

ICIR-98-42-T
13-02-2009
(13270-13255)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 13 February 2009

The PROSECUTOR

v.

Pauline NYIRAMASUHUKE *et al.*
Joint Case No. ICTR-98-42-T

JUDICIAL RECORDS/ARCHIVES
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DECISION ON NYIRAMASUHUKE'S URGENT MOTIONS FOR VARIANCE IN PAGE LIMIT OF CLOSING BRIEF, NTEZIRYAYO'S, NDAYAMBAJE'S, NSABIMANA'S AND NTAHOBALI'S URGENT MOTIONS FOR VARIANCE IN PAGE LIMITS AND DEADLINE FOR THE CLOSING BRIEFS AND KANYABASHI'S MOTION FOR EXTENSION OF DEADLINE FOR FILING OF THE CLOSING BRIEF

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

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

BEING SEIZED of the:

i) “Extremely Urgent Motion for variance of page limit for Closing Brief of Nyiramasuhuko,” filed on 3 February 2009 (“Nyiramasuhuko’s Motion”);

ii) “Extremely Urgent Motion of Alphonse Nteziryayo for the Extension of time limit for filing and variation of the page limits of the Closing Briefs,” filed on 6 February 2009 (“Nteziryayo’s Motion”);

iii) “*Requête en extrême urgence d’Élie Ndayambaje en extension de délais et en augmentation du nombre de pages du mémoire final,*” filed on 9 February 2009 (“Ndayambaje’s Motion”);

iv) “*Requête en extrême urgence de Sylvain Nsabimana en extension du délai du dépôt et en augmentation du nombre de pages du mémoire final,*” filed on 9 February 2009 (“Nsabimana’s Motion”);

v) “*Requête en extrême urgence de Joseph Kanyabashi demandant une extension de délai pour produire le mémoire final,*” filed on 9 February 2009 (“Kanyabashi’s Motion”);

vi) “Extremely Urgent Motion for extension of time and further allocation of pages for Closing Brief,” filed on 10 February 2009 (“Ntahobali’s Motion”);

vii) “*Requête révisée pour dépôt de notre mémoire avec pages additionnelles, réplique aux réponses la concernant et réponse aux requêtes des co-accusés au même effet,*” filed on 10 February 2009 (“Nyiramasuhuko’s Revised Motion, Reply and Responses to co-accused Motions”);

CONSIDERING the:

i) “Prosecutor’s Response to the “Extremely Urgent Motion for Variance of page limits for Closing Brief of Nyiramasuhuko,” filed on 5 February 2009 (“Prosecution’s Response to Nyiramasuhuko’s Motion”);

ii) “*Réponse de Joseph Kanyabashi à la requête de Pauline Nyiramasuhuko demandant d’augmenter le nombre de pages du mémoire final,*” filed on 6 February 2009 (“Kanyabashi’s Response to Nyiramasuhuko’s Motion”);



iii) “*Réponse de Joseph Kanyabashi aux requêtes de Nteziryayo, Nsabimana et Ndayambaje demandant de modifier le délai et le nombre de pages du mémoire final,*” filed on 10 February 2009 (“Kanyabashi’s Response to Nteziryayo’s, Nsabimana’s and Ndayambaje’s Motions”);

iv) “Prosecutor’s Consolidated Response to Ndayambaje, Nteziryayo, Nsabimana and Kanyabashi’s motions for extension of time and increase in pages of their Closing Briefs,” filed on 10 February 2009 (“Prosecution’s Consolidated Response”);

v) “Prosecutor’s Response to Ntahobali’s motion for extension of time limits and length of Closing Brief,” filed on 10 February 2009 (“Prosecution’s Response to Ntahobali’s Motion”);

vi) “*Réplique de Arsène Shalom Ntahobali à la réponse du procureur « Prosecutor’s Response to Ntahobali’s motion for extension of time limits and length of Closing Brief »*” filed on 11 February 2009 (“Ntahobali’s Reply to the Prosecution’s Response”);

vii) “*Réponse et réplique de Joseph Kanyabashi à la requête révisée de Pauline Nyiramasuhuko et réponse à celle de Arsène Shalom Ntahobali concernant le mémoire final,*” filed on 11 February 2009 (“Kanyabashi’s Consolidated Response to Ntahobali’s and Nyiramasuhuko’s Motions”);

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, pursuant to Rule 54 of the Rules, the Chamber ordered 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.¹ On 4 July 2008, all the Parties submitted oral motions requesting the Chamber to reconsider the Scheduling Order of 2 July 2008. One of the grounds for the reconsideration was to increase the page and word limits for the Defence Closing Briefs to 600 pages and 180,000 words respectively.

2. On 29 August 2008, the Chamber extended the maximum length for the Defence Closing Briefs to 250 pages and 75,000 words and the Prosecution Closing Brief to 600 pages and 180,000 words.²

¹ *The Prosecutor v. Nyiramasuhuko et al.*, Case No ICTR-89-42-T, Scheduling Order, 2 July 2008.

² *The Prosecutor v. Nyiramasuhuko et al.*, Case No ICTR-89-42-T, Decision on the parties oral motions to review the timeframes and length of closing briefs of the 2 July 2008 Scheduling Order, 29 August 2008, para. 17.

3. On 2 December 2008, when adjourning the trial *sine die*, the Chamber underscored its Decision of 29 August 2008, and after hearing the Parties on requests for extension of the 60-day period within which to file the Closing Briefs, granted an extension of 15 days until 17 February 2009 thereby extending the period to 75 days. On 15 January 2009, the Chamber denied the motions by Nyiramasuhuko, Ntahobali and Nsabimana for certification to appeal the 2 December 2008 Formal Statement issued at the adjournment of the trial.³

SUBMISSIONS OF THE PARTIES

Nyiramasuhuko's Motion

4. The Defence for Nyiramasuhuko requests the Chamber for a variation in the 250 page limit for Nyiramasuhuko's Closing Brief due on 17 February 2009, allowing it to file a brief of not more than 600 pages. Given the enormity of the evidence, and the importance of final determination accorded to the evidence due to the low threshold of Rule 89, the wide latitude given to admitting expert evidence of doubtful reliability, and the multi-accused and contentious nature of the proceedings, it is not only impossible to submit a closing brief of less than 250 pages but a derogation of Nyiramasuhuko's rights to present her defence, pursuant to Article 19 of the Statute.

5. Further support for the request is based on the Chamber's caveat confirmed in the 15 January 2009 Decision that the "parties will be given an opportunity to address any issue that may arise in their closing arguments or for specific addendum to their Closing Brief, if warranted."

6. In the alternative, and cumulatively, the Defence submits that the Chamber has the inherent power to reconsider its Decision "if a new fact is discovered that was not known to the Chamber at the time [the Decision was made], if there is material change in circumstances, or where there is reason to believe that a previous decision was erroneous and therefore prejudicial to either party." In the instant case, the details of the final brief and the comparison with other multi-accused cases are factors supporting reconsideration.

7. To deny reconsideration would deny Nyiramasuhuko's right to present a defence. There is no redundancy or repetition in the final brief and no exposition on the state of law, making culling impossible. Nyiramasuhuko cannot risk the deletion of submissions on some evidence, even if in her opinion, it has no credibility or reliability.

8. The Defence submits that there exists persuasive jurisprudence where, on showing of necessity, variance in page limits was granted. Quoting *Bizimungu et al.*, where Mugenzi's motion for an extension of pages was granted because the Defence

³ *The Prosecutor v. Nyiramasuhuko et al.*, Case No ICTR-89-42-T, Decision on Ntahobali's, Nyiramasuhuko's and Nsabimana's motions for certification to appeal the formal statement of 2 December 2008, 15 January 2009.



argued that it could not do justice to Mugenzi's case without the increase in the page limit, the Defence submits that Nyiramasuhuko's case, which is larger than others and involves adversarial co-accused, requires even more time and pages; the limitation to 250 pages is challenging and difficult to meet.

9. Nyiramasuhuko's Brief stands at 600 pages; the sections currently constituted are: 30 pages for the indictment; 250 pages for the Prosecutor's evidence; 60 pages for Nyiramasuhuko's testimony; 100 pages for the remainder of the Defence witnesses; 75 pages on all of the expert witnesses; 25 pages for the appreciation of the evidence; another 35 pages on important issues of the jurisprudence and 25 pages on the law of conspiracy. The Defence has striven in good faith to meet the page limit imposed by the Chamber, but as the section breakdown suggests, this has been impossible.

10. The Parties have to comprehend the submissions of other parties, and it should be noted that the Prosecutor is not alone in making submissions against the accused on the 11 counts brought against Nyiramasuhuko. There are two adversarial co-accused; the additional pages are not required to summarise witness testimonies for the Chamber, but to make material submissions on reliability, credibility and assessment of the evidence and the law that must be applied.

11. The one-shoe-fits-all approach is also inequitable to Nyiramasuhuko as she must answer not only broad brush charges with regard to her alleged conduct in Butare, whether introduced factually by experts, hearsay or general statements, but also broad brush charges introduced only by expert witnesses against the Interim Government's alleged culpability and in a novel theory of vicarious liability and/or group liability, unprecedented in international tribunals, imputed onto her from her function as Minister. The number of pages required by Nyiramasuhuko is not the same as those required by some of the other accused, and may be increased at the Chamber's discretion.

12. Volume II of Andre Guichaoua's report, which is 90 pages long, consists only of his personal opinions and interpretations entirely outside his competence. It is contested vigorously by the Defence along with Nyiramasuhuko's personal diary, which was introduced into evidence over objections by Nyiramasuhuko. The Defence must challenge Guichaoua's allegations to assist the Chamber in its exercise of final determination. Nyiramasuhuko must dedicate numerous pages and time to addressing the evidence adduced from her diary, as well as to events at the Butare *préfectoral* office, and none of the other accused is similarly burdened. Nyiramasuhuko is unnecessarily penalised by a page limit common to all Accused.

13. The order limiting the Defence Closing Briefs to 250 pages, in light of the facts presented, is unreasonable, particularly when the Chamber has generally deferred decisions on evidence to the final determination. Thus Nyiramasuhuko must make submissions not only on contradictions and reliability of the evidence, but also on relevance and authenticity.



14. No arguments have been advanced that favour limiting the page limits. Arguments of judicial efficiency are not suitably elucidated to counter the real prejudice seen here, particularly in light of the fact that the Chamber has allowed the proceedings to stretch over 714 days, while the Accused were remanded in the detention centre.

15. For instance, in the order qualifying Des Forges as an expert witness, the Chamber deferred consideration of even the low threshold of reliability found in Rule 89 to final determination. Nyiramasuhuko must expend resources and pages in addressing the complete unreliability of Des Forges' opinions at this late stage of the proceedings.

16. Giving examples from other multi-accused cases, the Defence submits that on average, the limit for the closing briefs was 323 pages which worked out to be 1.35 pages per trial day, and that, on this benchmark, this trial should have a limit of a maximum of more than 900 pages, though most parties would submit less. The Defence submits that this case is no less important than others.

17. The Defence also submits that although these examples are only persuasive, there is no reason why limitations that have been applied in other cases should not apply in the instant case to avoid creating the risk of prejudice and unequal treatment before the law.

18. Even if the submission of a brief longer than 250 pages causes a strain on judicial resources, the strain is justifiable given the length of the trial, and entirely predictable for the same reason. The purpose of the Tribunal having judicial resources and a translation section is, ultimately, so that the parties' submissions on the evidence can be heard, understood, considered and decided upon. The determination of evidence is not the time to apply judicial economy.

19. Finally, the Defence requests that Nyiramasuhuko be permitted to file a closing brief of not more than 600 pages.

Prosecution's Response to Nyiramasuhuko's Motion

20. The Prosecution opposes Nyiramasuhuko's Motion, requests the Chamber to dismiss it, and submits that the page limits set by the Chamber and confirmed in the 2 December 2008 Formal Statement are reasonable and that, at this stage, all the Parties have been preparing their final briefs with the currently applicable page limits in mind.

21. However, if the Chamber grants the Motion, the Prosecution submits that it should also be granted an increase to 900 pages. The Prosecution Brief relates to six accused, and if the Defence for Nyiramasuhuko requires up to 600 pages to summarise her case, the Prosecution will require this increase to summarise the arguments of Nyiramasuhuko and the other accused.

Kanyabashi's Response to Nyiramasuhuko's Motion

22. The Defence for Kanyabashi opposes Nyiramasuhuko's Motion. The Defence submits that the Chamber has always insisted on treating the co-accused equally in



conformity with Article 20 (1) of the Statute, and that the Chamber is conscious of the conflicts between Kanyabashi's Defence and those of two other accused, including Nyiramasuhuko. The Defence also submits that to give Nyiramasuhuko special treatment by allowing her to file a closing brief of 600 pages would violate the principle of equality. Finally the Defence notes that it has adjusted its own work in order to comply with the Chamber's Decision of 29 August 2008 and that it would be unfair to change the rules at this very advanced stage of the proceedings.

Nteziryayo's Motion

23. The Defence for Nteziryayo submits that despite its best efforts to comply with the 17 February 2009 filing deadline, it will fail to meet this deadline. While the Defence has to a large extent addressed the allegations of the Prosecution and Defence witnesses, it must still analyse crucial evidence of expert witnesses and of a large number of witnesses called by the co-accused. The Defence estimates that it has completed 60 percent of its work, including analysis of over 25 witnesses whose testimony bears directly on Nteziryayo. The Defence also submits that a good number of its members are comparatively new to the case.

24. A considerable amount of work remains in regard to testimony which appears to be exculpatory for Nteziryayo and complements the overall context of the alleged command responsibility.⁴ From a practical perspective, the Defence still has to analyse defence witnesses and important exhibits, and the delay in translation of all exhibits has not made this task any easier.

25. Considering the vagueness of some accusations, some of the allegations against Nteziryayo require studying the totality of the testimony of a given witness to focus on the relevant portions.

26. The burden on the Defence has been compounded by the discovery of a number of significant differences in the English and French transcripts which often require reconciliation when they significantly change the purport of the evidence. Different members of the Nteziryayo Defence speak only one of the official languages of the Tribunal, and the Accused, who has a legitimate interest in wrapping up his case, often has commentaries (in French and requiring a translation to English for some members of the team) on various issues. Considering that the trial has gone on for many years, leading to numerous changes in the composition of the Bench, the Prosecution, the Registry and the Defence teams, the Defence submits that these changes have affected Nteziryayo's team significantly.

⁴ Paragraph 11 of Nteziryayo's Motion; referring to Prosecution witnesses SJ, QBQ, QBP, SU, SD, TB, RE, TA, TK, SS, and Nyiramasuhuko's witnesses WHNC, WBNC, WTRT and WBND. Ntahobali's witnesses WBNM, HIBI4, WTHSA and WCQME. Nsabimana's witnesses UMA, BURU, BUBU, AGWA, Patrick Fergal Keane, TWW, BE and DEDE. Kanyabashi's witnesses D-2-5-W, D-2-13-D, D-2-YYYY and D-2-5-I. Ndayambaje's witnesses BOZAN, KEPIR, NAVIC, KWEPO, MACHO, MARVA, TOVIA and Constant Julius Goetshalckx, as well as individual testimonies of the co-accused.



27. The Defence also submits that its consultations with Nteziryayo are affected by his frail health, limiting their contact with him, which complicates their work, resulting in loss of valuable time.

28. The factors that slow down the Defence work are compounded by the exhaustion that results from continuous mental work. A short extension of time will refresh the team and enable it to work more effectively.

29. Taking into account the enormity of all the remaining tasks, the Defence estimates that it would require 45 days from 17 February 2009 to complete its Closing Brief and it will cause no prejudice to any of the parties.

30. The Defence submits that the evidentiary material so far analysed should cover no less than 280 pages when condensed and that the addition of the evidence that remains to be addressed would require an estimated 350 pages to accommodate all issues. The Defence is hopeful that if the Chamber grants the Motion of 23 January 2009 for exclusion of evidence, it will need far less extra time and paper space than is requested in this Motion.

31. Finally the Defence notes that the quality of a final trial brief depends to a great extent on the clarity and cogency of the analysis of the evidence and the task of producing such a document has, in the present circumstances, been complicated by multiple defences, giving rise to complex legal issues and numerous allegations that cover vast expanses of time and space when confronting them. Taking all of the above issues into account, and in accordance with counsel's duties to their client, the Defence requests a variance in the page limit for its Closing Brief to 350 pages.

Ndayambaje's Motion

32. The Defence for Ndayambaje submits that from 3 December 2008, Ndayambaje's Defence team has been working on the drafting of the Closing Brief and has scrupulously attempted to comply with the filing deadline and the page and word limits imposed by the Chamber. The Defence has avoided repetitions and irrelevant events in its analysis of the evidence presented by the Prosecution, which covers more than 51 facts and events involving accusations against Ndayambaje. However, despite its diligence and good will, it is impossible for the Defence to finish the drafting of the closing brief by 17 February 2009 and the page and word limits will be marginally surpassed despite significant cuts made.

33. The Defence estimates that it has covered approximately 65 percent of all the work necessary for the finalisation of the Closing Brief. There remain approximately 17 events to cover, including two massacre sites about which several witnesses have testified, as well as the incorporation of all of the exhibits and the expert testimony. In addition, a large part of the legal conclusions must be integrated into the brief and the parts drafted by the various members of the team in their respective countries must be harmonised.



34. The Defence submits that the Chamber should note that the Defence is citing to the transcripts in both French and English, which takes up much time and space. The Defence notes that in the *Bizimungu et al.* case, the Chamber allowed Bizimungu's Defence 175 supplementary pages after it justified the difficulties it was having in complying with the 300 page limit initially ordered. The Defence argues that it now finds itself in a situation similar to that of Bizimungu's Defence.

35. Finally, the Defence requests that the deadline for filing its Closing Brief be extended to 10 March 2009 and that the page and word limits be raised to 310 pages and 105,000 words respectively, for Ndayambaje to enjoy his right to a full defence as guaranteed under Articles 19 and 20 of the Statute.

Nsabimana's Motion

36. The Defence for Nsabimana notes that while reconsideration of a decision is an exceptional measure, one of the criteria warranting it is a new material circumstance. It submits that new and very serious circumstances have appeared over the course of the drafting of the closing brief that have obliged it to request reconsideration of the Chamber's decision made in the 2 December 2008 Formal Statement. The Defence finds support for its Motion in Articles 19 and 20 of the Statute.

37. The Defence started drafting its Closing Brief as soon as the Scheduling Order of 2 July 2008 was issued. Every member of the team worked through the two-week Christmas break and through January in an effort to comply with the 17 February 2009 deadline; the Defence would have been very close to the completion of its first draft by now, but for recent unfortunate circumstances.

38. The Defence attempted harmonising its work on a common USB key to avoid a problem being caused by viruses. However, on 5 February 2009, during the printing of the first draft of its Closing Brief, the Defence discovered that a large part of its harmonised work was damaged by viruses that had infected one of the Tribunal's computers. All efforts to recover the damaged documents, which constituted a substantial part of the brief, including the analysis of Paragraphs 6.35 to 6.41 of Nsabimana's Indictment, failed. The infected part of its brief concerned serious allegations against Nsabimana and implicated more than 17 Prosecution witnesses and factual analysis that covered more than 90 pages.

39. The Defence submits that from memory and with the help of a few drafts, it could rewrite this part if the Chamber allowed it an extension. It therefore requests an additional three weeks from 17 February 2009 for the filing of its Closing Brief.

40. The Defence submits that after an analysis of the essence of the evidence, it will require over 300 pages for its Closing Brief. It therefore requests an additional 100 pages.

41. The Defence notes that this request may not have been necessary if the Prosecution had been ordered to file its Closing Brief before Nsabimana's, as this would have allowed the Defence to complete its factual analysis with reference to the Prosecution's brief and not with reference to the entirety of the Prosecution's evidence, which is very extensive. In addition, the Defence notes that it is filing its Closing Brief in French and that a text written in French requires more words than one in English. If the Chamber were to grant this Motion, the English translation of the closing brief filed would amount to fewer than 300 pages and be nearer to the 250 pages currently being allowed.

Kanyabashi's Motion

42. The Defence for Kanyabashi submits that it began drafting its Closing Brief well before the Chamber's 2 December 2008 Order setting the deadline for filing of the closing briefs as 17 February 2009. The Defence notes that this document is extremely complex in view of the many witnesses heard and many exhibits admitted into evidence.

43. The Defence has made every effort to comply with the deadline, but the Closing Brief has not been finished, although it is at a very advanced stage; the Defence estimates that it has completed approximately 70 percent of the work required. The Defence requests an extension of three weeks for the filing of Kanyabashi's Closing Brief.

44. The Defence notes the other Motions and requests that the same rules in deadline and page limit should apply to all the accused.

Ntahobali's Motion

45. The Defence for Ntahobali requests an extension of 21 days and an additional 150 pages for the Closing Brief. The request stems from the material change in circumstance arising from the resignation of Co-Counsel Bertrand St-Arnaud and the delayed appointment of Mylène Dimitri by the DCDMS on 6 January 2009. As a result, one month of the Defence drafting took place without a co-counsel and this has presented difficulties in meeting the deadlines. Meeting the deadlines has been made more difficult by the 700 days of trial transcripts, 190 witnesses, including five experts, and over 1100 exhibits, as well the fact that the Prosecution is filing at the same time as the Defence.

46. Referring to the President's Memorandum of 28 January 2009 by which the Butare trial is expected to resume on 23 February until 13 March 2009 for the hearing of recalled witnesses, the Defence submits that granting its extension request would not interfere, delay, or interrupt the proceedings as the Defence request does not go beyond 13 March 2009.

47. Making reference to the accused's right to counsel, the complexity of the case and apparent conflicts of interest in other cases where reconsideration was granted by other Chambers, the Defence submits that in the interest of a fair trial and given the material change of circumstances, the requests in its Motion be granted.



48. Currently, Ntahobali's brief comprises of 275 pages, however, 125 more pages are anticipated to be necessary.⁵ The Defence needs to comprehensively demonstrate through contradictions and omissions, and cross-referencing for the Chamber, why the Prosecution's evidence cannot convince beyond a reasonable doubt.⁶ Filing of the Defence briefs at the same time as the Prosecution makes it difficult to reduce the number of pages sufficiently to comply with the current page limit.

49. The Defence also submits that the fact that all the other Defence have made similar requests indicates the legitimacy of Ntahobali's demand.⁷

Prosecution's Response to Ntahobali's Motion

50. The Prosecution submits that the allegation of difficulties arising from simultaneous filing by the Defence is not grounded in law. The Prosecution leaves the variation of page limits and extension of filing time for the Closing Briefs to the Chamber's discretion, and requests a simultaneous filing for all the Parties.

Ntahobali's Reply to Prosecution's Response

51. The Defence underscores that it has not requested a reconsideration of the decision to have common filing deadlines. Rather, the fact that the closing briefs must all be submitted at the same time was meant only to act as a supplementary argument with regard to the difficulty it has incurred in reducing the number of pages, it being the case that it cannot know what arguments the Prosecution's own brief will rely upon ahead of time. The Defence notes that in a Decision of the same nature, and one that rejected a request to have the page limit of the closing brief increased, one of the reasons for the denial was the following: "In addition, the Prosecution's closing brief has yet to be filed. The Chamber expressly authorized all the Defence teams to file their briefs after receipt of the Prosecution's closing brief so that the Defence teams would have a clearer idea of the Prosecution's case(s) against the co-Accused. This knowledge should assist the Defence teams in focusing, and thus limiting their briefs."⁸

Kanyabashi's Response to Nteziryayo's, Nsabimana's and Ndayambaje's Motions

52. The Defence for Kanyabashi reiterates the substance of its Motion in its Response, adding that it may file another motion for variance of the page limits in case the motions for extension of time are granted.

Nyiramasuhuko's Revised Motion, Reply and Responses to Co-Accused Motions

⁵ Paragraph 18 of Ntahobali's Motion.

⁶ Paragraph 116 of Ntahobali's Motion.

⁷ Paragraph 120 of Ntahobali's Motion.

⁸ Paragraph 7 of the Ntahobali's Reply, quoting the Decision on Justin Mugenzi's composite motion concerning page limits on closing brief (TC 11) para. 2 septembre 2008 paragraphe 16.

53. The Defence for Nyiramasuhuko submits that it realised on the morning of 10 February 2009 that the deadline for the Responses to its original motion was actually Friday 6 February. The Defence requests that the Chamber excuse this error in computation of deadlines.

54. The Defence notes the requests made in the motions filed by Nteziryayo, Ndayambaje, Nsabimana and Kanyabashi. It observes with astonishment that Kanyabashi, who has invoked equality of arms as his principal ground in contesting Nyiramasuhuko's original motion, has completely modified his position in filing his own motion for an extension of time and increase in the page limit. The Defence submits that Kanyabashi's Response indicating that he was able to file a brief of 250 pages must be considered a deliberate obstruction to the request made by Nyiramasuhuko.

55. There are precedents that recognise differences between the burdens of different accused in a single multi-accused case. It cites the *Ndindiliyimana et al.*, case where two accused were permitted a larger number of pages than two other accused.

56. After cutting its Closing Brief in its current state as much as possible since it filed its original Motion, the Defence requests that the Chamber allow it to file a closing brief of 450 pages.

Kanyabashi's Consolidated Response to Ntahobali's and Nyiramasuhuko's Motions

57. The Defence for Kanyabashi submits that Kanyabashi is just asking for an extension of time of three weeks to file his closing brief. If the extension is granted, Kanyabashi might request for a restricted additional pages to his brief to deal with other issues which he has to put aside to stay within the scope of the Decision of 29 August 2008. Kanyabashi further submits that there is no reason for Nyiramasuhuko to benefit from a special treatment. The Defence indicates that Nyiramasuhuko's Defence case only took 115 days whereas Kanyabashi's lasted 125 days.

58. The Defence supports Ntahobali's request for an extension of time of 21 days for the particular reason that his new Co-Counsel only joined the team on 1 September 2008. Furthermore, he reiterates his submissions in response to Nteziryayo's, Nsabimana's and Ndayambaje's motions.

Prosecution's Consolidated Response

59. The Prosecution leaves it to the Chamber's discretion whether or not to vary its decisions of 29 August 2008 and 2 December 2008. However all the Parties must be ordered to file on the same date.



DELIBERATIONS

60. As a preliminary matter, the Chamber notes that the Defence for Nyiramasuhuko filed its Reply to the Responses to Nyiramasuhuko's Motion out of time on 10 February 2009, and has not shown good cause for this late filing. However, considering that the issues raised in the said reply are interlinked with each other, the Chamber has considered the totality of the submissions in the interests of justice.

61. With respect to the Defence for Nyiramasuhuko's submission that "parties will be given an opportunity to address any issue that may arise in their closing arguments," the Chamber reiterates that its Decision of 15 January 2009 concerns Parties being given an opportunity to address any issue that may arise after the filing of the Closing Briefs, in their closing arguments or for specific addendum to their Closing Brief, if warranted. This was in respect of recalled or other witnesses who may come to testify and not issues of page limits and time frames for the Closing Briefs.⁹

62. 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.¹⁰

63. The Chamber observes that the thrust of all the motions is in respect to (a) the length of the Closing Briefs and (b) the filing deadline for the Closing Briefs. The Chamber shall now consider whether or not reconsideration of its Decisions of 29 August 2008 and 2 December 2008 in regard to these two issues is warranted.

Length of Closing Briefs

64. As a preliminary matter, the Chamber recalls its Decision of 29 August 2008 by which it extended the length of the Defence Closing Briefs to 250 pages and 75,000 words and the Prosecution Closing Brief to 600 pages and 180,000 words. This extension was granted after all the Parties orally requested the Chamber to vary the limits of 200 pages and 60,000 words for the Defence Closing Briefs and 400 pages and 120,000 words for the Prosecution Closing Brief earlier set in the 2 July 2008 Scheduling Order.

⁹ *The Prosecutor v. Nyiramasuhuko et al.*, Case No ICTR-98-42-T, Decision on Ntahobali's, Nyiramasuhuko's and Nsabimana's motions for certification to appeal the formal statement of 2 December 2008, para 17.

¹⁰ *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.



65. The Chamber notes the reasons and the requests for an increase of between 310 to 450 pages by the Defence, and observes that in its initial Motion, the Defence for Nyiramasuhuko requested up to 600 pages, but subsequently reduced its request to 450 pages in the revised motion, without further elaboration or justification. The Prosecution requests 900 pages if Nyiramasuhuko's Motion is granted and Kanyabashi requests that the same limits apply to all Accused to avoid any unfair advantage.

66. The Chamber recalls that in reaching its 29 August 2008 Decision regarding the 250 page limit, the pertinent issues raised in the current motions were considered. The Chamber also recalls that on 2 July 2008, 29 August 2008 and 2 December 2008, judicial economy was not the only consideration when setting the page limits. The Chamber has continuously been alive to the circumstances and complexities of this case, as well as the practice followed in international criminal law with regard to page limits for closing briefs.¹¹

67. The Chamber notes the assertions by the Defence for Nyiramasuhuko that she is in a unique situation compared to the other accused. The Chamber underscores that as required under Article 20 of the Statute, all Accused have to be treated equally.

68. In the circumstances, the Chamber observes that the requests in the Motions with respect to the length of the Closing Briefs are attempts to re-litigate a matter that was already considered and decided upon by the Chamber. The Chamber does not consider that a new fact or a material change in circumstances has been established in any of the Motions warranting a reconsideration of its Decision with regard to the page limits set for the closing briefs. Therefore, the Chamber denies all Defence requests to increase the page limits of the Closing Briefs and the Prosecution request for 900 pages is moot.

Extension of Time within which to File Closing Briefs

69. As a preliminary matter, the Chamber recalls that the purpose of the 2 July 2008 Scheduling Order was for the Parties to start and continuously work on, organise and manage their Closing Briefs from an early stage. In its Decision of 29 August 2008, the Chamber, after hearing all the Parties, extended the time within which to file the Closing Briefs from 45 to 60 days. The Chamber also recalls that on 2 December 2008, when adjourning the trial, and after hearing all the Parties, it extended the deadline by a further 15 days to 17 February 2009, allowing for a total of 75 days within which to file the briefs.

¹¹ In the 29 August 2008 Decision, the Defence requested for up to 600 pages and 180,000 words and argued that the length and complexity of the trial proceedings, conflicts of interests between parties, and exhibits not being translated warranted an increase in the page limits. The Chamber considered the limits set by the ICTY practice direction and that the number of pages requested would run against judicial economy, and, then on account of the complexity of the case and apparent conflicts of interests between parties, granted a limit of 250 pages for the Defence and 400 pages for the Prosecution briefs. (See paras. 15-17).

70. The Chamber notes the Defence requests and the reasons raised in support of extending the deadline within which to file the closing briefs by a further 21 to 45 days. The Chamber observes that all the pertinent issues raised by the Defence were considered in reaching the 29 August 2008 and 2 December 2008 Decisions, except for two allegedly new issues submitted by the Defence for Nsabimana and Ntahobali.¹² The Chamber further observes that these issues which were already addressed are attempts to re-litigate a matter that was already considered and decided upon by the Chamber. The Chamber will therefore only address the alleged new facts.

71. The Chamber considers that the submissions by the Defence for Nsabimana that computer viruses allegedly resulted in the loss of more than 90 pages of their work are unsubstantiated. Besides, such an occurrence happening on 5 February 2009, when the filing deadline is 17 February 2009, does not warrant the Chamber's reconsideration of its Decisions. Further, the Defence has not shown any justification for a three-week extension.

72. The Chamber also notes the submissions by the Defence for Ntahobali that its preparation was affected by the absence of co-counsel for a period of one month and that going by the annexes to Ntahobali's Motion, Mr. St-Arnaud requested his formal withdrawal as co-counsel on 14 December 2008, and Ms. Dimitri was appointed on 6 January 2009. The Chamber observes that for the month during which the Defence team may have had no co-counsel, the rest of the team remained in place and should have been working on the closing brief on a continuous basis as earlier directed in the Scheduling Order and Decisions on this matter. The Chamber considers that had the absence of co-counsel materially affected the preparation of the closing brief, the Defence would have been more diligent in raising this issue at the time of the actual absence, and not at this late stage.

73. With respect to the alleged new material facts or changes of circumstances raised by the Defence for Nsabimana and Ntahobali, the Chamber does not consider that they warrant a reconsideration of its Decision on the filing deadline for the Closing Briefs.

74. The Chamber also considers that, although judicial economy is not the only consideration, the timeframes requested by the Parties would delay the expeditious conduct of the proceedings and run against judicial economy. Furthermore, considering all the circumstances of this case, the Chamber is not convinced that the Parties need such extended time periods to complete their briefs. In addition, the Chamber considers that 75 days for the filing of the closing briefs does not run contrary to the practice followed at the ICTR.¹³

¹² In the 29 August 2008 Decision, the Chamber granted an additional 15 days because of the complexity of the case, apparent conflicts of interests between parties and issues relating to translation of exhibits (See paras. 11-13). In the 2 December 2008 ruling, the Chamber, after hearing the Parties, cited the amount of work that had been completed during the session and left it to the parties to organise their work and extended by another 15 days the deadline for filing the Briefs to 17 February 2009. (See T.2 December 2008 pp.37-42).

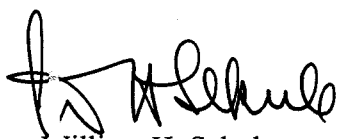
¹³ For example, in *Bagosora et al.*, the first closing brief was filed 43 days after the end of trial. In *Nahimana et al.*, the first closing brief was filed 47 days after the end of the trial.

75. Accordingly, the Chamber denies the Motions and reaffirms that the deadline for filing the Closing Briefs is 17 February 2009 and the page limits are 250 pages and 75,000 words for the Defence and 600 pages and 180,000 words for the Prosecution.

FOR THE ABOVE REASONS, THE TRIBUNAL

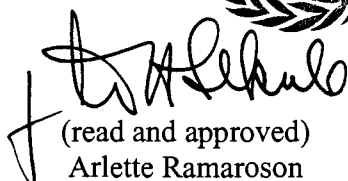
DENIES each of the seven Motions in its entirety.

Arusha, 13 February 2009



William H. Sekule

Presiding Judge



(read and approved)
Arlette Ramarason

Judge

(absent at time of signature)



Solomy Balungi Bossa

Judge

[Seal of the Tribunal]