



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 13 December 2006

The PROSECUTOR v. ÉLIE NDAYAMBAJE
The PROSECUTOR v. JOSEPH KANYABASHI
The PROSECUTOR v. PAULINE NYIRAMASUHUKO & ARSÈNE SHALOM NTAHOBALI
The PROSECUTOR v. SYLVAIN NSABIMANA & ALPHONSE NTEZIRYAYO
Joint Case No. ICTR – 98 – 42 – T

SCHEDULING ORDER

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecutor

Silvana Arbia
Adelaide Whest
Gregory Townsend
Holo Makwaia
Althea Alexis Windsor
Astou Mbow

Defence Counsel for Ndayambaje

Pierre Boulé
Claver Sindyigaya

Defence Counsel for Kanyabashi

Michel Marchand
Simone Santerre

Defence Counsel for Nyiramasuhuko

Nicole Bergevin
Guy Poupart

Defence Counsel for Ntahobali

Normand Marquis
Louis Huot

Defence Counsel for Nsabimana

Josette Kadji
Pierre Weledji

Defence Counsel for Nteziryayo

Titinga Frédéric Pacere
Richard Perras

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

SITTING as Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa (the “Chamber”), pursuant to Rule 54 of the Rules of Procedure and Evidence (the “Rules”);

RECALLING the Scheduling Orders of 5 October 2006 and 9 November 2006, in which the Chamber ordered the Defence for Alphonse Nteziryayo, Elie Ndayambaje, and Joseph Kanyabashi to review their witness list and file updated and realistic witness lists;

HAVING RECEIVED the Responses to the Scheduling Order of 9 November 2006 by the Defence for Kanyabashi,¹ Nteziryayo,² and Ndayambaje,³ a consolidated Response by the Prosecution⁴ and a Reply by Arsène Shalom Ntahobali,⁵ as well as Ndayambaje’s Reply to the Prosecutor’s Response;⁶

NOTING that the Defence for Nteziryayo has indicated that it will withdraw four witnesses, bringing the total number of proposed witnesses to 24,⁷ whereas the Defence for Kanyabashi withdraws 14 witnesses from its list and thus intends to call at least 56 witnesses, while 23 other witnesses may be the subject of a motion for addition to the witness list,⁸ and that the Defence for Ndayambaje has withdrawn two witnesses and intends to call a total of 49;⁹

NOTING further that most of the documents annexed to Ndayambaje’s Response to the Scheduling Order date from 2005 or the beginning of 2006 and thus were known to the Defence long before the two Scheduling Orders were issued, that the Defence does not indicate which witnesses it is unable to locate, and that if the Defence for Ndayambaje cannot locate potential witnesses, they should be withdrawn from its witness list;

RECALLING that the Chamber has always been alive to the need to balance the rights of each Accused to a fair trial, including the right to have adequate time and facilities for the preparation of his or her defence, pursuant to Art. 20 (4) (b), and to the right of each Accused in this joint trial to be tried without undue delay, pursuant to Art. 20 (4) (c), Rule 82 (A),¹⁰ as

¹ *Réponse de la défense de Joseph Kanyabashi au “Scheduling Order” du 9 novembre 2006*, 4 December 2006.

² *Réponse de la défense d’Alphonse Nteziryayo au “Scheduling Order” du 9 novembre 2006*, 4 December 2006.

³ *Réponse de la défense d’Elie Ndayambaje au “Scheduling Order” du 9 novembre 2006*, 4 December 2006.

⁴ Prosecutor’s Consolidated Response to Elie Ndayambaje, Joseph Kanyabashi and Alphonse Nteziryayo’s Responses to the Trial Chamber’s Scheduling Order of November 9 2006 Pursuant to Rules 73 and 54 of the Rules of Procedure and Evidence, 6 December 2006.

⁵ *Réplique d’Arsène Shalom Ntahobali à “La réponse de la défense de Joseph Kanyabashi au “Scheduling Order” du 9 novembre 2006” du 4 décembre 2006*, 7 December 2006.

⁶ *Réplique de la défense d’Elie Ndayambaje à la réponse du Procureur suite aux réponses d’Alphonse Nteziryayo, Joseph Kanyabashi et d’Elie Ndayambaje au “Scheduling Order” du 9 novembre 2006*, 12 December 2006.

⁷ *Réponse de la défense d’Alphonse Nteziryayo au “Scheduling Order” du 9 novembre 2006*, 4 December 2006, paras. 112, Annexure 1.

⁸ *Réponse de la défense de Joseph Kanyabashi au “Scheduling Order” du 9 novembre 2006*, 4 December 2006, paras. 103-105. The approximate number of witnesses is caused by the Defence’s indication that on several points, it intends to call “one or more” witnesses.

⁹ *Réponse de la défense d’Elie Ndayambaje au “Scheduling Order” du 9 novembre 2006*, 4 December 2006, paras. 139-140, 142.

¹⁰ *Prosecutor v. Pauline Nyiramasuhuko et al.*, Decision on Prosecutor’s Motion Pursuant to Rules 54, 73, and 73ter to Proceed with the Evidence of the Accused Nyiramasuhuko as a Witness on 15 August 2005 or in the Alternative to Proceed with the Defence Case of the Accused Ntahobali, 19 August 2005, para. 30: “The

is borne out by the numerous directions to the Parties to review their list of witnesses with a view to the reduction of witnesses who will be called,¹¹ and to complete their Defences in a timely fashion¹² or by a specific date;¹³

CONSIDERING that the number of witnesses to be called by a party cannot merely be justified by equating it with the number of witnesses that another party has called and that rather, the calling of each proposed witness must be justified by the exigencies of a fair trial, a trial without undue delay, and a complete defence, pursuant to Art. 20 (2), (4) (b), (e);

CONSIDERING that it is for the Chamber, and not the Parties, to control proceedings,¹⁴ pursuant to Art. 19 (I) and Rules 54, 73ter (D) and 90 (F), including but not limited to the setting and implementation of timeframes, and that the Chamber's discretion in this matter should not be considered to be any form of threat;

CONSIDERING that the Chamber has been alive and will continue to be alive to good cause shown by the Parties which may be relevant to the conduct of proceedings;

CONSIDERING that the timeframe for the completion of the Defence case by mid-2007 is reasonable in the circumstances of a trial which started in 2001 and that it is in the interest of justice that proceedings should come to an end;

HEREBY

RECALLS that the presentation of the Defence case is scheduled to be completed by mid-2007; and

Chamber underscores that when seeking to give effect to an Accused's rights under Article 20, it has a duty to ensure that there is a balance between the competing and respective rights of all the Parties in this case."

¹¹ *Prosecutor v. Pauline Nyiramasuhuko et al.*, Proceedings of 31 January 2005, Daily Minutes, 1 (e), 2 (c) (Nyiramasuhuko, Kanyabashi); Proceedings of 13 December 2005, T. p. 82 (Ntahobali); Status Conference of 25 February 2005, Daily Minutes 1 (a), (h), 2 (i) (Kanyabashi, Nyiramasuhuko); Status Conference of 26 April 2005, Daily Minutes 1 (b), 2 (c) (Nyiramasuhuko); Scheduling Order, 14 December 2005, Order (h) (Ntahobali, Nsabimana, Nteziryayo, Kanyabashi, Ndayambaje), referred to during proceedings on 26 January 2006, Daily Minutes, 2 (d), and during the Status Conference of 8 February 2006, Daily Minutes, 2 (e) ("the Parties").

¹² *Prosecutor v. Pauline Nyiramasuhuko et al.*, Scheduling Order, 14 December 2005, Order (d) (Ntahobali).

¹³ Status Conference of 26 April 2005, Daily Minutes 1 (c) (Nyiramasuhuko); Daily Minutes 1 June 2005, 2 (d) (Nyiramasuhuko); Status Conference of 8 February 2006, Daily Minutes, 2 (b) (Ntahobali).

¹⁴ *Prosecutor v. Pauline Nyiramasuhuko et al.*, Decision on Prosecutor's Motion Pursuant to Rules 54, 73, and 73ter to Proceed with the Evidence of the Accused Nyiramasuhuko as a Witness on 15 August 2005 or in the Alternative to Proceed with the Defence Case of the Accused Ntahobali, 19 August 2005, para. 37: "Furthermore, the Chamber reminds all Parties that it is for the Parties, and not either the Defence or the Prosecution teams, to set the agenda for the conduct of this trial."

ORDERS the Defence for Elie Ndayambaje and Joseph Kanyabashi to further review their witness lists with a view to significantly reducing the total number of witnesses as well as reducing the number of witnesses who are being called to prove the same facts, and to file final and realistic lists of witnesses by 31 January 2007, pursuant to Rule 73*ter* of the Rules.

Arusha, 13 December 2006

William H. Sekule
Presiding

Arlette Ramaroson
Judge

Solomy Balungi Bossa
Judge

[Seal of the Tribunal]