ICTR-98-44D-1
30-10-2009
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

Before Judges: Solomy Balungi Bossa, Presiding
Bakhtiyar Tuzmukhamedov
Mparany Rajohnson

Registrar: Adama Dieng

Date: 30 October 2009

2009 OCT 30 P 1:32

THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D-T

DECISION ON DEFENCE MOTION FOR THE POSTPONEMENT OF THE START OF TRIAL

Office of the Prosecution
Paul Ng'arua
Memory Maposa
Marie Ka

Defence Counsel for Callixte Nzabonimana
Vincent Courcelle-Labrousse
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INTRODUCTION

1. During the Status Conference held on 1 October 2009, the Pre-Trial Chamber scheduled the start of trial of Callixte Nzabonimana for 9 November 2009.[1]

2. On 14 October 2009, the Defence filed a Motion requesting the postponement of the Trial.[2]

3. On 19 October 2009, the Prosecution filed a Response opposing the Defence Motion.[3]

4. On 27 October 2009, the Defence filed its Reply to the Prosecutor's Response.[4]

Submissions of the parties

5. In its Motion, the Defence refers to the Completion Strategy of the Tribunal and submits that the scheduling of the trial was an administrative decision rather than a legal one,[5] and that an issue of impartiality arises because of the conflict between the administrative functions of the President of the Tribunal and his legal duties as Presiding Judge of the Pre-Trial Chamber.[6] Further, the Defence contends that the Indictment was not transmitted to the Defence in a timely manner. The Defence also argues that the Indictment contains numerous complex allegations.[7] The Defence considers the crimes of which Nzabonimana stands accused to be the most serious set forth in the Statute.[8] The Defence also submits that it has encountered difficulties in carrying out its investigations based on the political climate in Rwanda.[9]

6. The Defence alleges a violation of the principle of equality of arms and the Accused's right to a fair trial citing, in particular, the fact that the Prosecution has had 12 years to prepare its case while the Defence has only had 12 months.[10] In addition, the Defence accuses the Prosecution of violating its disclosure obligations[11] and cites delays in obtaining translations of the material disclosed.[12]

7. Finally, the Defence alleges that France's refusal to cooperate with the Tribunal has impeded its ability to prepare an alibi defence for the period between 7-11April 2009.[13]

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[1] Status Conference, T. 1 October 2009, pp. 29-30.
[2] *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Requête de la Défense aux Fins de Report de l'Ouverture du Procès de Callixte Nzabonimana, 14 October 2009 (hereinafter "Defence Motion").
[3] *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Prosecutor's Response to Nzabonimana's Motion Requesting Chamber to Postpone Sine Die the Commencement of the Trial of Callixte Nzabonimana, 19 October 2009 (hereinafter "Prosecutor's Response").
[4] *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Nzabonimana's Reply to Prosecutor's Response to Nzabonimana's Motion Requesting to Postpone Sine Die the Commencement of the Trial of Callixte Nzabonimana, 27 October 2009 (hereinafter "Defence's Reply").
[5] Defence Motion, paras. 9-22 and 13 and 19.
[6] Defence Motion, para. 23.
[7] Defence Motion, paras. 28– 49 and para. 148.
[8] Defence Motion, para. 148.
[9] Defence Motion, paras. 50 – 88 and 118 - 120.
[10] Defence Motion, paras. 89 – 102.
[11] Defence Motion, paras. 104-111 and 115-116; paras. 121-133.
[12] Defence Motion, paras. 103 and 112-113.
[13] Defence Motion, paras. 135-140.

The Defence also states that it had not had access to material related to extradition proceedings brought against two Rwandan citizens allegedly closely associated with the Accused.[14]

8. The Prosecution opposes the Defence Motion and states that the Accused has had adequate time to prepare his defence pursuant to Article 20(4)(b) of the Statute of the Tribunal ("the Statute").[15] The Prosecution submits that the statement made by the President of the Tribunal regarding the Completion Strategy expresses goals or targets, and that the Defence has not shown that this separate function of the Presiding Judge amounts to a personal interest or association that might affect his impartiality.[16] The Prosecution alleges that the Defence has exaggerated the difficulties faced during its investigations in Rwanda and that in any case the Defence was fully aware of these difficulties when it informed the Chamber that it would be prepared to start trial in September 2009.[17]

9. The Prosecution submits that it has met its disclosure obligations pursuant to Rule 66(A) of the Rules of Procedure and Evidence ("the Rules").[18] The Prosecutor alleges that the Defence informed the Chamber that it would be ready to commence trial in September 2009 based on an Indictment that has since been simplified, stressing that it has reduced the number of Prosecution witnesses it plans to call and that the July 2009 revised Indictment contains fewer allegations than the preceding Indictment.[19]

10. Finally, the Prosecution submits that with regards to translation issues, the rights of the accused pursuant to Article 20(4)(a) of the Statute have not been violated and that the Prosecution has assisted the Defence in identifying the changes in the revised Pre-Trial Brief so that modifications could be more quickly translated into French.[20]

11. The Prosecutor alleges that the purported failure of the French authorities to cooperate with the Defence should have no impact on the start of trial, and that the Accused should promptly inform the Prosecutor of its intention to raise an alibi defence.

DELIBERATIONS

Applicable Law

12. It is the general practice of the Chambers of the Tribunal to rely on Rule 54 as the legal basis for orders scheduling the commencement of trials.[21] Rule 54 stipulates that "[a]t the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial".

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[14] Defence Motion, paras. 141-146.
[15] Prosecutor's Response, paras. 3-4.
[16] Prosecutor's Response, paras. 2 and 5.
[17] Prosecutor's Response, para. 18.
[18] Prosecutor's Response, para.12.
[19] Prosecutor's Response, para. 19.
[20] Prosecutor's Response, paras. 21 and 26.
[21] See *inter alia*, *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-PT, Scheduling Order (Rule 54 of the Rules of Procedure and Evidence), 24 March 2005; as for the appeals proceedings, *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54A-A, Scheduling Order, 19 July 2005.

13. Trial Chambers enjoy considerable discretion in the conduct of the proceedings, including in the scheduling of the trials.[22] However, this discretion "finds its limitation in the obligation imposed on Trial Chambers by Articles 19 and 20 of the Tribunal's Statute ("Statute") to ensure that a trial is fair and expeditious."[23]

14. Article 19(1) of the Statute states that "[t]he Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses".

15. Article 20(4) of the Statute reads as follows:

> In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
> (a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
> (b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;
> (c) To be tried without undue delay;
> (d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interest of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
> (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
> (f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;
> (g) Not to be compelled to testify against himself or herself or to confess guilt.

16. The Trial Chamber recalls that, although a Chamber must ensure that proceedings do not suffer undue delay, it must strike a balance between ensuring that a trial is conducted in an expeditious manner and the right of the accused to a fair trial, and in particular his right to have adequate time to prepare his defence.[24] In *Karemera et al.*, the Appeals Chamber recognised that striking this balance would often be "a delicate exercise".[25]

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[22] *Prosecutor v. Augustin Ngirabatware, Case No. ICTR-99-54-A,* Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009, para. 22; see also *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, 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, para. 16.

[23] *Prosecutor v. Augustin Ngirabatware, Case No. ICTR-99-54-A,* Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009, para. 22.

[24] *Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-A, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009, para. 31: "Time and resource constraints exist in all judicial institutions and it is legitimate for a Trial Chamber to ensure that the proceedings do not suffer undue delays and that the trial is completed within a reasonable time. However, the Appeals Chamber stresses that these considerations should never impinge on the rights of the parties to a fair trial."

[25] *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Mathieu Ngirumpatse's Appeal from the Trial Chamber Decision of 17 September 2008, 30 January 2009, para. 29; citing *Nyiramasuhuko* Decision, para. 26; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR15bis.3, Decision on Appeals pursuant to Rule 15*bis*(D), 20 April 2007, para. 27.

17. With regard to the factors that a Trial Chamber might take into account in balancing the competing interests, the Appeals Chamber in *Ngirabatware* held that "that it is not possible to set a standard of what constitutes adequate time to prepare a defence. The length of the preparation period depends on a number of factors specific to each case, such as, for example, 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 [...]"[26]

Preliminary Matter

18. With regard to the Defence's Reply, the Trial Chamber recalls that Rule 73(E) of the Rules stipulates that "[a] responding party shall, thereafter, file any reply within five days from the date on which Counsel received the motion". The Trial Chamber observes that the Defence Reply was filed on 27 October and thus out of time. As the Defence has not provided any explanation for this late filing, the Trial Chamber will not take this Reply into consideration.

Scheduling of the trial on the basis of political rather than legal concerns

19. In its Motion, the Defence submits that the Pre-Trial Chamber determined the schedule for the Nzabonimana trial on the basis of political, rather than legal, concerns. In particular, the Defence alleges that the trial was scheduled to fit in with the Completion Strategy of the Tribunal as approved by the United Nations Security Council ("Security Council") in Resolution 1503 (2003). The Defence submits that in his Report to the Security Council dated 3 November 2008, the President of the Tribunal had already indicated a date for the commencement of the Nzabonimana trial.[27] Accordingly, the Defence argues that the Pre-Trial Chamber's Decision establishing a start date for the trial constitutes a grave violation of the right to a fair trial.[28]

20. In its Response, the Prosecution alleges that the Defence's contention is factually incorrect, and that in his report to the Security Council, the President of the Tribunal gave no indication of a trial date.[29] On the contrary, the Prosecution submits that in this report the President of the Tribunal expressed goals rather than actual timelines.[30]

21. The Trial Chamber notes that in the Report to the Security Council dated 3 November 2008,[31] the President of the Tribunal stated that "[f]ollowing the recent transfer to the Tribunal of three arrested persons (Nzabonimana, Ntawukulilyayo and Ngibaratware) and taking into account Trial Chambers' occupancy rate, their cases are now also scheduled to commence in the first half of 2009."[32]

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[26] *Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-A, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009, para. 28.
[27] Defence Motion, paras. 13 and 19.
[28] Defence Motion, paras. 9-22.
[29] Prosecutor's Response, para. 3.
[30] Prosecutor's Response, para. 4.
[31] Letter dated 21 November 2008 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council, S/2008/726, attachment: Report on the completion strategy of the International Criminal Tribunal for Rwanda, as at 3 November 2008, transmitted to the United Nations Security Council on 21 November 2008 (hereinafter "Report").
[32] Report, para. 66.

22. The Trial Chamber further notes that while in his report to the Security Council, the President referred to a start date for the Nzabonimana in the first half of 2009, the Pre-Trial Chamber ultimately scheduled the start of trial for 9 November 2009. The Chamber further observes that the scheduling of the Accused's trial was the subject of several discussions between the Pre-Trial Chamber and the parties, and that the Pre-Trial Chamber did accord the Defence several postponements taking into consideration Defence concerns regarding the complexity of the case, difficulties in conducting investigations, and disclosure issues.[33] For example, in February 2009, in response to Defence arguments that it would not be able to start the trial in April 2009,[34] the Pre-Trial Chamber agreed to review the issue of the trial commencement, and ordered that the Defence team be provided with additional resources.[35] In July 2009,[36] the Defence again expressed concerns about the scheduled start date of Trial and asked the Pre-Trial Chamber to postpone the start date until at least 3 November 2009. In its Decision dated 24 August 2009,[37] the Pre-Trial Chamber considered that "the issues raised by the Defence are important issues that touch upon the right of the Accused to a fair trial" and agreed "that the start of the trial should be set at a later date than 14 September 2009."[38]

23. The Trial Chamber therefore concludes that the statement made by the President of the Tribunal regarding the *Nzabonimana* case, like other similar statements concerning the Completion Strategy,[39] simply expressed goals or target dates.[40] Thus, the Trial Chamber finds that the Defence has not established that the Pre-Trial Chamber scheduled the Nzabonimana Trial on the basis of political expediency rather than on the basis of proper legal principles. Thus, the Trial Chamber further concludes that postponement of the start of Trial is not justified on this basis.

The dual functions of President Byron

24. The Defence contends that President Byron has a conflict of interest because of his dual roles as President of the Tribunal and Presiding Judge of the Pre-Trial Chamber in this case.[41]

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[33] See *inter alia*, Status Conference, T. 15 December 2008, pp. 11-14 (closed session); Status Conference, T. 12 February 2009, pp. 12-13, 15 and 18-21; *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-PT, Decision on Motion for Transfer of Witnesses and Other Issues Relating to the Preparation of the Trial, 24 August 2009, paras. 8-9; Status Conference, T. 29 June 2009, pp. 15-16 (closed session); Status Conference, T. 1 October 2009, pp. 16-21.

[34] Status Conference, T. 12 February 2009, pp. 19-20.

[35] Status Conference, T. 12 February 2009, pp. 20-21.

[36] *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-PT, Nzabonimana's Response to Prosecutor's Motion for "Temporary Transfer of Detained Witnesses from Rwanda to the Seat of the ICTR at Arusha (Rules 73(B) and 90*bis* of Rules of Procedure and Evidence", 27 July 2009, paras. 3-7.

[37] *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-PT, Decision on Motion for Transfer of Witnesses and Other Issues Relating to the Preparation of the Trial, 24 August 2009.

[38] *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-PT, Decision on Motion for Transfer of Witnesses and Other Issues Relating to the Preparation of the Trial, 24 August 2009, para. 9.

[39] See *e.g.*, Report No. S/2008/322 on the completion strategy of the International Criminal Tribunal for Rwanda (as at 1 May 2008) from the President of the International Criminal Tribunal for Rwanda to the President of the Security Council, annexed to Letter dated 12 May 2008 from the President of the International Criminal Tribunal for Rwanda to the President of the Security Council, 13 May 2008.

[40] *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion for Disqualification of Judge Byron and Stay of Proceedings, 20 February 2009, para. 12.

[41] Defence Motion, para. 23.

25. Referring to Rule 15(A), the Prosecution notes that "[t]he requirement of impartiality is violated not only where a Judge is actually biased, but also where there is an appearance of bias".[42] However, the Prosecution adds that the Defence has failed to show that the Presiding Judge's role, as President of the Tribunal, amounts to personal interest or association that might affect his impartiality.[43]

26. Rule 15(A) of the Rules provides that:

> A Judge may not sit in any case in which he has a personal interest or concerning which he has or has had any association which might affect his impartiality. He shall in any such circumstance withdraw from that case. Where the Judge withdraws from the Trial Chamber, the President shall assign another Trial Chamber Judge to sit in his place. Where a Judge withdraws from the Appeals Chamber, the Presiding Judge of that Chamber shall assign another Judge to sit in his place.

27. The Appeals Chamber has held that the requirement of impartiality is violated not only where the decision-maker is actually biased, but also where there is an appearance of bias.[44] An appearance of bias is established if (a) a Judge is a party to the case, or has a financial or proprietary interest in the outcome of the case, or if the Judge's decision will lead to the promotion of a cause in which he or she is involved; or (b) the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.[45]

28. The apprehension of bias test reflects the maxim that "justice should not only be done, but should manifestly and undoubtedly be seen to be done."[46] However, the Appeals Chamber has cautioned that a mere feeling or suspicion of bias by the accused is insufficient; what is required is an objectively justified apprehension of bias, based on knowledge of all the relevant circumstances. [47]

29. In the *Nahimana* et al. case, the Appeals Chamber held that there is a presumption of impartiality which attaches to any Judge of the Tribunal and which cannot be easily rebutted. In the absence of evidence to the contrary, it must be assumed that the Judges "can disabuse their minds of any irrelevant personal beliefs or predispositions".[48] Therefore, it is for the appellant doubting the impartiality of a Judge to adduce

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[42] Prosecutor's Response, para. 2.

[43] Prosecutor's Response, para. 5.

[44] *Prosecutor v. Furundžija*, Case No. IT-95-17/1-A, Appeals Chamber Judgment, 21 July 2000, paras. 181-88. *See also Prosecutor v. Brđanin and Talić*, Decision on Application by Momir Talic for the Disqualification and Withdrawal of a Judge,, 18 May 2000, paras. 9-14; see also *Prosecutor v. Théoneste Bagosora*, Case No. ICTR-98-41-T, Decision on Motion for Disqualification of Judges, Appeals Chamber, 28 May 2007, para. 6.

[45] *Prosecutor v. Furundžija*, Case No. IT-95-17/1-A Appeals Chamber Judgment, 21 July 2000, para. 189.

[46] *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion for Disqualification of Judges Byron, Kam and Joensen, 7 March 2008, para. 5; citing *inter alia, Prosecutor v. Furundžija*, Case No. IT-95-17/1-A, Appeals Chamber Judgment, 21 July 2000, para. 195 (*quoting R. v. Sussex Justices* (1923), [1924] 1 K.B. 256, 259 (Lord Hewart)); *Brđanin and Talić*, Decision on Application by Momir Talić for the Disqualification and Withdrawal of a Judge, 18 May 2000, para. 9.

[47] *Prosecutor v. Théoneste Bagosora*, Case No. ICTR-98-41-T, Decision on Motion for Disqualification of Judges, Appeals Chamber, 28 May 2007, para. 7; citing This "objective test" has, in substance, been adopted in a number of decisions before this Tribunal: *Prosecutor v. Seromba*, Case No. ICTR-2001-66-T, Decision on Motion for Disqualification of Judges (Bureau), 25 April 2006, para. 9; *Ntahobali*, Decision on Motion for Disqualification of Judges (Bureau), 7 March 2006, para. 9; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion by Karemera for Disqualification of Judges (Bureau), 17 May 2004, para. 9.

[48] *Prosecutor v. Nahimana et al.*, Case ICTR-99-52-A, Appeals Chamber Judgment, 28 November 2007, para. 48; citing *Furundžija* Appeal Judgement, para. 197.

sufficient reliable evidence to the Appeals Chamber to rebut this presumption of impartiality.[49]

30. The test is that of the reasonable observer, properly informed, meaning "an informed person, with knowledge of all the relevant circumstances, including the traditions of integrity and impartiality, apprised also of the fact that impartiality is one of the duties that Judges swear to uphold". The Chamber must therefore determine whether such a hypothetical fair-minded observer, acting in good faith, would accept that a Judge might not bring an impartial and unprejudiced mind to the issues arising in the case.[50]

31. The Trial Chamber considers that the Defence has failed to demonstrate that Judge Byron had a personal interest or association, or that there is a reasonable appearance of bias in this case. Moreover, the Trial Chamber observes that the Pre-Trial Chamber postponed the start of trial on several occasions in response to Defence concerns that it had not had adequate time prepare its case. Thus, the Trial Chamber concludes that postponement of the start of Trial is not justified on the basis of President Byron's alleged conflict of interest.

The late filing of the Amended Indictment

32. In its Motion, the Defence notes that on 4 October 2008, it received an English version of the Amended Indictment containing 58 allegations.[51] It then states that the Amended Indictment was subsequently modified on 7 July 2009, and that 15 allegations were removed.[52] It argues that it expended significant time and resources investigating allegations that were later removed from the Indictment.[53]

33. In its Response, the Prosecution submits that at a Status Conference held on 15 December 2008, the Defence informed the Pre-Trial Chamber that based on the operational Indictment at that time it would be ready to commence the trial in September 2009.[54] In addition, the Prosecution argues that the modifications made to the Indictment in July 2009 consisted solely of reducing the number of allegations against the Accused. At the same time, the Prosecution notes that it significantly reduced its witness list from 47 to 26 witnesses. Thus, it concludes that these modifications to the most recent Indictment cannot justify a delay in the start of trial.[55]

34. The Chamber observes that the original Indictment against the accused, joined together with six other accused, was filed in November 2001. On 7 November 2008, the Pre-Trial Chamber granted the Prosecutor's Motion to sever the Accused, Callixte Nzabonimana, from the original Indictment.[56] The Prosecutor submitted an amended

[49] *Prosecutor v. Nahimana et al.*, Case ICTR-99-52-A, Appeals Chamber Judgement, 28 November 2007, para. 48; citing *Semanza* Appeal Judgement, para. 13; *Niyitegeka* Appeal Judgement, para. 45; *Akayesu* Appeal Judgement, para. 91; *Čelebići* Appeal Judgement, para. 707; *Furundžija* Appeal Judgement, para. 197.
[50] *Prosecutor v. Nahimana et al.*, Case ICTR-99-52-A, Appeals Chamber Judgement, 28 November 2007, para. 50 (internal citation omitted).
[51] Defence Motion, paras. 28– 49.
[52] Defence Motion, para. 38.
[53] Defence Motion, paras 38-49.
[54] Prosecutor's Response, para. 18.
[55] Prosecutor's Response, para. 19.
[56] *Prosecutor v. Callixte Nzabonimana*, Case ICTR-98-44D-I, Decision on Prosecution Motion for Severance and Amendment of Indictment, 7 November 2008.

Indictment in English on 4 October 2008.[57] The Defence received the French and Kinyarwanda versions of this Amended Indictment on 2 December 2008.[58] That Indictment contained 5 counts and 58 factual allegations. On 24 July 2009, the Prosecution filed a revised Amended Indictment containing the same number of counts but only 43 factual allegations.[59] Upon review of the relevant Indictments, the Trial Chamber concludes that in its July 2009 Indictment, the Prosecutor neither expanded the charges against the Accused nor modified the modes of responsibility it intended to rely on. On the contrary, the only modification in this new Indictment was to simplify the case against the Accused, reducing the number of allegations against the accused and witnesses needed to prove them.

35. The Trial Chamber notes that the modifications made by the Prosecution to the July 2009 Indictment reduce the breadth of the case rather than expand it, and add no new allegations requiring *de novo* Defence investigations. Moreover, the Trial Chamber observes that at the 15 December 2008 Status Conference, when the parties were still working on the basis of the October 2008 Indictment, the Defence stated that "September [2009] would be the appropriate time at which the Prosecutor could begin his case."[60]

36. Thus the Trial Chamber finds that these modifications to the Indictment do not justify a postponement in the start of trial.

The complexity of the Amended Indictment

37. The Defence contends that each of the 43 allegations could, in and of itself, justify a separate trial.[61] It further enumerates several factors that complicate Defence investigations into the allegations: that the events took place 15 years ago; that the Indictment includes allegations that took place during a period ranging from 1990 to 1994; and that the events involved different protagonists.[62] The Defence adds that the crimes of which Nzabonimana stands accused are the most serious set forth in the Statute.[63]

38. The Prosecution did not address this point in its Response.

39. The Chamber notes that two allegations against the Accused regarding events that allegedly occurred in 1993 were removed from the October 2008 Indictment,[64] thus limiting to three the number of allegations regarding pre-1994 events. The Trial Chamber observes that the 40 remaining allegations in the Indictment focus on events that occurred between April and July 1994, and thus the allegations are temporally limited to four months of 1994, and they concentrate mainly on the limited

[57] *Prosecutor v. Callixte Nzabonimana*, Case ICTR-98-44D-I, Amended Indictment dated 4 October 2008, filed on 12 November 2008 (hereinafter "October 2008 Indictment").
[58] Status Conference, T. 15 December 2008, p. 2 (closed session).
[59] *Prosecutor v. Callixte Nzabonimana*, Case ICTR-98-44D-I, Revised Amended Indictment dated 23 July 2009, filed on 24 July 2009 (hereinafter "July 2009 Indictment").
[60] Status Conference, T. 15 December 2008, p. 13 (closed session).
[61] Defence Motion, para. 39.
[62] Defence Motion, paras. 29-49 and para. 148.
[63] Defence Motion, para. 148.
[64] *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-I, Amended Indictment, 4 October 2008, paras. 36 and 37.

geographical area of Gitarama *Préfecture*. The Trial Chamber considers the fact that the Accused is accused of the most serious crimes to be a given for all Accused on trial at the Tribunal.

40. While the Trial Chamber does not deny that the case is a complex one, it notes that it is a case involving only a single accused, and that the complexity of the case does not match, for example, that of the Milošević and Karadžić cases.[65] In the Milošević case, the Defence had less time to prepare its case before the start of trial than in the instant case, while in the Karadžić case the time accorded to the Defence to prepare for the start of trial was approximately the same as in the instant case. Both Milošević and Karadžić appealed Decisions regarding start dates on the grounds that they had not had adequate time to prepare their cases, and each lost his appeal on this ground.[66] The Trial Chamber recalls that in *Ngirabatware* the Appeals Chamber held that "[t]ime and resource constraints exist in all judicial institutions and it is legitimate for a Trial Chamber to ensure that proceedings do not suffer undue delays and that the trial is completed within a reasonable time.[67]

41. Thus, the Trial Chamber concludes that postponement of the start of Trial is not justified on the basis of the complexity of the case.

The impact of the political situation in Rwanda on Defence investigations

42. The Defence argues that the political context in Rwanda makes Defence investigations and contacts with witnesses particularly difficult.[68] The Defence refers to an incident in August 2008 during which the lead Counsel and one investigator, who were planning a mission in Rwanda, spent hours in the international zone of the airport of Kigali before being refused entry into Rwanda.[69] The Defence also refers to decisions of national courts refusing to extradite Rwandan nationals to Rwanda because of concerns that those persons would not receive a fair trial.[70] It further stresses that potential witnesses living in Rwanda are afraid of testifying before the Tribunal fearing political retribution in the form of prosecution before Gacaca courts. These potential witnesses believe that the protective measures offered by the Tribunal offer insufficient protection from Rwandan state forces.[71] In support of its argument that Rwanda has no democratic institutions, the Defence refers to the participation of the *Armée Patriotique Rwandaise* and the RPF in the wars in the Democratic Republic of Congo.[72]

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[65] The Accused Slobodan Milošević had seven months to prepare his defence between his transfer to the Tribunal (29 June 2001) and the commencement of his trial (12 February 2002); the Accused Radovan Karadžić had fourteen months to prepare his defence between his transfer to the Tribunal (30 July 2008) and the commencement of the trial (26 October 2009).

[66] *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, 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; *Prosecutor v. Radovan Karadžić*, Case IT-95-5/18-AR73.5, Decision on Radovan Karadžić's appeal of the Decision on commencement of trial, 13 October 2009.

[67] *Prosecutor v. Augustin Ngirabatware, Case No. ICTR-99-54-A*, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009, para. 31.

[68] Defence Motion, paras. 50–88 and 118-120.

[69] Defence Motion, para. 5.

[70] Defence Motion, paras. 51-53.

[71] Defence Motion, paras. 54-58 and 65-80.

[72] Defence Motion, paras. 59-61.

43. The Defence therefore concludes that because of the political climate in Rwanda, the Accused, as former Minister and therefore enemy of the current regime, is obliged to seek evidence clandestinely. This in turn leads to delays in establishing contact with potential witnesses, and consequent delays in obtaining evidence for the defence of the Accused.[73]

44. In its Response, the Prosecution submits that "[o]n several occasions the Pre-trial Chamber recognized the difficulties faced by the Defence in conducting its investigations, but held that these were not unique to this trial and were same for other Defence counsels in the Tribunal"[74] It further argues that the Defence did not seek assistance of the Defence Management Section, as proposed, or accept the help offered by the Pre-Trial bench.[75] As for the episode at the International Airport of Kigali, the Prosecution contends that members of the Defence failed to obtain visas prior to their arrival, and therefore that there was no concerted effort by the Rwandan authorities to impede the work of the Defence.[76] Finally the Prosecution submits that the Defence was fully aware of the political difficulties it faced when it informed the Chamber of its readiness to commence the trial by September 2009.[77]

45. The Trial Chamber observes that the political difficulties encountered by Defence teams in Rwanda are not a new development.

46. The Trial Chamber recognises that some potential Defence witnesses residing in Rwanda may be fearful about testifying for the Defence.[78] The Appeals Chamber in *Munyakazi* took into account the conclusion of the Trial Chamber that, "regardless of whether their fears are well-founded, witnesses in Rwanda may be unwilling to testify for the Defence as a result of the fear that they may face serious consequences, including threats, harassment, torture, arrest, or being killed".[79] The Appeals Chamber further noted that no judicial system can guarantee absolute witness protection.[80] The Trial Chamber also recalls that in *Gatete*, the Trial Chamber noted that Defence teams had been unable to obtain documents from the Rwandan authorities, or had received them only after considerable time, and that the Defence had encountered difficulties in meeting with detainees.[81]

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[73] Defence Motion, paras. 64 and 80.
[74] Prosecutor's Response, para. 9.
[75] Prosecutor's Response, para. 10.
[76] Prosecutor's Response, para. 14.
[77] Prosecutor's Response, para. 11.
[78] *Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36-R11bis, Appeals Chamber Decision on Request from the International Criminal Defence Attorneys Association (ICDAA) for Permission to File an Amicus Curiae Brief, Ground of Appeal 3: Availability and Protection of Witnesses, 8 October 2008, paras. 32-38.
[79] *Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36-R11bis, Appeals Chamber Decision on Request from the International Criminal Defence Attorneys Association (ICDAA) for Permission to File an Amicus Curiae Brief, 8 October 2008, para. 37; see also *Prosecutor v. Gaspard Kanyurikiga*, Case No. ICTR-2002-78-R11bis, 30 October 2008, Appeals Chamber Decision on the Prosecution's Appeal against Decision on Referral under Rule 11*bis*, paras. 23-27.
[80] *Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36-R11bis, Appeals Chamber Decision on Request from the International Criminal Defence Attorneys Association (ICDAA) for Permission to File an Amicus Curiae Brief, 8 October 2008, para. 38; citing *Prosecutor v. Gojko Janković*, Case No. IT-96-23/2-AR11*bis*.2, Decision on Rule 11*bis* referral, 15 November 2005, para. 49.
[81] *Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-2000-61-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 17 November 2008, para. 53; citing *amicus curiae* submissions filed by the International Criminal Defence Attorneys Association (ICDAA) on 17 July 2008, as well as the *amicus curiae* brief of Human Rights Watch in the *Kayishema* case.

47. The Trial Chamber notes that in the instant case the Defence has provided only one concrete example of what it believed to have been obstruction of its investigations, and that that incident took place over a year ago. Rather, the Defence has made broad generalisations about the challenges it faced in conducting its investigations.

48. This Trial Chamber also recognises that witnesses residing in Rwanda may in some cases have concerns—well-grounded or not—about testifying for the Defence, and that they may not have faith in the protective measures offered by the Tribunal. However, many cases have been held at the ICTR during its fifteen year history, and numerous witnesses have appeared on behalf of the accused persons. Trials do not stop because political circumstances are less than ideal. The Defence has not provided a single example of a potential witness it considered important who has refused to testify for the Defence because of Rwanda's political climate. Nor has it explained how postponing the start of trial will have an impact on reluctant witnesses or recalcitrant political authorities. Finally, the Trial Chamber notes that although the Defence was aware of the conditions in which it would work, it has in the past assured the Pre-Trial Chamber that it would be ready to start the trial by this time.[82] Thus, the Trial Chamber concludes that postponement of the start of Trial is not justified on this basis.

The principle of equality of arms

49. The Defence submits that the Prosecution interviewed its first witnesses in the Nzabonimana case as early as 1998, and thus that the Prosecution had 12 years to prepare its case while the Defence has only had 12 months. It therefore argues that there is a lack of equality of arms between the Prosecution and the Defence.[83]

50. The Prosecution did not respond to this argument.

51. Article 20(4)(e) of the Statute states that the accused shall be entitled to, in full equality, to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.

52. In *Karemera*, the Appeals Chamber[84] stated that:

> The Appeals Chamber has long recognised that "the principle of equality of arms between the prosecutor and accused in a criminal trial goes to the heart of the fair trial guarantee." At a minimum, "equality of arms obliges a judicial body to ensure that neither party is put at a disadvantage when presenting its case," certainly in terms of procedural equity. This is not to say, however, that an [a]ccused is necessarily entitled to precisely the same amount of time or the same number of witnesses as the Prosecution. The Prosecution has the burden of telling an entire story, of putting together a coherent narrative and proving every necessary element of the crimes charged beyond a reasonable doubt. Defense strategy, by contrast, often focuses on poking specifically targeted holes in the Prosecution's case, an endeavour which may require less time and fewer witnesses.

[82] Status Conference, T. 15 December 2008, p. 13 (closed session).
[83] Defence Motion, paras. 89–102.
[84] *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Mathieu Ngirumpatse's Appeal from the Trial Chamber Decision of 17 September 2008, 30 January 2009, para. 29; citing *Nyiramasuhuko* Decision, para. 26; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR15bis.3, Decision on Appeals pursuant to Rule 15*bis*(D), 20 April 2007, para. 27.

> This is sufficient reason to explain why a principle of basic proportionality, rather than a strict principle of mathematical equality, generally governs the relationship between the time and witnesses allocated to the two sides.[85]

53. The Trial Chamber recalls that the principle of proportionality does not require that the Defence be provided with the same time to prepare its case, or the same means, as the burden of proof lies with the Prosecution.

54. Therefore, the Trial Chamber concludes that the discrepancy in the number of years that each party has had to conduct its investigations does not in and of itself constitute a violation of Article 20(4)(e), and thus that postponement of the start of Trial is not justified on this basis.

The Prosecution's disclosure obligations

55. The Defence submits that it has a fundamental right to access material pertaining to the judicial records of Prosecution witnesses,[86] and argues that the Prosecution has not cooperated with Defence requests for disclosure.[87] The Defence contends that the Prosecution has an obligation to obtain and disclose material relevant to the credibility of its witnesses, pursuant to Rules 66 and 68, and most notably with respect to Prosecution Witness CNAA.[88] Referring to the Pre-Trial Chamber's Decision granting the Defence Motion to meet with Prosecution witnesses,[89] the Defence submits that it has taken all available steps to obtain the Gacaca records of Prosecution witnesses.[90] The Defence concludes that the Prosecution has failed to comply with its obligations pursuant to Rules 66 and 68 of the Rules.[91]

56. With regard to the disclosure of the Gacaca records, the Prosecution contends that it has satisfied its obligations under Rule 66(A) of the Rules.[92] With regard to Rules 66 (B) and 68, the Prosecution considers that disclosure under these rules "is an on going and continuous process" and that "the Trial Chamber will evaluate the impact of any such material that may be disclosed after the commencement of trial."[93]

57. The Trial Chamber observes that the arguments proffered by the Defence in the instant Motion are substantially the same as those that it made in its 13 October 2009 Motion seeking an Order for Disclosure of Gacaca and Judicial Material Relating to Prosecution Witnesses.[94] The Trial Chamber addressed the Defence arguments in its

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[85] *Nyiramasuhuko* Decision, para. 26; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR15bis.3, Decision on Appeals pursuant to Rule 15*bis*(D), 20 April 2007, para. 27, quoting *Ori}* Decision, para. 7 (internal footnote omitted).
[86] Defence Motion, para. 104.
[87] Defence Motion, para. 106.
[88] Defence Motion, paras. 107, 115-116 and 128-133.
[89] Defence Motion, paras. 108-109.
[90] Defence Motion, paras. 110-111.
[91] Defence Motion, paras. 121-127.
[92] Prosecutor's Response, para. 12.
[93] Prosecutor's Response, para. 12.
[94] *Prosecutor v. Callixte Nzabonimana*, Case ICTR-98-44D-T, Motion of Defendant Nzabonimana for an Order Concerning Disclosure of Gacaca and Judicial Material Relating to Prosecution Witnesses, 13 October 2009.

Decision on that Motion,[95] and found that the Defence had not established that the Prosecution had violated its disclosure obligations pursuant to Rules (66)(A)(ii), 66(B) or 68(A). In the circumstances of this Motion the Trial Chamber sees no reason to hold otherwise and concludes that postponement of the start of the trial is not justified on the basis of the Defence allegation regarding the Prosecution's disclosure obligations. Moreover, should the Trial Chamber conclude at a later stage that a party has not been diligent in fulfilling its disclosure obligations, there are a number of remedies available, such as recalling a witness. Thus, the Trial Chamber concludes here that postponement of the start of Trial is not justified on this basis.

Delays in the translation of disclosed materials

58. The Defence submits that in August 2009, and again on 13 October 2009, it received large quantifies of material from the Prosecution relating to Prosecution witnesses, and that none of this information has yet been translated.[96] It notes that translation delays pose significant difficulties for the Defence,[97] and argues that the Defence is entitled to translations of such materials.[98]

59. The Prosecution argues that Article 20(4)(a) of the Statute[99] only requires that material be provided in a language the Accused understands,[100] and notes that the Accused received a copy of the Indictment in French in November 2008. As for the Gacaca records, the Prosecutor submits that they were submitted in Kinyarwandan, the native language of the Accused, and do not pertain to the nature and cause of the charges against the Accused. Therefore, it concludes that there has been no violation of the rights of the accused pursuant to Article 20(4)(a) of the Statute.[101]

60. The Trial Chamber notes that on 26 August 2009, the Prosecution disclosed material regarding an important number of Prosecution witnesses;[102] that it disclosed more material on 23 September 2009; and that additional material related to the prior judicial history of Prosecution Witness CNAA was disclosed on 13 October 2009.[103]

61. The Trial Chamber observes that contrary to the Prosecution's contention, it is not simply Article 20(4)(a) that is at stake in this matter but Articles 20(4)(b) and 20(4)(e). The Trial Chamber considers that language and translation issues may affect the ability of the Defence to prepare its case and the cross-examination of Prosecution witnesses within the meaning of Articles 20(4)(b) and 20(4)(e).

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[95] *Prosecutor v. Callixte Nzabonimana*, Case ICTR-98-44D-T, Decision on Callixte Nzabonimana's Motion for an Order Concerning Disclosure of Gacaca and Judicial Material Relating to Prosecution Witnesses (*Rules 66, 68 and 73 of the Rules of Procedure and Evidence*), 29 October 2009.

[96] Defence Motion, para. 112.

[97] Defence Motion, para. 113.

[98] Defence Motion, para. 103.

[99] Article 20(4)(a) of the Statute: "4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her."

[100] Prosecutor's Response, para. 21.

[101] Prosecutor's Response, para. 26.

[102] Interoffice Memorandum, Subject: Disclosure in the case Prosecutor v. Callixte Nzabonimana, ICTR-98-44-I, 26 August 2009.

[103] Interoffice Memorandum, Subject: Disclosure of CNAA Gacaca Records in the case Prosecutor v. Callixte Nzabonimana, ICTR-98-44D, 13 October 2009.

62. The Chamber notes that the issue of translation was raised during the pre-trial stage.[104] The Prosecution agreed to modify its list of appearances of the Prosecution witnesses in order to enable the Defence to receive translations of relevant material prior to cross-examination.[105] During the Pre-Trial Conference, the Chamber encouraged the parties to facilitate the translation process by identifying the portions of documents they need to rely on for the translation services.[106] Finally, the Trial Chamber notes that the Defence team has the facilities required for in-house review of documents in both French and English, and that the Accused, who was a Government Minister, and his investigators, speak Kinyarwanda. Thus, the Trial Chamber considers that the Defence team has at its disposal the resources necessary to review a significant amount of material, and urges the Defence to manage these resources in an efficient manner. The Trial Chamber concludes that postponement of the start of Trial is not justified on the basis of delays in translation.

Cooperation with the French authorities

63. The Defence submits that it has sought, since May 2009, to obtain the cooperation of the French Government, and information necessary to prove an alibi for the period 7-11 April 1994.[107] It argues that it will be able to challenge 10 allegations made in the Indictment when it obtains this information,[108] and that the material requested from the French government will enable it to prepare for the cross-examination of Prosecution witnesses.[109] The Defence refers to the Pre-Trial Chamber's 2 July 2009 Decision on this issue,[110] and to the Defence Motion[111] asking the Chamber to request the President of the Tribunal to report the matter of France's failure to comply with its obligations under Article 28 of the Statute.[112] The Defence further refers to a case pending before the French *Conseil d'État* on the same matter.[113]

64. In its Response, the Prosecution contends that the purported failure of the French authorities to cooperate with the Defence should not be cause to postpone the trial,[114] although it considers the position of the French authorities to be unfortunate.[115] The Prosecution adds that it would like to be informed promptly of any Defence intention to invoke a defence of alibi.[116]

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[104] See *inter alia*, Status Conference, T. 1 October 2009, pp. 18-20; Pre-Trial Conference, T. 15 October 2009, p. 34 (closed session) as for the translation of the Pre-Trial Brief.
[105] Pre-Trial Conference, T. 15 October 2009, pp. 27-28 (closed session): the Prosecutor agreed to remove CNAA from the first week to the third week.
[106] Pre-Trial Conference, T. 15 October 2009, p. 33 (closed session).
[107] Defence Motion, para. 135.
[108] Defence Motion, para. 136.
[109] Defence Motion, paras. 139 and 140.
[110] *Prosecution v. Callixte Nzabonimana*, Case No. TPIR 98-44D-PT, Décision sur la Requête urgente de Callixte Nzabonimana Demandant à la Chambre D'ordonner à la France Coopération et Assistance, 2 July 2009..
[111] *Prosecution v. Callixte Nzabonimana*, Case No. TPIR 98-44D-T, Nzabonimana's Motion Asking the Chamber to Request the President to Report the Matter of France's Refusal to Cooperate to the Security Council (Article 28 of the Statute of the Tribunal; Rules 7 *bis*, 19, 33B) and 54 of the Rules of Procedure and Evidence), 1 October 2009.
[112] Defence Motion, para. 137.
[113] Defence Motion, para. 138.
[114] Prosecutor's Response, paras 27 and 33.
[115] Prosecutor's Response, para. 30.
[116] Prosecutor's Response, para. 31.

65. In a Decision dated 19 October 2009,[117] the Trial Chamber acknowledged that the French Government had not satisfied the Pre-Trial Chamber's request for assistance in its 2 July 2009 Decision.[118] However, the Trial Chamber observes that the French Government has provided the Defence with the copies of the diplomatic telegrams suggesting that Nzabonimana was at the French Embassy on 7, 9 and 11 April 1994.[119] The Defence may adduce any further information received during the presentation of its case. Moreover, the question of where the accused was is a matter within his personal knowledge and should not prevent him from filing an alibi notice.[120] Thus, the Trial Chamber concludes that postponement of the start of Trial is not justified on the basis of this issue.

Pending extradition proceedings for two alleged accomplices of the Accused

66. The Defence submits that the Rwandan government has initiated extradition proceedings in New Zealand and France for two Rwandan citizens alleged to have been accomplices of the Accused.[121] The Defence intends to obtain copies of the extradition documentation from the authorities of those states.[122]

67. The Prosecutor did not respond with respect to this ground.

68. The Defence has not demonstrated that it has taken any steps to obtain the documentation sought nor has it adequately explained the relevance of this material. In addition, at this juncture, the Trial Chamber considers that Defence arguments that this material is critical to its case are purely speculative. The Trial Chamber further notes that the Defence may adduce any evidence arising from these proceedings during the Defence case. Thus, the Trial Chamber concludes that postponement of the start of Trial is not justified on the basis of this issue.

Conclusion

69. In conclusion, the Trial Chamber finds that Defence arguments in favor of a postponement of the start of trial are without merit.

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[117] *Prosecution v. Callixte Nzabonimana*, Case No. TPIR 98-44D-T, Decision on Nzabonimana's Motion Asking the Chamber to Request the President to Report the Matter of France's Refusal to Cooperate to the Security Council, (Article 28 of the Statute of the Tribunal; Rules 7 *bis*, 19, 33 B) and 54 of the Rules of Procedure and Evidence), 19 October 2009.

[118] *Procureur c. Callixte Nzabonimana*, Case TPIR 98-44D-PT, Décision sur la Requête Urgente de Callixte Nzabonimana Demandant à la Chambre d'ordonner à la France Coopération et Assistance, 2 July 2009.

[119] *Prosecution v. Callixte Nzabonimana*, Case No. TPIR 98-44D-T, Télécopie de M. Jacques Champagne de Labriolle, Ambassadeur de France en Tanzanie adressée a M. Adama Dieng, Greffier du Tribunal Pénal International pour le Rwanda, 29 janvier 2009 ; Annexes : Note verbale No. 66/TPIR concernant la transmission des extraits diplomatiques en date des 7, 9, et 11 avril 1994 portant sur les personnes réfugiées à l'Ambassade de France à Kigali, 29 janvier 2009; télégrammes diplomatiques, Objet : Personnalités réfugies à l'Ambassade de France, 7, 9 et 11 avril 1994.

[120] *Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-PT, Decision on Defence Urgent Motion for an Order Directed at the Kingdom of Belgium Pursuant to Article 28 of the Statute, 16 September 2009, para. 11.

[121] Defence Motion, paras. 141 and 145.

[122] Defence Motion, paras. 142-144 and 146.

FOR THESE REASONS, THE CHAMBER

DENIES the Defence Motion in its entirety.

Arusha, 30 October 2009, done in English.

Solomy Balungi Bossa
Presiding Judge

Bakhtiyar Tuzmukhamedov
Judge

Mparany Rajohnson
Judge

[Seal of the Tribunal]