



ICTR-98-42-T
29-08-08
(12549-12544)

12549
PM

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 29 August 2008

The PROSECUTOR v. Pauline NYIRAMASUHUKE & Arsène Shalom NTAHOBALI
Case No. ICTR-97-21-T

The PROSECUTOR v. Sylvain NSABIMANA & Alphonse NTEZIRYAYO
Case No. ICTR-97-29 A&B-T

The PROSECUTOR v. Joseph KANYABASHI
Case No. ICTR-96-15-T

The PROSECUTOR v. Élie NDAYAMBAJE
Case No. ICTR-96-8-T

Joint Case No. ICTR-98-42-T

DECISION ON THE PARTIES ORAL MOTIONS TO REVIEW THE TIMEFRAMES AND
LENGTH OF CLOSING BRIEFS OF THE 2 JULY 2008 SCHEDULING ORDER

Office of the Prosecutor

Ms. Holo Makwaia
Ms. Adelaide Whest
Ms. Madeleine Schwarz
Ms. Althea Alexis Windsor
Mr. Fergal Gaynor
Mr. Tidiane Mara
Ms. Astou Mbow, Case Manager
Mr. Lansana Dumbuya, Case Manager

Counsel for Kanyabashi

Mr. Michel Marchand

Counsel for Ndayambaje

Mr. Pierre Boulé
Mr. Claver Sindayigaya

Counsel for Nyiramasuhuko

Ms. Nicole Bergevin

Mr. Guy Poupart

Counsel for Ntahobali

Mr. Normand Marquis

Mr. Bernard St. Arnaud

Counsel for Nsabimana

Ms. Josette Kadji

Mr. Pierre Tientcheu Weledji

Counsel for Nteziryayo

Mr. Titinga Frédéric Pacere

Mr. Ob'wamwa Otachi

2008 AUG 29 P 2:00

JUDICIAL RECORDS ARCHIVES

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

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

BEING SEIZED of oral Motions by the Defence of Sylvain Nsabimana, Alphonse Nteziryayo, Arsène Shalom Ntahobali, Pauline Nyiramasuhuko, Élie Ndayambaje and by the Prosecution for reconsideration of the Scheduling Order of 2 July 2008, submitted on 4 July 2008;

CONSIDERING the Registry's oral submissions under Rule 33 (B) of 4 July 2008 and the "Registry's Submission under Rule 33 (B) of the Rules on 'the Scheduling Order of the Chambers Dated 2 July 2008'", filed on 5 August 2008,

CONSIDERING the "*Réponse de Arsène Shalom Ntahobali aux soumissions du greffier en vertu de l'article 33 RPP*", filed on 21 August 2008;

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

NOW DECIDES the Motions pursuant to Rule 73 (A) of the Rules.

INTRODUCTION

1. On 2 July 2008, the Chamber ordered pursuant to Rule 54 of the Rules that the respective Defence Closing Briefs shall not exceed 200 pages and 60,000 words and that the Prosecution Closing Brief shall not exceed 400 pages and 120,000 words; that all Parties shall file their closing briefs simultaneously no later than 45 days after the presentation of all the evidence; that the closing briefs shall be translated before the hearing of the closing arguments; and that closing arguments shall be held no later than 30 days after the filing of the closing briefs.¹ On 4 July 2008, all Parties submitted oral motions requesting the Chamber to reconsider the Scheduling Order of 2 July 2008.

SUBMISSIONS OF THE PARTIES

Defence Submissions

2. All Defence request a period of six months after the presentation of all evidence for the filing of their closing briefs; to file closing briefs of 600 pages and 180,000 words; to be allowed to file their closing briefs after that of the Prosecution; and to be granted a timeframe longer than 30 days between the filing of the closing briefs and the scheduling of the closing arguments.

3. All Defence submit that the restrictive timeframes indicated in the Scheduling Order may jeopardize a fair trial arguing that 45 days would be insufficient for preparing their closing briefs because of the length and complexity of the trial proceedings and the conflicts of interests between the various parties. Furthermore, some exhibits have not been translated and can therefore, not be analysed. In other ICTR cases, the Defence has been granted a

¹ *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Scheduling Order, 2 July 2008.

2 

longer time period for filing their closing briefs and more pages. The Defence add that it is difficult to focus on the preparation of the closing briefs while the case is still ongoing.

4. All Defence submit that they should be allowed to file their briefs after that of the Prosecution to be able to respond to it. The Defence finally argue that the time frame of 30 days between the filing of the closing briefs and the closing arguments is too short in view of the fact that the accused need time to take account of the content of the other closing briefs.

5. The Defence for Ndayambaje adds that, being the last party to present its case, it will only be able to start preparing its closing brief after the presentation of all its evidence.

Prosecution

6. The Prosecution requests four months after the closure of all evidence for the filing of the closing briefs and to be allowed to file 900 pages and 270 000 words referring to the complexity of the case. It also points out that all the exhibits have not been translated. The Prosecution further requests more than 30 days between the filing of the briefs and the closing arguments, asserting that 30 days is too short for reading 1200 pages. The Prosecution opposes the Defence request not to file all closing briefs simultaneously.

Registry

7. Referring to Rule 33 (B), the Registry requests more than 30 days between the filing of the briefs and the closing arguments. It submits that the language section will have difficulties in translating the briefs within the indicated timeframe. The five translators available for translating the Parties' closing briefs are able to translate 20 pages per week in accordance with professional standards. Therefore, they will need sixteen weeks to complete the translation of the closing briefs amounting to 1,600 pages in total according to the 2 July Scheduling Order. If the Chamber were to grant the Parties' request for extending the length of their closing briefs, the timeframe required would be even longer. Even though it would be possible to increase the numbers of translators, it would take around six months for a new translator to reach the ICTR translation standards. The Registry excludes the option of outsourcing the translation due to bad experiences in the past.

Ntahobali's Additional Submissions in response to the Registry's Rule 33 (B) Submissions

8. The Defence for Ntahobali argues that the fact that the Registry's submissions were initially filed *ex parte* has no justification in law. The Defence expresses its satisfaction at the Chamber ordering that the submissions be circulated to the Parties. The Defence contends that the lack of qualified staff within the translation unit may not be used as a reason to undermine the Accused rights. The length of the closing briefs and the time frames provided should not depend on financial means or lack of management within the Registry. Therefore, the Chamber should reject the Registry's submissions with regard to its translation difficulties.

DELIBERATIONS

9. The Chamber recalls that it has the inherent power to reconsider its own decisions. This is an exceptional measure available only under particular circumstances and where the interests of justice so require, including but not limited to: (1) a new fact has been discovered

that was not known to the Chamber at the time it made its original decision; (2) there has been a material change in circumstances since it made its original decision; and (3) there is reason to believe that its original decision was erroneous, or constituted an abuse of power that resulted in an injustice.²

10. In the instant case, the Parties' submissions regarding the filing and length of closing briefs and the planning of the closing arguments may lead to a reconsideration of the Scheduling Order in the interests of justice.

Timeframes for filing of the closing briefs

11. The Chamber notes that the Defence unanimously requested for six months and the Prosecution for four months after the presentation of all evidence for the filing of their respective closing briefs. The Chamber considers that the time frames requested by the Parties would delay the expeditious conduct of the proceedings and run against judicial economy. Furthermore, considering all circumstances of this case, the Chamber is not convinced that the Parties need such an extended time period to prepare their briefs. The Chamber underscores that, in rendering the Scheduling Order at an early stage of the proceedings, it gave ample time for preparation and enabled the Parties to start working on their closing briefs immediately. The Parties are expected to organise their work on a continuous basis.

12. In addition, the Chamber considers that the time period of 45 days after the hearing of all evidence, as indicated in the Scheduling Order, does not run contrary to the practice followed at the ICTR. In several multiple-accused cases, some filing was done within this timeframe, even if the briefs were not filed simultaneously. For example, in *Bagosora et al.*, the first closing brief was filed 43 days after the end of trial.³ In *Nahimana et al.*, the first closing brief was filed 47 days after the end of the trial.⁴

13. Nevertheless, after having considered the Parties' submissions regarding the complexity of the case, the apparent conflicts of interests between various Parties and issues relating to the translation of exhibits, the Chamber finds it in the interests of justice to reconsider the Scheduling Order and extends the 45 days to 60 days for the filing of the closing briefs after the hearing of all evidence for the Parties.

Simultaneous filing of all closing briefs

14. The Chamber notes the Defence request to file their closing briefs after that of the Prosecution and to respond in their briefs to the arguments developed by the Prosecution. The Trial Chamber recalls that Rule 86 does not provide for written rejoinders or rebuttals to a party's closing brief. Furthermore, in *Semanza* the Appeals Chamber held that "[t]here is nothing in the Rules to suggest that different dates must be set for each party to file its

² *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion for Reconsideration of the Decision of 2 March 2006, 11 June 2007, paras. 9,10 quoting further decisions; *The Prosecutor v. Bizimungu et al.*, Case No. ICTR-90-55-T, Extremely urgent Decision Reconsidering Trial Chamber's Decision of 24 January 2008 and Order for the Testimony of Witness RDG to be Taken by Deposition, 29 January 2008, paras. 4,5; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion for Partial Reconsideration of the Decision on Joseph Nzirorera's Tenth Notice of Rule 68 Violation, 16 April 2008 para. 5.

³ *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Oral Order Status Conference, 19 January 2007.

⁴ *The Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-T, Revised Scheduling Order, 16 May 2003.

closing brief.⁵ Any response by any Party may be dealt with during the oral arguments. Therefore, the Chamber is of the view that there is no need to reconsider its Scheduling Order in this regard. The order for simultaneous filing of all the closing briefs stands.

Length of closing briefs

15. The Chamber notes the Defence request to file closing briefs of 600 pages and 180,000 words and the Prosecution request to file a closing brief of 900 pages and 270,000 words. The Chamber considers that the number of pages requested by the Parties would delay the expeditious conduct of the proceedings and run against judicial economy.

16. In addition, the Chamber recalls that the ICTY "Practice Direction on the length of Briefs and Motions" directs that the length for closing briefs is 60,000 words.⁶ While this Direction is not binding on this Chamber, it shows that the length indicated in the Scheduling Order is well within the practice followed in international criminal law.

17. Nevertheless, after having heard the Parties submissions regarding the complexity of the case and the apparent conflicts of interests between the Defence Parties, the Chamber finds it in the interests of justice to reconsider the Scheduling Order and to order that the respective closing briefs of the Defence shall not exceed 250 pages and 75,000 words and that the Prosecution closing brief shall not exceed 600 pages and 180,000 words.

Timeframe between the filing of closing briefs and closing arguments

18. The Chamber notes that the Parties and the Registry requests to extend the 30 days timeframe between the filing of closing briefs and the closing arguments.

19. Recalling that according to Rule 86 (B), the final trial brief shall be filed no later than five days prior to the day set for the presentation of that party's closing argument, the Chamber considers that it is the Registry's responsibility to ensure a timely translation of documents within the timeframe indicated by the Rules and directed by the Chamber. Having extended the length of the closing briefs, the Chamber finds it in the interests of justice to reconsider the timeframe between closing briefs and closing arguments and to allow for a timeframe of 45 days. The Chamber expects the Registry to plan its work effectively to allow for the timely translation of the briefs within the timeframes indicated. Ample time has been given for this preparation.

FOR THE ABOVE REASONS, THE TRIBUNAL

PARTIALLY GRANTS the Parties requests to extend the timeframe for filing of the closing briefs and **ORDERS** the filing of the closing briefs no later than 60 days after the presentation of all the evidence;

PARTIALLY GRANTS the Parties requests to extend the maximum length for the closing briefs and **ORDERS** that the Defence closing briefs shall not exceed 250 pages and 75,000 words and that the Prosecution closing brief shall not exceed 600 pages and 180,000 words;

⁵ *The Prosecutor v. Semanza*, Case No-ICTR-97-20-A, Judgement (AC), 20 May 2005, para. 36.

⁶ ICTY, Practice Direction on the length of Briefs and Motions, IT/184/Rev.2, 16 September 2005, para. 4.

GRANTS the Parties requests to extend the timeframe between the filing of the closing briefs and the scheduling of the oral arguments and **ORDERS** that the closing arguments be held 45 days after the simultaneous filing of the closing briefs;

DENIES the Motions in all other respects.

Arusha, 29 August 2008



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



Solomy Balungi Bossa
Judge

[Seal of the Tribunal]