



UNITED NATIONS  
NATIONS UNIES

ICTR-05-82-T  
12-05-2009  
(1221 - 1219)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

1221  
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OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Khalida Rachid Khan, presiding  
Lee Gacuiga Muthoga  
Aydin Sefa Akay

**Registrar:** Mr. Adama Dieng

**Date:** 12 May 2009

**THE PROSECUTOR**  
v.  
**DOMINIQUE NTAWUKULILYAYO**

**Case No. ICTR-05-82-T**

JUDICIAL RECORDS/ARCHIVE  
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**SCHEDULING ORDER REGARDING PREPARATION FOR AND  
COMMENCEMENT OF THE DEFENCE CASE**

*Rules 54 and 73ter of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Charles Adeogun-Phillips  
Ibukunolu Alao Babajide  
Thembile Segoete  
Ndeye Marie Ka

**Counsel for the Defence:**

Maroufa Diabira  
Dorothee Le Fraper du Hellen

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

**SITTING** as Trial Chamber III, composed of Judges Khalida Rachid Khan, Lee Gacuiga Muthoga, and Aydin Sefa Akay;

**NOTING** that a status conference was held on 4 May 2009 ("Status Conference") to hear oral submissions from the Parties on, among other things, the earliest possible date for the commencement of the Defence case;<sup>1</sup>

**NOTING FURTHER** that the trial in this case commenced on 6 May 2009;<sup>2</sup>

**RECALLING** the Chamber's Decisions finding the Prosecution in breach of its disclosure obligation under Rule 66 (A) (ii) of the Rules of Procedure and Evidence ("Rules");<sup>3</sup>

**CONSIDERING** that notwithstanding the postponement of trial, a large number of Rule 66 (A) (ii) disclosures have been made after the expiration of the 60 day time limit;<sup>4</sup>

**CONSIDERING** the oral submissions made by the Defence during the Status Conference, that due to late disclosures by the Prosecution; the need to conduct further investigations to finalise Defence witnesses; the recent replacement of Lead Counsel;<sup>5</sup> and the time required to meet with and arrange for the transfer of a number of witnesses residing in different countries, the earliest possible date the Defence can envisage commencing its case is 1 September 2009;<sup>6</sup>

**CONSIDERING FURTHER** courtroom availability;

**RECALLING** the Chamber's obligations pursuant to Articles 19 and 20 of the Tribunal's Statute to ensure a fair and expeditious trial and that proceedings are conducted with full respect for the rights of the accused, and in particular, recalling the accused's right to have

<sup>1</sup> *Prosecutor v. Ntawukulilyayo*, Case No. ICTR-05-82-T, T. 4 May 2009.

<sup>2</sup> The trial in this case was originally scheduled to commence on 30 March 2009 and postponed to 4 May 2009. On 4 May 2009, the Chamber ordered an adjournment to 6 May 2009 to allow the Defence time to consider the French translation of an amended Indictment filed by the Prosecution on 1 May 2009 and to consult with the Accused. See *Ntawukulilyayo*, Decision on Defence Motion Alleging Breach of Prosecution's Disclosure Obligations, 28 April 2009; Chamber's Warning to Prosecution Counsel and Scheduling Order Concerning Commencement of Trial, 26 March 2009; and T. 4 May 2009 (oral warning issued to the Prosecution) and T. 6 May 2009 (further adjournment until 2.30pm on 6 May 2009 to allow the Defence to consider the amended Indictments to consult with the Accused).

<sup>3</sup> Rule 60 (A) (ii) requires the Prosecution to disclose, no later than 60 days before the date set for trial, copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial. See *Ntawukulilyayo*, Decision on Defence 'Requête en Urgence de La Défense Concernant les Manquements du Procureur à ses Obligations de Communiquer les Pièces et ses Effets sur le Calendrier du Procès', 27 February 2009, *Ntawukulilyayo*, Order for the Prosecutor to Comply with the Chamber's Order of 27 February 2009, 9 March 2009; *Ntawukulilyayo*, Decision on Defence Motion Alleging Breach of Prosecution's Disclosure Obligations; Chamber's Warning to Prosecution Counsel; and Scheduling Order Concerning Commencement of Trial, 26 March 2009.

<sup>4</sup> In the present case, late disclosures include: 36 statements disclosed on 6 March 2009; French translations of transcripts disclosed on 9 March 2009; French/English versions of 17 statements and one page of a transcript disclosed on 24 April 2009; smaller disclosures made on 27 April and 1 May 2009; and the disclosure on 9 May 2009 of transcripts of Witness BAW's testimony from *The Prosecutor v. Nindiliyamana et. al.*

<sup>5</sup> *Ntawukulilyayo*, Commission d'office de Me Maroufa Diabira à titre de Conseil Principal pour la Défense des intérêts de M. Dominique Ntawukulilyayo, Accused devant le ICTR, 18 March 2009.

<sup>6</sup> *Ntawukulilyayo*, T. 4 May 2009, pp. 2-4, 6.



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adequate time and facilities for the preparation of his defence pursuant to Article 20 (4) (b) of the Statute; and


**RECALLING FURTHER** the Chamber's authority, pursuant to Rule 54 of the Rules, to issue such orders as may be necessary for the conduct of the trial, and Rule 73<sup>ter</sup> of the Rules, to hold a pre-defence conference prior to the commencement of the Defence case;


**THE CHAMBER HEREBY**

- I. **ORDERS** that the Defence case shall commence on 14 September 2009 and shall run, if necessary, until 9 October 2009, including time for cross-examination of Defence witnesses by the Prosecution; and
- II. **ORDERS** that immediately following the close of the Prosecution case, a Pre-Defence Conference shall be held at which the Chamber will make orders regarding the filing of a pre-Defence brief, a list of witnesses the Defence intends to call to testify, a statement of matters not in dispute, and other matters deemed necessary by the Chamber concerning preparation for the Defence case.

Arusha, 12 May 2009

  
Khalida Rachid Khan  
Presiding Judge

  
Lee Gacuiga Muthoga  
Judge

  
Aydin Sefa Akay  
Judge

