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UNITED NATIONS
NATIONS UNIES

ICTR-07-91-I
13-10-2008
(1636 - 1628)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rashid Khan, presiding
Lee Gaciga Muthoga
Emile Francis Short

Registrar: Mr. Adama Dieng

Date: 13 October 2008

THE PROSECUTOR

v.

Léonidas NSHOGIZA

Case No. ICTR-2007-91-PT

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**DECISION ON MOTIONS REQUESTING ASSIGNMENT OF
COUNSEL OF CHOICE**

*Articles 19 and 20 of the Statute and Rules 45 (H), 54 and 77 (F) of the Rules of Procedure and
Evidence and Article 10bis of the Directive on the Assignment of Defence Counsel*

Office of the Prosecutor:

Richard Karagyesa
Renfa Madenga
Abdoulaye Seye
Dennis Mabura

For the Accused

Allison Turner

Counsel Assigned by the Registrar

Philippe Grechano

ref

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INTRODUCTION

1. On 8 February 2008, the Accused, Mr. Leonidas Nshogoza, assigned Power of Attorney to Ms. Allison Turner to represent him in contempt proceedings before the Tribunal.¹ The Defence has submitted that, on 26 February 2008, the Accused filed signed forms in relation to his indigence and choice of counsel with the Defence Counsel Management Section ("DCMS"); Ms. Turner was his first choice.² The Registrar subsequently determined that the Accused satisfied the criteria for indigence, entitling him to legal assistance under the Tribunal's legal aid scheme. Since February 2008, the Registry and Ms. Turner have been engaged in communications concerning the assignment of counsel to the Accused.³

2. On 15 May 2008, DCMS sent Ms. Turner a letter which offered to assign her as counsel for the Accused ("Communication of 15 May 2008").⁴ However, since June 2008, Ms. Turner and the Registry have been unable to resolve a disagreement regarding the terms of remuneration for her assignment.⁵ The Registry has therefore not assigned Ms. Turner as counsel for the Accused. Ms. Turner continued to act for the Accused on a *pro bono* basis pursuant to the Power of Attorney until 9 June 2008, when she informed the Registry that she would be suspending all work on the file until she was formally assigned as counsel.⁶

¹ *The Prosecutor v. Nshogoza*, Case No. ICTR-2007-91-PT, "Power of Attorney signed by Leonidas Nshogoza" dated 8 February 2008. See Annex A to *Nshogoza*, "Urgent Motion for Assignment of Counsel", filed on 16 May 2008 ("Motion to Assign Counsel"). The Accused is charged with Contempt of the Tribunal and Attempt to Commit Acts Punishable as Contempt of the Tribunal, contrary to Rule 77 of the Rules of Procedure and Evidence.

² See Motion to Assign Counsel, para. 5 and Annexure D.

³ Ms. Turner was placed on the List of Duty Counsel on 11 February 2008, but this was later withdrawn by DCMS who informed Ms. Turner that she could continue to act under the Power of Attorney. Between 19 March and 2 May 2008, DCMS asked Ms. Turner twice as to whether she could act for two accused before the Tribunal (Ms. Turner had been acting in the case of *Prosecutor v. Rukundo*, Case No. ICTR-2001-70-T). Ms. Turner replied on 19 March and 17 April 2008 confirming there was no difficulty in this respect. For further details of communications between Ms. Turner and the Registry, see *Nshogoza*, Order to Assign Counsel, 24 July 2008, ("Order of 24 July 2008"), para. 2, and fn. 6. See also fn. 4 of this Decision.

⁴ "Offer of Assignment as Counsel for the Accused Leonidas Nshogoza" dated 15 May 2008 ("Communication of 15 May 2008"). See *Nshogoza*, Supplementary Defence Submissions to Leonidas Nshogoza's "*Requete pour la commission d'un Conseil de defense*" filed on 19 August 2008 ("Submissions of 19 August 2008"), Annexure C. The Communication of 15 May 2008 stated that Ms. Turner would be paid up to \$50,000 to cover legal fees and that the Registrar would also meet other expenses related to the proceedings.

⁵ Ms. Turner accepted the offer in the Communication of 15 May 2008, by letter, on 19 May 2008 and on 30 May 2008, hand-delivered and filed a signed copy of the Communication of 15 May 2008. However, on 6 June 2008, DCMS informed Ms. Turner that their offer in fact included fees and expenses. On 9 June 2008, Ms. Turner replied to the said offer noting DCMS' attempt to modify the agreed terms of remuneration. See *Nshogoza*, Supplementary Submissions to 'Defence Extremely Urgent Motion (...) and to 'Defence Extremely Urgent Request (...) filed 20 and 26 August 2008 ("Submissions of 1 September 2008"), Annexure B and Addendum to Urgent Motion to Assign Counsel, Annexures B and D. Ms. Turner maintains that she should be remunerated on the terms of the offer in the Communication of 15 May 2008. However, the Registry insists on paying Ms. Turner a lump sum of \$50,000 to cover fees and expenses. See further para. 3 of this Decision.

⁶ *Nshogoza*, "*Requete au fins de constat d'entrave a la justice, Article 77 du RPP du TPIR*", filed 13 August 2008 ("Accused's Request of 13 August 2008"), annexed letter dated 9 June 2008 from Ms. Turner to DCMS stating "While the undersigned continues to treat the Contract as valid and act as assigned counsel for Mr. Nshogoza, in view of the aforementioned breaches she is suspending all work on this file until the assignment as counsel has been formalized as stipulated in the Contract."



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3. On 24 July 2008, the Chamber, in accordance with Article 20 (4) (d) of the Statute and Rule 77 (F) of the Rules, ordered the Registrar to assign counsel to the Accused without further delay.⁷

4. On 25 July 2008, DCMS wrote to Ms. Turner offering her assignment as counsel for the Accused.⁸ However, Ms. Turner was not formally assigned as counsel by the Registry due to the ongoing disagreement regarding terms of remuneration.⁹

5. On the same date, DCMS informed the Accused that Ms. Turner did not accept the offer of assignment as counsel and requested that the Accused submit a list of three names as potential counsel.¹⁰ DCMS added that if the three names were not submitted by 5 August 2008, the Registrar may decide to act under Article 10bis of the Directive on the Assignment of Defence Counsel and assign, in the interests of justice, a Counsel listed for this purpose.¹¹

6. On 5 August 2008, DCMS circulated a communication seeking defence counsel to represent the Accused.¹² On 18 August 2008, the Chamber, noting that the Registry had failed to assign counsel to the Accused, ordered the Registrar to give effect to the Chamber's Order of 24 July 2008 within ten days.¹³ On 20 August 2008, the Registrar assigned Mr. Philippe Greciano as Lead Counsel for the Accused.¹⁴

7. Between 5 August and 1 September 2008, the Accused and Ms. Turner filed a number of submissions and two Motions in which they request, among other things, that the Chamber:¹⁵

⁷ Order of 24 July 2008. See fn. 3 of this Decision.

⁸ Nshogoza, "Requete pour la commission d'un Conseil de defense", 5 August 2008 (Accused's Request of 5 August 2008"), annexed letter from DCMS dated 25 July 2008.

⁹ On 29 July 2008, Ms. Turner wrote to DCMS accepting the assignment as per the terms of the offer in the Communication of 15 May 2008. On 30 July 2008, DCMS replied stating: "We do not want to understand that your reference to the offer letter of 15 May 2008 is a rejection of the actual assignment of 25 July 2008 with its terms" and sought clarification from Ms. Turner. On 1 August 2008, Ms. Turner confirmed to DCMS that she accepted the assignment to act for the Accused on the terms set out in the original offer of 15 May 2008. These communications are annexed to the Submissions of 1 September 2008, Annexure D.

¹⁰ Accused's Request of 5 August 2008, attached letter dated 1 August 2008 from DCMS to Mr. Nshogoza.

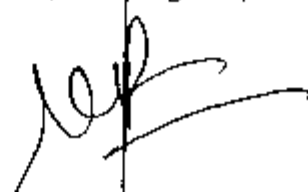
¹¹ Article 10bis of the Directive on the Assignment of Defence Counsel ("Directive") states: "If a suspect or accused, (i) Either requests an assignment of Counsel but does not comply with the requirement set out above within a reasonable time; or (ii) Fails to obtain or to request assignment of Counsel, or to elect in writing that he intends to conduct his own defence, the Registrar may nevertheless assign him Counsel in the interests of justice in accordance with Rule 45 (E) of the Rules and without prejudice to Article 18."

¹² "Request for interest in defending a person accused of Contempt of the Tribunal," see Accused's Request of 13 August 2008, annexed confidential email from DCMS dated 5 August 2008.

¹³ Nshogoza, Order for Immediate Assignment of Counsel, 18 August 2008 ("Order of 18 August 2008").

¹⁴ Nshogoza - Commission D' Office De Me Philippe Greciano a Titre de Conseil dans L'Interet de la Justice pour la defense des interest de M. Leonidas Nshogoza, Accuse Devant Tribunal Penal International Pour le Rwanda, dated 20 August 2008 ("Registrar's Notification of Assignment of Greciano").

¹⁵ The Accused also requests that the Chamber issue an Order that the Registrar has been perverting, or interfering in, the course of justice by not assigning the Accused counsel of his own choice. See Accused's Request of 13 August 2008. Ms. Turner also requests that the Chamber declare "null and void" the Registrar's communication to Defence counsel on 5 August 2008. See Nshogoza, Supplementary Defence Submissions to Leonidas Nshogoza's "Requete pour la commission d'un Conseil de defense" filed on 19 August 2008 ("Submissions of 19 August 2008"). Ms. Turner submits that the Accused seeks to be represented by the lawyer of his choice as guaranteed by Article 20 (4) (d) of the Statute and recognised by the Chamber's Order of 24 July 2008. It is further submitted that the Registry's communication of 25 July 2008, re-iterating the terms of a 6 June 2008 offer of assignment, are deemed unacceptable by the Accused.



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- (i) Assign counsel of choice to the Accused;¹⁶
- (ii) Order an oral hearing on the Motion to Assign Counsel of Choice;¹⁷
- (iii) Quash the Registrar's decision to assign Mr. Greciano,¹⁸ or, order the Registrar to withdraw Mr. Greciano pursuant to Rule 45 (H) of the Rules.¹⁹

8. The Prosecutor opposes the Motion for a Hearing on the basis that (i) Ms. Turner is no longer assigned as Duty Counsel or acting in any capacity to defend the Accused; and, (ii) the right of an indigent accused to effective representation does not entitle him to choose his own counsel.²⁰

DISCUSSION

Preliminary Matters

9. Before considering the merits of the Motions and Submissions, the Chamber will address two preliminary issues.

10. The Chamber must first determine the issue of whether Ms. Turner has right of audience to make submissions on behalf of the Accused. The Chamber considers that Ms. Turner's capacity to represent the Accused derives from the Power of Attorney assigning her as his counsel, and she continues to act pursuant to this. Although Ms. Turner is not counsel assigned by the Registrar, and thus is not entitled to payment under the Tribunal's legal aid scheme, she continues to act on a *pro bono* basis. The Chamber therefore finds that Ms. Turner has right of audience to make submissions on behalf of the Accused.

11. Second, Ms. Turner has requested an oral hearing. Rule 73 (A) of the Rules provides that a Chamber may rule on a motion based solely on the briefs of the parties, *unless it decides* to hear the motion in open court.²¹ Ms. Turner has urgently requested a hearing to determine the Motion to Assign Counsel of Choice. However, Ms. Turner has proffered no reasons for why a hearing is necessary. Rather, in Ms. Turner's application for an oral hearing on this issue, she recites all of the arguments raised in her written motion for assignment of counsel. Furthermore, the Chamber considers that it has all the necessary information before it and is satisfied that it can dispose of this issue on the basis of written briefs alone.

¹⁶ Accused's Request of 5 August 2008 and "Extremely Urgent Motion for Order to Registrar to Assign Counsel of Choice Pursuant to Article 20 (4) (d) ICTR Statute" filed on 21 August 2008 ("Motion to Assign Counsel of Choice").

¹⁷ Nshogoza, "Defence Extremely Urgent Request for Hearing on Motion to Assign Counsel of Choice Allison Turner and Amended Prayer of Relief," filed on 26 August 2008 ("Motion for Hearing").

¹⁸ Motion for Hearing, para. 2, and Submissions of 1 September 2008. Ms. Turner submits that the assignment of Mr. Greciano is not "in the interests of justice" as there is no instruction from the Chamber pursuant to Rule 45 *quater* and that Article 10 *bis* of the Directive is not applicable. See Submissions of 1 September 2008.

¹⁹ Rule 45 (H) provides that under exceptional circumstances, at the request of the suspect or accused or his counsel, the Chamber may instruct the Registrar to replace an assigned counsel, upon good cause being shown and after having been satisfied that the request is not designed to delay the proceedings.

²⁰ Nshogoza, "Prosecutor's Response to 'Defence Extremely Urgent Request for Hearing on Motion to Assign Counsel of Choice Allison Turner and Amended Prayer for Relief', filed 1 September 2008 ("Prosecutor's Response"), para. 2.

²¹ Emphasis added.

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12. The Chamber will now proceed to consider the merits of the Motions on the basis of the Accused's and Ms. Turner's written filings.

Merits of the Motions and Submissions

Law Relating to Assignment of Counsel

13. Article 20 of the Statute sets out the rights of the accused. Sub-section (4) (d) provides for, among other things, the right to be assigned legal assistance of an accused's own choosing, without payment by the accused if the accused is of insufficient means. Pursuant to Sub-section 4 (c), the Accused also has the right to be tried without undue delay. In this respect, Article 19 of the Statute provides that Trial Chambers have an obligation to ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules, and with full respect for the Accused's rights.

14. Rule 45 of the Rules sets out the procedure for the assignment of counsel. Under Sub-Rule (A), the Registrar shall maintain a list of counsel who have indicated their willingness to be assigned to an indigent accused. Sub-Rule (C) stipulates the procedure for the assignment of counsel to an indigent accused. Pursuant to Sub-Rule (C) (iii), the Registrar shall decide whether the criteria for indigency are met, and shall assign counsel from the list if the criteria are met.²²

15. Under Rule 45 (H), the Chamber may, in exceptional circumstances and at the request of the accused or his counsel, instruct the Registrar to replace an assigned counsel, upon good cause being shown and after having been satisfied that the request is not designed to delay the proceedings. In addition, Rule 45^{quater} provides that a Trial Chamber may, if it decides that it is in the interests of justice, instruct the Registrar to assign counsel to represent the interests of the accused.

16. Specifically in relation to contempt proceedings, Rule 77 (F) of the Rules provides that any person "indicted for or charged with contempt shall, if that person satisfies the criteria for determination of indigence established by the Registrar, be assigned counsel in accordance with Rule 45."

17. The procedure for the assignment of counsel is further provided for by the Directive on the Assignment of Defence Counsel.²³ Pursuant to Article 10 (A) of the Directive, the Registrar may decide to assign or not to assign counsel, after examining an accused's declaration of means and other relevant information. Article 10 *bis* of the Directive provides that if an accused either (i) requests assignment but does not comply with the requirements set out in the Directive within a reasonable time; or (ii) fails to obtain or to request assignment of counsel, or to elect in writing that he intends to conduct his own defence, the Registrar may

²² Rule 45 (C): "In assigning counsel to an indigent suspect or accused, the following procedure shall be observed:

- (i) A request for assignment of counsel shall be made to the Registrar;
- (ii) The Registrar shall enquire into the financial means of the suspect or accused and determine whether the criteria of indigence are met;
- (iii) If he decides that the criteria are met, he shall assign counsel from the list; if he decides to the contrary, he shall inform the suspect or accused that the request is refused."

²³ Articles 5 to 12 of the Directive on the Assignment of Defence Counsel ("Directive").

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assign him Counsel in the interests of justice.²⁴ The Chamber recalls that the Registrar's Notification of Assignment of Mr. Greciano was made pursuant to this provision.²⁵

18. Pursuant to the jurisprudence of the *ad hoc* Tribunals, an indigent accused's right to counsel of his or her own choosing is limited. The Registrar may take account of an accused's preference but it is within the Registrar's discretion to override that preference if he considers there to be well-founded reasons, or if it is in the interests of justice.²⁶

²⁴ The Directive further provides a mechanism for withdrawal of assigned counsel pursuant to Article 19 (A) (i) which provides that the Registrar may withdraw the assignment of counsel in exceptional circumstances, at the request of the accused, or his Counsel; and pursuant to Sub-Rule (A) (ii) at the request of Lead Counsel. Sub-Rule (E) provides a review mechanism in that "[w]here a request for withdrawal, made pursuant to paragraph (A), has been denied, the person making the request may seek the President's review of the decision of the Registrar."

²⁵ Registrar's Notification of Assignment of Greciano, p. 1, "J'ai l'honneur de vous informer qu'en application de l'Article 10 bis de la Directive... le Greffier du TPIR a décidé de vous commettre d'office à titre de conseil dans l'intérêt de la justice..."

²⁶ *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgment, 1 June 2001 ("Akayesu Appeal Judgment"), paras. 60 and 61: The Trial Chamber had dismissed the Appellant's request to replace assigned counsel. As a ground of appeal, the Appellant submitted that he had been denied the right to counsel of his own choosing pursuant to Article 20 (4) (d). The Appeals Chamber held, confirming previous jurisprudence, that the issue of the right to an indigent accused to counsel of his own choosing raises issues of balancing two requirements: on the one hand affording the accused as effective a defence as possible to ensure a fair trial; and on the other hand, proper use of the Tribunal's resources. The Appeals Chamber held that in principle, the right to free legal assistance does not confer the right to counsel of one's own choosing. The right to choose counsel applies only to those accused who can financially bear the costs of counsel. *The Prosecutor v. Blagojevic*, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojevic to Replace his Defence Team (AC), 7 November 2003 ("Blagojevic Decision"), para. 22: In *Blagojevic*, the Registrar had assigned Co-Counsel selected by Lead Counsel, in accordance with the Directive on Assignment of Defence Counsel. However, the Appellant had never agreed with how Co-Counsel had been selected and appointed and asserted that he had not been consulted. He requested replacement of Co-Counsel, as well as Lead Counsel, on the basis that he no longer trusted him. The Appeals Chamber confirmed that the Appellant had no right to choose his Lead or Co-Counsel. *The Prosecutor v. Milan Martić*, Case No. IT-95-11-PT, Decision on Appeal Against Decision of Registry, 2 August 2005 (TC) ("Martić Decision"), para. 4: In *Martić*, counsel of choice had temporarily been assigned but the Registry had raised an issue of a possible conflict of interest and requested that this be resolved within a specified time. The Accused appealed to the Trial Chamber against the Registrar's decision, submitting that the Registrar was not authorized to determine potential conflict of interest issues but that this was for a Trial Chamber to determine. The Chamber, noting that an accused's right to counsel of choice is limited and deciding that the Registrar was the appropriate body to consider conflict of interest issues, denied the request and remitted the matter back to the Registrar. *The Prosecutor v. Nahimana et al.*, Decision on Appellant Jean-Bosco Barayagwiza's Motion Contesting the Decision of the President Refusing to Review and Reverse the Decision of the Registrar Relating to the Withdrawal of Co-Counsel (AC), 23 November 2006 ("Nahimana Decision"), para. 10: This was an appeal contesting a decision of the President refusing to review and reverse a decision of the Registrar denying withdrawal of co-counsel. Lead-counsel had requested withdrawal of co-counsel due to differences in legal reasoning and strategy. The Registrar dismissed the request for withdrawal as no exceptional circumstances had been established and the President dismissed the motion to review the Registrar's decision. The Appeals Chamber conducted a review of the President's decision. The Appeals Chamber recalled that the right to legal assistance financed by the Tribunal does not confer right to counsel of one's own choosing. It found that the alleged conflict between the Appellant and co-counsel on issues of legal strategy did not constitute exceptional circumstances justifying withdrawal. *The Prosecutor v. Muvunyi*, Case No. ICTR-2000-55-I, Decision on the Accused's Request to Instruct the Registrar to Replace Assigned Lead Counsel (TC), 18 November 2003 ("Muvunyi Decision"), para. 6: The Accused requested the Trial Chamber to replace lead counsel due to lack of communication and failure to follow instructions. The Chamber noted that according to the Statute and Rules, there is no right to choose counsel and that the procedure is that the accused expresses his wishes and the Registrar is the only authority competent to assign Defence counsel. However, due to the deadlock between counsel and the Accused, which was a hindrance to the trial commencing, the Trial Chamber directed replacement of counsel under Rule 45 (H). *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on the Defence Motions for the Reinstatement of Jean Yaovi Degli as Lead Counsel for Gratien

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19. In addition to the Chamber's specific powers, pursuant to Rule 45 (H) to instruct the Registrar to replace an assigned counsel and Rule 45 *quater* to assign counsel in the interests of justice, the Chamber has a general power, pursuant to Rule 54 of the Rules, to issue any orders as may be necessary for the preparation or conduct of the trial.²⁷ Additionally, the Chamber has an obligation to ensure a fair and expeditious trial pursuant to Articles 19 and 20 of the Statute, and to act in order to preserve an Accused person's fair trial rights. The Appeals Chamber has consistently held that the issue of assignment of counsel is not just an administrative matter but "extends to the substantive nature of the representation of counsel and the proper fulfilment of obligations of legal representation towards the accused by counsel."²⁸ Therefore, although the Registrar has the primary responsibility to administer the Tribunal's legal aid system and determine which counsel to assign, where the issue of assignment of counsel impacts upon the substantive rights of an accused to a fair and expeditious trial, assignment or replacement of counsel can be subject to judicial scrutiny by a Trial Chamber. Indeed, a Chamber may order the Registry to assign counsel to avoid an adverse effect on the Accused's fair trial rights.²⁹

20. With regard to the replacement of assigned counsel under Rule 45 (H), it is for the moving party to establish good cause warranting the replacement. According to the jurisprudence, a complete breakdown of communication between counsel and client may amount to good cause for withdrawal of assigned counsel.³⁰ However, the Appeals Chamber has consistently held that an accused does not have the right to claim a breakdown in communication through unilateral actions, such as refusing to meet with, or receive documents from, counsel, in the hope that such actions will result in the withdrawal of counsel by the Registrar.³¹

The Request to Assign Ms. Turner as Counsel for the Accused

21. Ms. Turner requests the Chamber to order the Registrar, pursuant to Rule 45 (H), to withdraw Mr. Greciano's assignment as counsel for the Accused, and assign Ms. Turner in his place. Ms. Turner submits that the Accused has consistently maintained his wish to be represented by counsel of choice, has refused to accept Mr. Greciano's assignment and refused to meet with him. It is further submitted that since March 2008, the Accused and Ms.

Kabiligi (TC), 19 January 2005 ("Bagosora Decision"), para. 45: Lead counsel had been withdrawn by the Registrar under Article 19 (A) (iii) of the Directive due to evidence of fraud. However, counsel filed a motion seeking suspension of the Registrar's decision due to the advanced stage of proceedings, which was supported by joint motion of counsel for the other defendants. They sought to challenge the legal basis for withdrawal and the Chamber proceeded with judicial review of the Registrar's decision. The Chamber went through the grounds for judicial review. The Chamber found, among other things, that denying the accused counsel of choice was not considered to be a basis for quashing the Registrar's decision.

²⁷ See also *Bagosora Decision*, para. 35.

²⁸ *Blagojevic Decision*, para. 6 where the Appeals Chamber cites and confirms the Trial Chamber's words.

²⁹ *Akayesu*, Decision Relating to the Assignment of Counsel (AC), 27 July 1999, p. 5; *Prosecutor v. Zejnil Delalic et al.*, Case No. IT-96-21-A, Order on the Motion to Withdraw as Counsel due to a Conflict of Interest (AC), 24 June 1999; and *Delalic*, Order Regarding Esad Land o's Request for Removal of John Ackerman as Counsel on Appeal for Zejnil Delalic (AC), 6 May 1999; *Martić Decision*, p. 4; *Blagojevic Decision*, paras. 6 and 7; and *Bagosora Decision*, para. 35.

³⁰ *Delalic*, Decision on Request by Accused Mucic for Assignment of New Counsel, 24 June 1996, para. 4. See also *Muvunyi Decision*, para. 6, where complete deadlock between counsel and the accused led to the Chamber directing replacement of counsel under Rule 45 (H).

³¹ *Blagojevic Decision*, para. 51; *Nahimana Decision*, para. 13.

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Turner have extended efforts to advance proceedings, while the assignment of Mr. Greciano hinders the proceedings due to his unfamiliarity with the case and Tribunal procedures.

22. The Chamber recalls that the right to counsel is not unlimited and that assignment of counsel is primarily a matter for the Registrar. The Chamber further recalls that an accused's refusal to cooperate with his lawyer, such as refusing to meet with or receive documents from his counsel, does not constitute exceptional circumstances warranting the Registrar's withdrawal of assigned counsel.³² Indeed, the decision to replace assigned counsel should not be taken lightly. However, the request in the present case must be considered against the backdrop of these proceedings. The Accused has been in pre-trial detention for almost eight months in relation to contempt charges. His trial, scheduled to commence on 29 September 2008, has been adjourned *sine die*, while there has already been significant delay in proceedings due to the failure to finalise assignment of counsel³³ - circumstances which gave rise to the Chamber's decisions of 24 July and 18 August 2008. The Chamber therefore deems it necessary, pursuant to its obligations under Articles 19 and 20, to ensure that no further delay is occasioned.

23. The Chamber considers that Mr. Greciano, who is unfamiliar with the case, continuing as counsel for the Accused, will inevitably result in further delay. Indeed, during the status conference of 28 August 2008, Mr. Greciano indicated to the Chamber that he would not be adequately prepared for a trial commencing on 29 September 2009, and suggested that he may not be in a state of trial readiness until January 2009.³⁴ Conversely, Ms. Turner is familiar with the Accused's case, has already dedicated many hours to it, and is ready to proceed to trial.³⁵ Further, in addition to the delay occasioned by the assignment of new counsel unfamiliar with the case, a deadlock exists between Mr. Greciano and the Accused. Mr. Greciano is unable to obtain instructions from the Accused, as the Accused refuses to accept Mr. Greciano as his counsel and refuses to meet with him. Although an accused's refusal to cooperate with his assigned counsel cannot be a basis for withdrawal, in this case, the continuing deadlock between the Accused and Mr. Greciano is a further hindrance to the trial commencing and proceeding expeditiously.³⁶

24. Under these exceptional circumstances, the Chamber finds, pursuant to Rule 45 (H) of the Rules, that there is good cause warranting the replacement of Mr. Greciano as assigned counsel for the Accused with Ms. Turner. The Chamber considers that this replacement will minimise any further delay to the proceedings.

25. Furthermore, the Chamber notes the dispute between Ms. Turner and the Registrar regarding terms of remuneration. The Chamber considers that unless the continuing deadlock between Ms. Turner and the Registrar is resolved, this trial will not move forward, thereby adversely affecting the Accused's right to an expeditious trial. The Chamber therefore deems it necessary, due to the exceptional circumstances of this case, to direct the Registry to assign Ms. Turner in accordance with the Communication of 15 May 2008.³⁷ The Chamber's decision to replace Mr. Greciano with Ms. Turner, in accordance with the aforementioned

³² *Nahimana* Decision, para. 12. See also *Blagojevic* Decision, para. 51.

³³ Order of 24 July 2008, para. 17.

³⁴ *Nshogoza*, T. 28 August 2008 p. 9 (closed session).

³⁵ Ms. Turner has filed approximately seven motions separate from the issue of assignment of counsel.

³⁶ See *Muvunyi* Decision, para. 6.

³⁷ See fn. 4 and 5.



communication, is based on the need for this trial to move forward without further delay, and is made pursuant to the Chamber's power to issue any orders as may be necessary for the conduct of this trial and to ensure fair and expeditious proceedings under Articles 19 and 20 of the Statute, and Rules 45 (H) and 54 of the Rules.

FOR THESE REASONS the Chamber,

DENIES the Motion for a Hearing in its entirety;

HAVING particular regard to the Accused's right to a fair and expeditious trial, as enshrined by Articles 19 and 20 of the Statute; hereby

GRANTS IN PART the Motion to Assign Counsel of Choice; and

DIRECTS the Registrar, pursuant to Rule 45 (H) of the Rules, to withdraw the assignment of Counsel Mr. Philippe Greciano, and assign Ms. Allison Turner as counsel for the Accused in accordance with the Registry's Communication of 15 May 2008, within seven days from the date of this Decision.

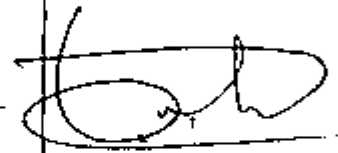
Arusha, 13 October 2008



Khalida Rachid Khan
Presiding Judge



For and on behalf of
Lee Gacuiga Muthoga
Judge
[Seal of the Tribunal]



Emile Francis Short
Judge