹⁴³ Whilst in the case cited by the Prosecutor the conditions for severance have not been met, the court clearly recognizes the right to severance in cases where the right to a fair trial is in danger of suffering prejudice, and *a fortiori* if a prejudice to this right has already been suffered.¹⁴⁴

52. In Reply to Nteziryayo's Response, Nyiramasuhuko agrees that all parties should be heard if the Motion is granted.¹⁴⁵ As to the question of who can rely on evidence in joint proceedings, the Defence stresses that if there is a charge of conspiracy, every piece of evidence concerning an act undertaken for the common aim may be relied upon against all persons accused of conspiracy, once conspiracy has been proved beyond reasonable doubt.¹⁴⁶ Therefore, not all evidence can be used against all parties, even if there is a conspiracy charge.¹⁴⁷ Further, according to the Defence, all evidence presented in joint proceedings may be used by all parties to raise reasonable doubt as to their respective criminal responsibility.¹⁴⁸ The Defence also submits that this question of law should be clarified by the Chamber as quickly as possible.¹⁴⁹

Kanyabashi's Response

53. The Defence for Kanyabashi prays that the Chamber declare that his defence has not interfered with other defence teams' strategies, but that it has only tried to present a full defence in joint proceedings, and leaves it to the Chamber to decide the Motion.¹⁵⁰
54. The Defence submits that it has always opposed the joinder but respects the Chamber's decision of 5 October 1999.¹⁵¹ As to Nyiramasuhuko's allegations of interfering in her defence, Kanyabashi submits that the Indictment (paras. 5.1 and 6.62) refers to an alleged conspiracy with Nyiramasuhuko and that he needs to cross-examine witnesses on this subject.¹⁵² This does not, however, constitute interfering in another Accused's defence.¹⁵³ As to Nyiramasuhuko's submission regarding prejudice resulting from Kanyabashi's defence, which is opposed to hers, Kanyabashi replies that his defence strategy has been the same during the proceedings and that his cross-examination of Nyiramasuhuko could not have been a surprise, since her examination-in-chief aimed to cast doubt on statements Kanyabashi had elicited from Witnesses RV, Alison Des Forges, and André Guichaoua, or were raised by Nyiramasuhuko herself.¹⁵⁴
55. Besides, the Defence for Kanyabashi contends that it does not relentlessly insist upon certain allegations against Nyiramasuhuko, as alleged by the latter, but that it responds to her allegations and that, according to certain observers, it is rather Nyiramasuhuko who lays the blame on local authorities, such as Kanyabashi.¹⁵⁵ Kanyabashi's defence strategy is clear: to

¹⁴³ Nyiramasuhuko's Reply to the Prosecutor's Addendum, paras. 19-21.

¹⁴⁴ Nyiramasuhuko's Reply to the Prosecutor's Addendum, para. 23.

¹⁴⁵ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, paras. 65-66.

¹⁴⁶ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 68.

¹⁴⁷ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 69.

¹⁴⁸ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 70.

¹⁴⁹ Nyiramasuhuko's Reply to Nteziryayo's and the Prosecutor's Responses, para. 71.

¹⁵⁰ Kanyabashi's Response, paras. 22-23.

¹⁵¹ Kanyabashi's Response, para. 5.

¹⁵² Kanyabashi's Response, para. 6.

¹⁵³ Kanyabashi's Response, para. 7.

¹⁵⁴ Kanyabashi's Response, paras. 11-15.

¹⁵⁵ Kanyabashi's Response, para. 17, quotes *Agence Hirondelle*, referred to in para. 18 of the Motion.

defend himself against the accusations leveled against him and because of which he has been detained for more than ten years, while being presumed innocent.¹⁵⁶

56. The Defence further stresses that apart from clerical errors, it has complied with the disclosure obligations, as noted by Counsel for Nyiramasuhuko.¹⁵⁷
57. As to the order of conducting cross-examinations and presenting defence cases, the Defence contends that in a trial joining six accused, all cannot testify at the same time. An order has to be established, and this was done according to the applicable law. There was no appeal.¹⁵⁸
58. The Defence also submits that it agrees with Nteziryayo's and the Prosecutor's submissions regarding the right of other parties to rely on evidence presented in joint proceedings.¹⁵⁹

Nyiramasuhuko's Reply to Kanyabashi's Response

59. In its Reply to Kanyabashi's Response, the Defence for Nyiramasuhuko reiterates its arguments contained in the Motion¹⁶⁰ and submits that it did not criticize Kanyabashi for his choice of defence strategy, since it is his right to defend himself in any way he chooses.¹⁶¹ It reiterates that Kanyabashi interferes with its defence strategy, since his strategy goes further than he pretends, because he considers that the implication and degree of criminality regarding the events at Butare between April and July 1994 rest on the government and its members, including Nyiramasuhuko, and not the "little *bourgmestres*", including himself.¹⁶² Whilst this strategy is legitimate, it is also legitimate for Nyiramasuhuko to point out that Kanyabashi's defence strategy is contradictory to hers and aims at incriminating her.¹⁶³ The Defence submits that it is this strategy which makes Kanyabashi interfere with her defence.¹⁶⁴ Even if the Chamber found that Kanyabashi's defence strategy does not interfere with Nyiramasuhuko's, it is still in contradiction with hers, lays the blame on her, and thus has caused her prejudice.¹⁶⁵
60. The Defence also maintains that there were elements of surprise in Kanyabashi's cross-examination since he used documents that were not known, and in some cases have not been divulged, to the Defence.¹⁶⁶ In this context, the Chamber has not been consistent in its orders for disclosure, or regarding the formulation of suggestions that may be put to witnesses.¹⁶⁷
61. As to Kanyabashi's argument that in joint proceedings not all the Accused can be heard at the same time, the Defence argues that this is not an issue. Rather, the fact that Nyiramasuhuko was compelled to be the first Accused to cross-examine Prosecution

¹⁵⁶ Kanyabashi's Response, para. 18.

¹⁵⁷ Kanyabashi's Response, paras. 19-20, quotes French Transcripts of 14 November 2005, p. 14 (p. 10 of the English version).

¹⁵⁸ Kanyabashi's Response, para. 21.

¹⁵⁹ Kanyabashi's Response, paras. 8-9.

¹⁶⁰ Nyiramasuhuko's Reply to Kanyabashi's Response, para. 26.

¹⁶¹ Nyiramasuhuko's Reply to Kanyabashi's Response, para. 8.

¹⁶² Nyiramasuhuko's Reply to Kanyabashi's Response, para. 14, French Transcripts of 19 April 2001, p. 184 (HC), English Transcripts pp. 140-141 (CS).

¹⁶³ Nyiramasuhuko's Reply to Kanyabashi's Response, para. 15.

¹⁶⁴ Nyiramasuhuko's Reply to Kanyabashi's Response, para. 15.

¹⁶⁵ Nyiramasuhuko's Reply to Kanyabashi's Response, para. 18.

¹⁶⁶ Nyiramasuhuko's Reply to Kanyabashi's Response, paras. 19-23.

¹⁶⁷ Nyiramasuhuko's Reply to Kanyabashi's Response, paras. 23-24.

witnesses, and especially to be the first to first present her defence case, has caused her prejudice. The Defence points out that this is not contested by Kanyabashi.¹⁶⁸

DELIBERATIONS

62. As a preliminary matter, the Chamber observes that many of the portions of the transcripts cited and relied upon by the Defence are not properly referenced,¹⁶⁹ or are not referenced at all.¹⁷⁰ This observation also applies to a decision quoted by the Defence.¹⁷¹ The Chamber reminds Counsel of their obligation to act with care and diligence, pursuant to Articles 5 (a) and 6 of the Code of Professional Conduct for Defence Counsel. It is not up to the Chamber to decipher parties' pleadings.
63. The Chamber recalls the provisions of Rule 82:
- (A) In joint trials, each accused shall be accorded the same rights as if he were being tried separately.
- (B) The Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice.
64. The Chamber recalls that it has a discretionary power to order a separate trial.¹⁷² It has carefully considered the Parties' submissions regarding the alleged conflict of interests and the violations of the interests of justice and will address them in turn.

Conflict of Interests that Might Cause Serious Prejudice

65. Regarding a conflict of interests between co-accused within the meaning of Rule 82 (B), the Chamber observes that its existence is to be determined on a case-by-case basis,¹⁷³ and that for such a conflict to exist, circumstances must be extraordinary.¹⁷⁴
66. The Chamber observes that Nyiramasuhuko alleges a conflict of interests between its defence strategy and Nsabimana's and Kanyabashi's respective defence strategies, based on three main elements: (1) the fact that Kanyabashi and Nsabimana insist on allegations that do not concern them, although they are contained in their Indictments, in order to attack Nyiramasuhuko; (2) the different positions held by these three Accused with regard to membership of political parties or of government; and (3) their different implications in the events in Butare between April and July 1994.

¹⁶⁸ Nyiramasuhuko's Reply to Kanyabashi's Response, para. 25.

¹⁶⁹ See, for example, Transcripts referred to at paras. 97, 102, 104, 144, 145, 148, 156 of the Motion.

¹⁷⁰ See, for example, Transcripts referred to at para. 152 of the Motion.

¹⁷¹ See para. 75 of the Motion.

¹⁷² Decision on Ntahobali's Motion for Separate Trial, para. 32, quotes *Prosecutor v. Brdanin and Talic*, Decision on Request to Appeal (AC), 16 May 2000.

¹⁷³ Decision on Ndayambaje's Motion for Severance, para. 11; see also *Prosecutor v. Bizimana et al.*, Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Joseph Nzirorera, 12 July 2000, para. 23.

¹⁷⁴ Decision on Nsabimana's Motion for Severance, para. 19; Decision on Ntahobali's Motion for Separate Trial, paras. 35-36, quotes *Prosecutor v. Brdanin and Talic*, Decision on Motions by Momir Talic for Separate Trial and for Leave to File a Reply, 9 March 2000, para. 29, upheld in *Prosecutor v. Brdanin and Talic*, Decision on Request to Appeal (AC), 16 May 2000. See also *Prosecutor v. Bizimana et al.*, Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Joseph Nzirorera, 12 July 2000, para. 19.

67. The Chamber recalls that a legally recognized conflict of interests that would cause serious prejudice is not demonstrated if one accused shifts blame to another joint accused.¹⁷⁵ The Chamber further recalls that a situation where the accused have allegedly played different roles in the hierarchy or even in different hierarchies of command, leading to possibly different culpability of the accused, does not constitute a conflict of interests that might cause serious prejudice to the accused.¹⁷⁶ The Chamber recalls the *Brdanin and Talic* Decision, where it was held:

Nor does the Trial Chamber see any possibility of serious prejudice resulting from the prospect that Brdanin may give evidence which incriminates Talic (...). A joint trial does not require a joint defence, and necessarily envisages the case where each accused may seek to blame the other. (...) Any prejudice which may flow to either accused from the loss of the "right" asserted by Talic here to be tried without incriminating evidence being given against him by his co-accused is not ordinarily the type of serious prejudice to which Rule 82 (C) (*sic*) is directed. The Trial Chamber recognises that there could possibly exist a case in which the circumstances of the conflict between the two accused are such as to render unfair a joint trial against one of them, but the circumstances would have to be extraordinary.¹⁷⁷

68. Having reviewed all arguments, including the portions of transcripts in support of the alleged conflict of interests,¹⁷⁸ the Chamber is of the opinion that the Defence for Nyiramasuhuko has not demonstrated that there is a conflict of interests between Nyiramasuhuko and her two co-accused, corresponding to the extraordinary and exceptional circumstances which are necessary for the application of Rule 82 (B).

69. Further, the Chamber notes that its decisions, which have purportedly aggravated the prejudice resulting from this alleged conflict of interests, were legally made and are unchallenged. The Chamber is of the view that these decisions do not give rise to any prejudice.

70. The Chamber underscores that it has always been and continues to be alive to the need for a fair trial with due considerations given to the rights of the accused within a joint trial, to ensure that each does not lose the rights that he or she would have if tried alone.¹⁷⁹ It also recalls that the Rules provide for several remedies, which are always available should any prejudice arise within the course of the trial and if the legal requirements are met. Such remedies may include cross-examination, further cross-examination, recall, or rebuttal evidence.

¹⁷⁵ Decision on Nsabimana's Motion for Severance, para. 32; see also Decision on Ntahobali's Motion for Severance, para. 16; Decision on Ntahobali's Motion for Separate Trial, para. 39.

¹⁷⁶ Decision on Nsabimana's Motion for Severance, paras. 29-30, quotes *Prosecutor v. Brdanin et al.*, Decision on Motions by Momir Talic for a Separate Trial and for Leave to File a Reply, 9 March 2000, paras. 23-29.

¹⁷⁷ *Prosecutor v. Brdanin et al.*, Decision on Motions by Momir Talic for a Separate Trial and for Leave to File a Reply, 9 March 2000, para. 29

¹⁷⁸ The Motion, paras. 97, 102, 104, quotes *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 12 October 2004, pp. 7-9; English Transcripts pp. 5-9; French Transcripts of 31 October 2005, pp. 1-18; English Transcripts pp. 3-12; French Transcripts of 25 October 2005, pp. 60-62; English Transcripts pp. 53-55; French Transcripts of 27 October 2005, pp. 19-31; English Transcripts pp. 21-24; French Transcripts of 7 November 2005, pp. 36-39; English Transcripts pp. 29-31.

¹⁷⁹ The Motion, para. 159, quotes *Prosecutor v. Nyiramasuhuko et al.*, *Décision relative à la requête de Ntahobali en séparation de procès*, 2 February 2005, para. 39.

71. The Chamber therefore finds that there has not been any demonstration of a conflict of interests that would cause serious prejudice within the meaning of Rule 82 (B).

Interests of Justice

72. As a preliminary matter, the Chamber notes that the Defence for Nyiramasuhuko has included its earlier Motion for Stay of Proceedings in the present Motion by way of reference.¹⁸⁰ The Chamber does not consider that the Defence for Nyiramasuhuko is justified in raising the arguments contained in the earlier Motion once again, as there are no new elements and the Chamber has already decided this Motion. The issue of general alleged delay due to joinder that was not included in that Motion will be addressed in this Decision. The Chamber will also address the conduct of Counsel at the end of the present Decision.
73. The Defence for Nyiramasuhuko submits that pursuant to Rule 82 (B), it is in the interests of justice that Nyiramasuhuko's trial be severed from Nsabimana's and Kanyabashi's. It mainly relies on three elements: (1) the right to a fair trial; (2) the right to be tried without undue delay; and (3) the consideration of the complexity of a case in determining appropriate delays. According to the Defence, none of these elements is met in the present case, and therefore severance, to be followed by a new trial, is warranted. However, because of the delays, the Defence moves for a stay of proceedings.
74. The Chamber notes the submission that Nyiramasuhuko's trial has been rendered unfair by the conflict of interests between her defence strategy and Nsabimana's and Kanyabashi's. However, the Chamber has already determined that no conflict of interests within the meaning of Rule 82 (B) has been demonstrated, for the reasons given in paragraphs 68 to 71 above.
75. As to the right to be tried without undue delay and the consideration of the complexity of the case, the Chamber underscores that it is fully aware of the length of proceedings and the detention period of the Accused, and that the expeditiousness of proceedings has been a constant concern.¹⁸¹ The Chamber recalls that the interests of justice mentioned in Rule 82 (B) may include, *inter alia*, an expeditious and fair trial as provided in Article 19. However, "in determining whether a delay in the criminal proceedings against the accused is undue, it is essential to consider the length of the delay, the gravity, nature and complexity of the case, as well as any prejudice that the accused may suffer."¹⁸² The Chamber notes that a

¹⁸⁰ The Motion, paras. 174, 186.

¹⁸¹ See, for example, the 15 *bis* Decision, para. 33 (1), where the Trial Chamber held: "Finally, we also note that it is an important consideration to the administration of justice that proceedings must not be allowed to drag on endlessly. They must come to an end at some point." See also Decision on Joinder, para. 15; Decision on Ntahobali's Motion for Severance, para. 23; Decision on Ndayambaje's Motion for Severance, paras. 18-19; Decision on Nyiramasuhuko's Motion for Stay of Proceedings, para. 16.

¹⁸² Decision on Nsabimana's Motion for Severance, paras. 38, 40, quotes *Prosecutor v. Bagosora et al.*, Decision on the Prosecutor's Request for Leave to Amend the Indictment, 23 September 1999, paras. B (i) and (ii); reiterated in Decision on Ndayambaje's Motion for Severance, para. 18, which quotes ECHR, *Eckle v. Germany*, Judgement of 15 July 1982, Series A no. 51, *Neumeister*, 27 June 1968, Series A, No. 8, *König*, 28 June 1978, Series A, No. 27, *Foti and others*, 10 December 1982, Series A, No. 56, *Zimmermann and Steiner*, 13 July 1983, Series A, No. 66, para. 24, reiterated in Decision on Ntahobali's Motion for Severance, para. 23; see also 15 *bis* Decision, quoting *Prosecutor v. Seselj*, Decision on Prosecutor's Motion for Order Appointing Counsel to Assist Vojislav Seselj with his Defence, 9 May 2003, para. 21; *Prosecutor v. Ngirumpatse et al.*, Decision on Prosecutor's Motion for Joinder of Accused and on the Prosecutor's Motion for Severance of the Accused, 29 June 2000, para. 38.

joint trial might last longer than that of a single accused,¹⁸³ without necessarily encroaching upon the right to be tried without undue delay.¹⁸⁴ The Chamber reiterates that the instant case raises complex issues of law and fact.¹⁸⁵

76. The Chamber also recalls its decision that the fact that an accused might be tried faster, should severance be granted, does not *per se* render unreasonable the length of the joint proceedings. Further, the possible acceleration of proceedings by severance is not necessarily compatible with the good administration of justice.¹⁸⁶ The Chamber is of the opinion that Nyiramasuhuko's submissions to the effect that the trials of all Accused would be concluded by now, had joinder been denied, are hypothetical and speculative.
77. Besides, the Chamber observes that whilst the right to be tried without undue delay, pursuant to Articles 19 (1) and 20 (4) (c), is one of the elements of the interests of justice within the meaning of Rule 82 (B), it is not the only one. Rather, the advantages of a joint trial, which are not lightly outweighed, include uniform presentation of evidence and uniform procedure; the guarantee of consistent treatment of evidence, verdicts, and sentencing; and ensuring that witnesses need not be called repeatedly in separate trials.¹⁸⁷ The Chamber notes that the protection of victims and other witnesses is part of the interests of justice pursuant to Rule 82 (B),¹⁸⁸ and that this has been the constant concern of the Chamber.¹⁸⁹ In this context, the Chamber recalls that "the similarity of the allegations in the different indictments (...) will avoid the unnecessary pressure and trauma caused to victims and other witnesses who may be repeatedly called upon to testify in separate trials."¹⁹⁰
78. With respect to the request for a new trial after severance is granted, the Chamber notes that witnesses may have to be recalled to testify again, which is the situation the Chamber wished to avoid when it granted joinder.
79. On balance, therefore, the Chamber is of the opinion that the length of proceedings has not violated Pauline Nyiramasuhuko's right to be tried without undue delay, given the complexity of the present case and taking into account the other elements that make up the interests of justice within the ambit of Rule 82 (B), discussed in the preceding paragraphs, as well as the advanced stage of proceedings. The Chamber notes that the length of

¹⁸³ Decision on Nsabimana's Motion for Severance, para. 40; Decision on Ndayambaje's Motion for Severance, para. 18.

¹⁸⁴ Decision on Ndayambaje's Motion for Severance, para. 18.

¹⁸⁵ Decision on Nsabimana's Motion for Severance, para. 40.

¹⁸⁶ European Court of Human Rights, *Neumeister*, 27 June 1968, Series A, No. 8, reiterated in Decision on Ntahobali's Motion for Severance, para. 24; see also Decision on Nyiramasuhuko's Motion for Stay of Proceedings, para. 15, quoting *Zimmermann and Steiner*, 13 July 1983, Series A, No. 66, para. 24.

¹⁸⁷ *Prosecutor v. Bagosora et al.*, Decision on Request for Severance by Accused Kabiligi, 24 March 2005, para. 13.

¹⁸⁸ *Prosecutor v. Ntabakuze et al.*, Decision on the Defence Motion Requesting an Order for Separate Trial, 25 March 1998, p. 3; *Prosecutor v. Bizimana et al.*, Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Joseph Nzirorera, 12 July 2000, para. 26; *Prosecutor v. Bagosora et al.*, Decision on Motions by Ntabakuze for Severance and to Establish a Reasonable Schedule for the Presentation of Prosecution Witnesses, 9 September 2003, para. 21; *Prosecutor v. Bagosora et al.*, Decision on Request for Severance by Accused Kabiligi, 24 March 2005, para. 13; *Prosecutor v. Delalic et al.*, Decision on Motions for Separate Trial Filed by the Accused Zejnil Delalic and the Accused Zdravko Mucic, 25 September 1996, paras. 6-7; *Prosecutor v. Kovacevic et al.*, Decision on Motion for Joinder of Accused and Concurrent Presentation of Evidence, 14 May 1998, para. 10 (b).

¹⁸⁹ See, for example, the Decision on Joinder, para. 16, reiterated in Decision on Ntahobalis' Motion for Severance, para. 25 and in the Decision on Ndayambaje's Motion for Severance, para. 20; Decision on Nsabimana's Motion for Severance, paras. 34, 39-40, 42; 15 *bis* Decision, para. 33 (h).

¹⁹⁰ Decision on Nsabimana's Motion for Severance, para. 42, quotes *Prosecutor v. Ntabakuze and Kabiligi*, Decision on the Defence Motion Requesting an Order for Separate Trials, 1 October 1998.

proceedings is also quoted by the Defence in support for its prayer for a stay of proceedings, but considers that such a measure is not justified under the present circumstances.

80. The Trial Chamber is of the view that no case has been made for severance, a new trial, or a stay of proceedings against Pauline Nyiramasuhuko. The Chamber finds that it would not be in the interests of justice to grant the Motion.

Conduct of Counsel

81. The Chamber notes that the Defence for Nyiramasuhuko has included its earlier Motion for Stay of Proceedings, filed on 25 June 2003, in the present Motion by way of reference. The Chamber further notes that the earlier Motion included the alleged prejudice Nyiramasuhuko had suffered from not being promptly informed of her rights when she was arrested and until her initial appearance.¹⁹¹ This issue was already addressed in 2000.¹⁹²
82. The Chamber recalls that in 2004, it considered Counsel's conduct in re-litigating issues resolved in 2000 to be an attempt to obstruct proceedings and warned Counsel pursuant to Rule 46 (A).¹⁹³ The Chamber is now of the opinion that sanctions pursuant to Rule 73 (F) are warranted for Counsel's lack of observance of the Chamber's warning in this matter.
83. The Chamber recalls that pursuant to Rule 73 (F),
- a Chamber may impose sanctions against Counsel if Counsel brings a Motion (...) that in the opinion of the Chamber, is frivolous or is an abuse of process. Such sanctions may include non-payment, in whole or in part, of fees associated with the motion and/or costs thereof.
84. As the prayers included in the 2003 Defence Motion and reintegrated into the present Motion have been addressed in 2004, the Chamber is of the opinion that relitigating these matters is frivolous. It therefore orders that the fees associated with the filing of the previous Motion as an annex to the present Motion not be paid.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Motion for severance, a new trial, and stay of proceedings in all respects;

IMPOSES sanctions pursuant to Rule 73 (F) of the Rules;

ORDERS that fees associated with the filing of the 2003 Motion in annex to the present Motion not be paid.

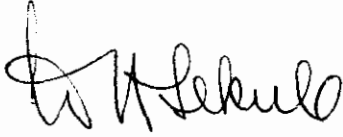
¹⁹¹ See paras. 51, 65 of Nyiramasuhuko's "*Requête de Pauline Nyiramasuhuko en arrêt des procédures pour abus de procédures (délais déraisonnables et procès inéquitable)*", filed on 25 June 2003, annexed to the Motion, and incorporated in paras. 174, 186.

¹⁹² Decision on Nyiramasuhuko's Motion for Certification to Appeal, paras. 24-25, refers to *Prosecutor v. Nyiramasuhuko et al., Décision relative à la requête de la Défense en exclusion de preuve et remise de biens saisis*, 12 October 2000. The Chamber recalls that it held then that "[i]t worries the Chamber that the same Defence Counsel who brought the Motion decided by the late Judge Kama in March 2000 felt no qualms in bringing back the same issues in June 2003, without saying a word to even hint at the fact that they had raised those issues on a previous occasion and that the decision went against them. This raises grave questions of professional responsibility", see Decision on Nyiramasuhuko's Motion for Certification to Appeal, para. 27.

¹⁹³ Decision on Nyiramasuhuko's Motion for Certification to Appeal, paras. 32, 34.

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Arusha, 7 April 2006



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



Solomy Balungi Bossa
Judge



[Seal of the Tribunal]