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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 Solomy Balungi Bossa  
Judge Mparany Rajohnson

Registrar: Mr. Adama Dieng

Date: 15 July 2009

JUDICIAL  
RECORDS  
2009 JUL 15 AM 11:20

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-PT

DECISION ON DEFENCE EXTREMELY URGENT MOTION FOR  
RECONSIDERATION OF THE TRIAL CHAMBER'S DECISION ON THE  
TRIAL DATE

Office of the Prosecutor

Mr. Wallace Kapaya  
Mr. Patrick Gabaake  
Mr. Brian Wallace  
Mr. Iskandar Ismail

Defence Counsel

Mr. Peter Herbert  
Ms. Mylène Dimitri

*[Handwritten signature]*

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

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

**RECALLING** the "Decision on Trial Date" of 12 June 2009 ("Decision on Trial Date"), which set the date of 3 August 2009 to start the trial;

**BEING SEIZED OF:**

- a) "Defence Extremely Urgent Motion for Reconsideration of the Trial Chamber's Decision on the Trial Date", filed on 07 July 2009 (the "Defence Submission");
- b) The "Observations du Procureur à la Requête de la Défense intitulée: 'Defense Extremely Urgent Motion for Reconsideration of the trial Chamber's Decision on Trial Date'", filed in French, on 9 July 2009 (the "Response");
- c) The "Defence Reply to the 'Observation du Procureur à la Requête de la Défen[s]e Intitulée: Defence Extremely Urgent Motion for Reconsideration of the Trial Chamber's Decision on Trial Date'", filed on 10 July 2009 (the "Reply"); and
- d) The Defence "Corrigendum to the Defence's Reply to the 'Observations du Procureur à la Requête de la Défen[s]e Intitulée Defence Extremely Urgent Motion for Reconsideration of the Trial Chamber's Decision on the Trial Date'", filed on 13 July 2009;

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

**NOW DECIDES** pursuant to Rule 73 of the Rules:

### INTRODUCTION

1. On 12 June 2009, the Chamber decided to set the trial to start on 3 August 2009.<sup>1</sup>
2. On 16 June 2009, the Registrar issued its "Decision Withdrawing Professor David Thomas as Lead Counsel for the Accused Augustin Ngirabatware" ("Withdrawal Decision").<sup>2</sup>
3. On 1 July 2009, the Registrar appointed Peter Herbert as Lead Counsel for the Accused.<sup>3</sup>

<sup>1</sup> The complete procedural history prior to the Defence Submission is set out in the introduction of the Decision on Trial Date, citing the Appeals Chamber Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, of 12 May 2009 ("the Appeals Chamber Decision").

<sup>2</sup> Registrar Decision Withdrawing Professor David Thomas as Lead Counsel for the Accused Augustin Ngirabatware, 16 June 2009.



4. For the purposes of this Decision, the Chamber therefore limits its considerations to the new elements of the case which occurred after its Decision on Trial Date of 12 June 2009 and will not address the full procedural history of the case.

## **SUBMISSIONS OF THE PARTIES**

### ***Defence Submission***

5. The Defence submits that, although the appointment of Co-counsel on 1 June 2009 had made the Defence team fully staffed, the defence team was understaffed for approximately one month between the withdrawal of Lead Counsel David Thomas and the appointment of new Lead Counsel Peter Herbert. It further submits that Co-counsel "is barely starting to get familiar with the case" and that the Withdrawal Decision was rendered after the Chamber's Decision on Trial Date.<sup>4</sup>

6. The Defence invites the Chamber "to recall its inherent power to reconsider its own decisions as an exceptional measure available under particular circumstances and where the interests of justice so require."<sup>5</sup> According to the Defence, such special circumstances include but are not limited to:

- "A new fact which has been discovered that was not known to the Chamber at the time it made its original decision;
- A material change in circumstances since the original decision; or
- A reason to believe that the original decision was erroneous; or constituted an abuse of power that resulted in an injustice."<sup>6</sup>

7. The Defence contends that the withdrawal of Lead Counsel from the case is a new fact that has been discovered and that was not known to the Chamber at the time of the Decision on Trial Date. It further submits that the absence in the team, and the subsequent appointment of a new Lead Counsel, are material changes in circumstances since the Decision on Trial Date was rendered.<sup>7</sup>

8. The Defence recalls Article 19(1) of the Statute, as well as the Appeals Chamber Decision of 12 May 2009,<sup>8</sup> and notes that the staffing of the Defence team was one of the factors which the Appeals Chamber held to bear on whether an Accused has adequate time to prepare a defence. The Defence avers "judicial economy should never outweigh

<sup>3</sup> See Letter from the Registry titled "Your Assignment as Lead Counsel to represent the Accused Augustin Ngirabatware".

<sup>4</sup> Defence Submission, paras. 10-12.

<sup>5</sup> Defence Submission, para. 13.

<sup>6</sup> *Id.*

<sup>7</sup> Defence Submission, paras 14-15.

<sup>8</sup> Defence Submission, paras 16-17.

the right of the Accused to a fair trial”<sup>9</sup> and the absence of a Lead Counsel from the Defence team for one month, if not taken into account by the Chamber, would interfere with the right of the Accused to a fair trial by preventing effective representation.<sup>10</sup>

9. The Lead Counsel submits that he only has about 20 working days to prepare for the case and that he does not yet have access to the documentation in hard copies, which is essential for the preparation of the defence case.<sup>11</sup> Furthermore, the earliest date Lead Counsel can be in Arusha is 16 July 2009.<sup>12</sup>

10. The Defence contends that it is taking the earliest opportunity to bring the issue of the trial date before the Chamber for reconsideration, and that the Accused has absolutely no intention to delay the trial unnecessarily.<sup>13</sup> It submits that the Accused was misquoted in the Withdrawal Decision, which stated that “Ngirabatware has accepted that the withdrawal of counsel upon his request would not be a motive for any further delay in the commencement of his trial.” The Defence avers that the Accused did not in fact renounce to his right to ask for a postponement of trial if need be, but rather said that “the reason why he requested Professor Thomas’s withdrawal was not formulated in an intention to delay the beginning of the trial, as it clearly states in the exchange of correspondence [with the Section Chief of DCDMS].”<sup>14</sup> The Accused and his Defence team submit they nonetheless exercised diligence and cooperated in the Procedure to appoint a new Lead Counsel.<sup>15</sup>

11. The Defence emphasises that the procedure to select a Lead Counsel is an important one, requiring the Accused to inquire into the availability of potential candidates, and that the new Lead Counsel responded that he “recognized the obligation resting upon him to prepare the case given the short period left until the trial (...) but that he could not, for professional and ethical grounds, accept such an assignment with less than one month to prepare without making such a reservation.” The present date for trial, according to the Defence Submission, “would cause serious professional embarrassment to Lead Counsel, who has consulted on this matter with his professional body.”<sup>16</sup> Lead Counsel submits that “[i]n the event that the trial date remains where it is, Lead Counsel would have to consider his professional situation as a matter of last resort. He does not wish under any circumstances to withdraw from the case; however he does not wish to be placed in an invidious position where the client best interests in achieving a fair trial are compromised.”<sup>17</sup>

<sup>9</sup> Defence Submission, para. 18, citing Prosecutor v. Krajisnik, Case No. IT-00-39, Decision on the Prosecution motions for judicial notice for adjudicated facts and for admission of written statements of rule 92 bis, 28 February 2003, para. 20.

<sup>10</sup> Defence Submission, para. 19.

<sup>11</sup> Defence Submission, para. 19.

<sup>12</sup> Defence Submission, para. 31.

<sup>13</sup> Defence Submission, paras. 21-22.

<sup>14</sup> Defence Submission, para. 22, and Annex I to the Defence Submission.

<sup>15</sup> Defence Submission, paras. 23-26.

<sup>16</sup> Defence Submission, paras. 27-29.

<sup>17</sup> Defence Submission, para. 30. The Chamber notes that this paragraph also provides details about the Practice Rules promulgated by Lead Counsel’s professional body practice rules.

12. The Defence further submits that the set trial date is too early for any new Lead Counsel to start a trial and that the Accused would undoubtedly be prejudiced if the trial was to start on that date; therefore, a trial date in early January 2010 or December 2009 is preferable to guarantee a fair and expeditious hearing without any possibility of further delay.<sup>18</sup>

13. The proposed date is based on the Defence's assessments of the work to be completed and "in light of the Prosecution failures to make appropriate disclosure about key witness testimony," and would allow "ample time for Lead Counsel to liaise appropriately with Co-counsel; take detailed instructions from the lay client; assess investigatory reports; visit the various *locus in quo* and assess the legal and factual submissions that lie at the heart of the defence case."<sup>19</sup>

14. The Defence Submission cites to prior trials before the Tribunal which were postponed due to the resignation or replacement of Lead or Co-counsel.<sup>20</sup> It further recalls the Appeals Chamber Decision, which held that the case at hand is a complex one, and concludes that this implies it will "take time for the Lead and Co-counsel to familiarise themselves with the case and to understand its complexity and build up a strategy accordingly."<sup>21</sup> The Defence emphasises the complexity of the case, number of counts, nature of the charges, number of alleged incidents and accomplices, and deems it "not possible to complete all th[e] tasks [to be undertaken to be ready for trial] in such a short time."<sup>22</sup> It submits that the Accused would inevitably suffer a significant and irreversible degree of prejudice to his right to a fair trial were his Defence team compelled to go to trial on 3 August 2009.<sup>23</sup>

15. With regard to the Prosecution's disclosure obligation, the Defence submits that supporting materials have been disclosed in March, April, May and as recently as 26 June 2009,<sup>24</sup> and for Lead Counsel to review the materials and prepare for trial would require four or five months.<sup>25</sup> The Defence adds that "Co-counsel is still struggling, despite her best efforts, to cope with her numerous assignments" and "has not even had the time to finish reviewing a third of the materials."<sup>26</sup>

16. The Defence submits that the disclosure of 17 and 25 June 2009 represents about 600 pages of documents and was filed pursuant to Rule 66 (A) (ii), "far beyond the 60-

<sup>18</sup> Defence Submission, paras. 31 and 61.

<sup>19</sup> Defence Submission, para. 32.

<sup>20</sup> Defence Submission, paras. 33-38, citing *Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-1, Decision on the Extremely Urgent Defence Motion for postponement of the Start of the Trial, 29 May 2009, para. 10; *Prosecutor v. Bagosora*, Case No. ICTR-98-41-T, Decision on Postponement of Defence of Accused Kabiligi, 21 April 2005 and Decision on Request for Severance of the accused Gratien Kabiligi, 24 March 2005.

<sup>21</sup> Defence Submission, para. 34.

<sup>22</sup> Defence Submission, para. 40.

<sup>23</sup> Defence Submission, para. 41.

<sup>24</sup> Defence Submission, para. 42, the Chamber notes that the accurate date of the latest disclosure filing is 25 June 2009.

<sup>25</sup> Defence Submission, para. 43.

<sup>26</sup> Defence Submission, para. 52.

day limit.”<sup>27</sup> The Defence contends that the 60-day limit prescribed in Rule 66 (A) (ii) is to be interpreted as a final date for disclosure and that timely disclosure of supporting materials is aimed at allowing sufficient time for the preparation of the defence and the conduct of the necessary investigations.<sup>28</sup> The Defence concludes that the Prosecutor is thus in breach of his disclosure obligation while the disclosure is still not yet completed, and that this breach will result in a material prejudice to the Accused.<sup>29</sup> The Defence furthermore states that it is expecting the Prosecution to oppose the postponement of trial and that “any refusal to adjourn the trial date would by definition excuse the Prosecution failures relating to disclosure.”<sup>30</sup>

17. The Defence contends that “the Prosecutor’s continuous reluctance to disclose material to the Defence constitutes an abuse of process”.<sup>31</sup> It alleges “continuous obstruction from the Prosecution seriously impairs the Defence capacity to prepare for trial”<sup>32</sup> and notes that, although the Prosecution submitted it had made good all its disclosure obligations on 19 May 2009, several witness statements were disclosed on 17 June 2009.<sup>33</sup> The Defence contends that there is precedent at the Tribunal for postponing the commencement of trial due to the Prosecution’s violation of its disclosure obligations, and that the adequate remedy for late disclosure is the adjournment of trial or the postponement of the hearings.<sup>34</sup>

18. The Defence submits that it needs to conduct new investigations before the commencement of trial, in light of the recent disclosures, as the investigations will be moot after the Prosecution’s case, because they are intended to prepare for cross-examination of Prosecution witnesses. Therefore, the Defence submits that the recent disclosures constitute a new fact and a change of circumstance as they necessitate additional investigations, which are impossible to complete before 3 August 2009.<sup>35</sup>

<sup>27</sup> Defence Submission, para. 44: According to the Defence, these filings constitute a new fact and a material change of circumstances as they occurred after the Decision on Trial Date and less than two months before the scheduled commencement of the trial.

<sup>28</sup> Defence Submission, para. 45, citing *Prosecutor v. Bisengimana*, Case No. ICTR-2000-60-I, Decision on Bisengimana’s Motion for Disclosure of Materials, 28 March 2003; *Prosecutor v. Mpambara*, Case No. ICTR-2001-65-I, Decision on Defence Motion for Disclosure of Documents and Objections Regarding the Legality of Procedures, 28 February 2002 and *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Defence Motions by Nyiramasuhuko, Ndayambaje, and Kanyabashi on, *inter alia*, Full Disclosure of Unredacted Prosecution Witness Statements, 13 November 2001.

<sup>29</sup> Defence Submission, para. 46.

<sup>30</sup> *Id.*

<sup>31</sup> Defence Submission, para. 47 also underlines that the Prosecutor has systematically opposed the Defence’s requests for disclosure, in spite of his failure to comply with his disclosure obligation.

<sup>32</sup> Defence Submission, para. 48.

<sup>33</sup> Defence Submission, para. 49.

<sup>34</sup> Defence Submission, paras. 50, 53, citing *Prosecutor v. Ntawukulyayo*, Case No. ICTR-05-82-PT, 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>35</sup> Defence Submission, para. 51 asserts that these investigations are necessary and relate to the Prosecution’s case, as well as to the Defence case.

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19. The Defence recalls that the Appeals Chamber Decision cited the status and scale of the Prosecutor's disclosure as one of the factors which impacts what constitutes adequate time to prepare a defence.<sup>36</sup>

20. Lastly, the Defence notes that numerous documents were disclosed by the Prosecution in Kinyarwanda and are still awaiting translation. It asserts that these documents are of "crucial importance for the Defence of the Accused, and their translation [...] is necessary."<sup>37</sup> The Defence states that neither the members of its team who understand Kinyarwanda nor the Accused can be expected to act as official translators and to perform a task which the Tribunal's Language Services Section has not been able to complete before the commencement of trial.<sup>38</sup> The Defence submits that it cannot cross-examine Prosecution witnesses without relying on official translations of documents and that it has the right to know with certainty the exact content and meaning of the materials disclosed by the Prosecution.<sup>39</sup>

21. The Defence thus requests that the Chamber reconsider its Decision on the Trial Date and set the trial date either in January 2010 or in December 2009.<sup>40</sup>

#### ***Prosecution Response***

22. The Prosecution notes that the Defence invokes the fact that the Prosecutor disclosed Rule 66 (A) (ii) material very late as a motive for an application to postpone the date of trial.<sup>41</sup> The Prosecution observes that in the present state of the procedure, it has discharged its disclosure obligations.<sup>42</sup> The Prosecutor relies on "the wisdom of the Chamber" regarding the postponement of the trial date.<sup>43</sup>

#### ***Defence Reply***

23. The Defence notes that the Prosecution does not deny having disclosed Rule 66 (A) (ii) material to the Defence at a very late stage,<sup>44</sup> and contests the Prosecution's affirmation that the disclosure is now entirely completed because it deems it impossible to rely on the Prosecutor's words.<sup>45</sup>

24. The Defence asserts that "it is not the first time that the Prosecutor has deliberately sought to mislead the [T]rial [C]hamber by asserting that he has entirely complied with his disclosure obligations when he clearly had not"<sup>46</sup> and provides the Chamber with several examples. According to the Defence Reply, the Prosecutor stated he had fulfilled

<sup>36</sup> Defence Submission, para. 54.

<sup>37</sup> Defence Submission, para. 55.

<sup>38</sup> Defence Submission, paras. 56, 57 and 60.

<sup>39</sup> Defence Submission, para 58.

<sup>40</sup> Defence Submission, para 61.

<sup>41</sup> Response, para. 2.

<sup>42</sup> Response, para. 3.

<sup>43</sup> Response, para. 4.

<sup>44</sup> Reply, para. 4.

<sup>45</sup> Reply, paras. 5-6.

<sup>46</sup> Reply, para. 7.

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his disclosure obligations on 6 February 2009,<sup>47</sup> on 13 March 2009,<sup>48</sup> on 19 May 2009 in writing,<sup>49</sup> as well as in oral submissions.<sup>50</sup> Yet, the Defence submits it received thousands of pages of disclosure on 15 May, 18 May, 17 June and 25 June 2009,<sup>51</sup> and that the Prosecutor was “clearly dishonest to publicly announce on May 19<sup>th</sup> that he had already disclosed all his witness statements when he disclosed for the first time several witness statements and more than 600 pages of new material after this date” which, for the most part, were related to Prosecution witnesses.<sup>52</sup>

25. The Defence notes that, although it announced having outstanding disclosure issues regarding two witnesses on 19 May 2009, the Prosecution waited more than a month to communicate the documents to the Defence, which were indeed Rule 66 (A) (ii) material of great importance to the case.<sup>53</sup> The Defence further notes that the Prosecution had much of the lately disclosed material in its possession,<sup>54</sup> and concludes that the Prosecution thus has no justification for such late disclosure.<sup>55</sup>

26. The Defence suggests that the Chamber may draw the conclusion that “the Prosecution cannot be relied upon to fulfil its professional duties of disclosure and should be put to strict proof in future.”<sup>56</sup> It further submits that it is thus compelled to rely on its own analysis of the Prosecution Disclosure to request the disclosure of remaining material.

27. On the basis of its ongoing review of the recently disclosed materials, some of which are still awaiting translation from Kinyarwanda into an official language of the Tribunal, the Defence submits a non-exhaustive list of documents for which it requests disclosure.<sup>57</sup>

<sup>47</sup> Reply, para. 8, citing “Prosecutor’s Response to the Defence Motion to Vacate Trial Date of May 4, 2009”, 6 February 2009.

<sup>48</sup> Reply, para. 9, citing “Prosecutor’s Response to the Defence Motion to continue 18 May Trial Date”, 13 March 2009 in which the Prosecutor stated that he was disclosing statements of witnesses he intended to call.

<sup>49</sup> Reply, para. 11, citing “Observations du Procureur sur ‘Dr. Ngirabatware’s Submission Regarding an Appropriate Trial Date pursuant to the Trial Chamber’s Scheduling Order dated 12 May 2009’”, 19 May 2009.

<sup>50</sup> Reply, para. 12, citing Status Conference, T. 19 May 2009, p. 9 during which the Prosecution stated it had disclosed all the witness statements and only had outstanding disclosure issues in relation to only two witnesses.

<sup>51</sup> Reply, para. 10.

<sup>52</sup> Reply, para. 13.

<sup>53</sup> Reply, para. 15.

<sup>54</sup> The defence notes that the great majority of this material dates back several years.

<sup>55</sup> Reply, para. 16.

<sup>56</sup> Reply, para. 17.

<sup>57</sup> Reply, paras. 19-23. The Defence requests the testimony of Witness ANAI at his trial, as well as the testimony of witnesses which testified against him; the testimony of Witness ANAD in a trial in Rwanda; all statements, interviews, and *pro justicia* of Witness ANAP before the national authorities of the witness’ country of residence; transcripts of the testimony of Witness PB-1 in the Military I case and exhibits admitted during the testimony; exhibits admitted under seal during the testimony of Witness GTC in the Government II case; and transcripts and exhibits for Witness AHI in the Media case, many of those documents are already the subject of pending motions before this Chamber and others.



28. The Defence further asserts the Prosecution breached its disclosure obligations by failing to inform the Defence that Witness PB-1 was expected to testify in the case against the Accused, and objected to the Defence's request for disclosure of this witness's testimony and associated exhibits in the *Military I* case.<sup>58</sup> The Defence adds that the Prosecution "appears to have no interest in safeguarding the right of the [A]ccused to obtain a fair trial". It requests the Chamber takes into account "the serious and deliberate attempts by the Prosecution to mislead it on the matter of disclosure" and submits that "in those circumstances, the Prosecution views and credibility on the necessity of the trial date being postponed are likely to be inherently suspect and simply a veneer to cover its wholly unprofessional approach to the conduct of trial."<sup>59</sup>

29. The Defence finally reiterates that the latest disclosures of 17 and 25 June 2009 occurred far beyond the 60 day limit prescribed by Rule 66 (A) (ii), and recalls that "this situation of late disclosure and continuous obstruction from the Prosecution materially prejudices the Accused in the preparation of his case."<sup>60</sup>

### DELIBERATIONS

30. The Chamber recalls the Appeals Chamber Decision and its subsequent Decision on Trial Date, setting the trial to start on 3 August 2009. It further recalls the factors identified in these two decisions as relevant to its making a fully informed and reasoned decision on the trial date, in light of the Accused's right to a fair trial, in particular his right to have adequate time to prepare his defence.<sup>61</sup>

31. The Chamber takes note of the fact that since its Decision on Trial Date of 12 June 2009, Lead Counsel for the Defence was withdrawn on 16 June 2009 and that a new Lead Counsel was appointed on 1 July 2009,<sup>62</sup> which made the Defence team understaffed for two weeks and constitute new circumstances in the case in the light of which the Chamber deems it appropriate to review its Decision on Trial Date. Taking into account the recent appointment of the new Lead Counsel, the Chamber is of the view that Lead Counsel requires additional and adequate time to duly prepare for trial.

32. The Chamber acknowledges the fact that the Prosecution disclosed a large amount of material pursuant to Rule 66 (A) (ii) on 17 and 25 June 2009, which could have

<sup>58</sup> Reply, para. 24.

<sup>59</sup> Reply, para. 25, the Defence notes that the Prosecution has systematically opposed every Defence motion for disclosure of exhibits and transcripts of Prosecution witnesses.

<sup>60</sup> Reply, para. 26.

<sup>61</sup> The Appeals Chamber referred to, among others, six factors a Chamber must consider in determining whether an accused has adequate time to prepare a defence: the complexity of the case, the number of counts and charges, the gravity of the crimes charged, the individual circumstances of the accused, the status and scale of the Prosecution's disclosure, and the staffing of the Defence team, see Trial Date Decision, para. 36, citing Appeal Decision, para. 28 recalling *The Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR-73.6, Decision on the Interlocutory Appeal by the *Amici Curiae* Against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, 20 January 2004 ("*Milošević* Decision"), paras. 8-19.

<sup>62</sup> See *supra*, paras. 2-3.

constituted a breach of its obligations to disclose materials covered by this Rule 60 days before trial. However, the Chamber notes that, although the Prosecution cited to Rule 66 (A) (ii) upon filing the material disclosed on 17 and 25 June 2009, and although they could be relevant for the preparation of the Defence, not all the material contained in these disclosures actually constitutes Rule 66 (A) (ii) material. The Chamber directs the Parties to carefully review the Rules and ensure that any document to be disclosed or requested to be disclosed in the future is disclosed or requested pursuant to the appropriate Rule.

33. The Chamber notes that some of the materials disclosed to the Defence are still awaiting translation and reiterates its call to the Registry to complete translations of the documents requested as soon as possible.<sup>63</sup> However, the Chamber reminds the parties that they ought to use their available resources in order to prepare for the trial.

34. With regard to the Defence's "non exhaustive list of requested materials still missing", the Chamber observes that the documents which have been mentioned so far appear to constitute Rule 66 (B) material, the disclosure of which should be raised by the Defence to the Prosecution. The Chamber reminds the parties that they should pursue the issues of disclosure as provided for in the Rules and specifying which Rule applies along with which requirements. The Chamber further notes that documents related to Witnesses PB-I, GTC and AHI are the object of specific motions by the Defence requesting their disclosure, some of which are pending before different Chambers, and concludes that those motions shall be addressed on their own merits and by the appropriate Chambers.

35. Having considered the totality of the issues raised in the Parties' submissions and particularly the new elements regarding the staffing of the Defence team, that is the recent appointment of the new Lead Counsel, the Chamber deems it appropriate to reconsider its Trial Date Decision. The Chamber considers that the date of 23 September 2009 will afford the Defence, including the newly appointed Lead Counsel, objectively adequate time to prepare for the presentation of the Prosecution's case in a manner consistent with the rights of the Accused. Almost two months will have been added to the latest scheduled trial date, Lead Counsel will have been assigned to the case for nearly three months, and Co-counsel will have been assigned to the case for nearly four months, while the rest of the team remained intact. The Chamber also notes that, even if there had been new disclosures of Rule 66 (A) (ii) material, the trial date of 23 September 2009 will allow more than 60 days between the latest disclosure and the start of trial.

**FOR THE ABOVE REASONS, THE TRIBUNAL**

**ORDERS** the trial to start on 23 September 2009.

Arusha, 15 July 2009

<sup>63</sup> Trial Date Decision, para. 52.

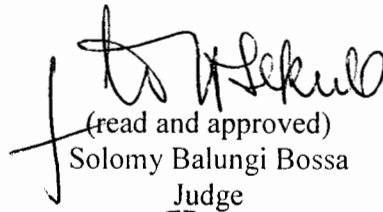
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*The Prosecutor v. Augustin Ngirabatware, Case No. ICTR-99-54-PT*



William H. Sekule

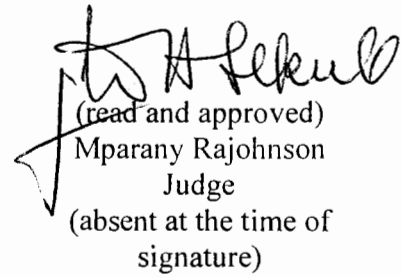
Presiding Judge

  
(read and approved)  
Solomy Balungi Bossa  
Judge

(absent at the time of  
signature)



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Mparany Rajohnson  
Judge  
(absent at the time of  
signature)