

ICTR-99-54-T  
15-04-10  
(5904-5902)

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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 April 2010

**The PROSECUTOR**

v.

**Augustin NGIRABATWARE**

Case No. ICTR-99-54-T

JUDICIAL ARCHIVES  
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**SCHEDULING ORDER**

*Pursuant to Rule 54 of the Rules of Procedure and Evidence*

**Office of the Prosecutor**

Mr. Wallace Kapaya  
Mr. William Egbe  
Mr. Patrick Gabaake  
Mr. Iskandar Ismail  
Ms. Faria Rekkas

**Defence Counsel**

Mr. Peter Herbert  
Ms. Mylène Dimitri  
Mr. Deogratias Sebureze  
Ms. Anne-Gaëlle Denier

**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 “Chamber”);

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

**RECALLING** that:

1. In its Pre-Trial Brief of 19 March 2009, the Prosecution listed Witness ANAC as someone that it intended to call to provide evidence in this case.<sup>1</sup> The anticipated testimony of Prosecution Witness ANAC pertains to the Ministry of Planning’s alleged misuse of foreign funds.<sup>2</sup>
2. On 22 May 2009, the Prosecution proposed an order of appearance identifying him as one of its last witnesses.<sup>3</sup>
3. On 24 December 2009, the Prosecution filed a revised order of appearance, in which Witness ANAC’s testimony was planned for the week of 15 to 19 February 2010.<sup>4</sup>
4. On 1 February 2010, the Prosecution submitted another order of appearance, this time scheduling Witness ANAC to testify the week of 15 to 19 March 2010.<sup>5</sup>
5. In submissions filed on 4 and 10 March 2010, the Defence sought to postpone Witness ANAC’s testimony, or alternatively his cross-examination, until after it received full cooperation from various States and Institutions. The Prosecution did not oppose the postponement of the Witness’s testimony. On 12 March 2010, the Chamber denied the Defence motion.<sup>6</sup>
6. On 16 March 2010, the Prosecution expressed difficulties in establishing contact with Witness ANAC, and promised to give the Chamber a definite statement on the Witness’s availability the following day.<sup>7</sup>
7. On 17 March 2010, the Prosecution stated that it was still pursuing the matter, and would offer the Chamber a definitive position the next day.<sup>8</sup>

<sup>1</sup> The Prosecutor’s Pre-Trial Brief (Filed pursuant to Rule 73 (B) (i) *bis* of the Rules of Procedure and Evidence), 19 March 2009, Annex I pp. 2-3.

<sup>2</sup> Decision on Defence Urgent Motion to Postpone the Testimony of Witness ANAC (TC), 12 March 2010 (“Decision on Motion to Postpone ANAC”), para. 1.

<sup>3</sup> Revised Order of Appearance: 12 May 2009, filed 22 May 2009.

<sup>4</sup> Confidential Revised Order of Appearance of Witnesses: 25 January – 05 March 2010\*, 24 December 2009.

<sup>5</sup> Confidential Revised Order of Appearance of Witnesses: 25 January – 19 March 2010, filed 1 February 2010.

<sup>6</sup> Decision on Motion to Postpone ANAC (TC), pp. 2, 4-5.

<sup>7</sup> T. 16 March 2010, pp. 57-58.

<sup>8</sup> T. 17 March 2010, pp. 67-68.

8. On 18 March 2010, the Prosecution conceded that, despite its efforts to contact Witness ANAC over the previous 10 days, it had received no response. In light of this, the Chamber adjourned the proceedings until 21 June 2010, when it planned to commence the evidence of Witness ANAC.<sup>9</sup>

9. The Chamber made the scheduling Decision of 18 March 2010 contingent upon the availability of Witness ANAC and upon possible further submissions by the Parties.<sup>10</sup>

**CONSIDERING** that Witness ANAC is the lone remaining witness scheduled to testify for the Prosecution, and that it is still unclear whether Witness ANAC will be available on 21 June 2010;

**THE CHAMBER HEREBY:**

**ORDERS** the Prosecution to provide the Chamber with a definite answer, at the earliest possible time and in any event no later than 30 April 2010, as to whether Witness ANAC will be present to testify starting on 21 June 2010;

**ORDERS** that, if the Prosecution reports that Witness ANAC will be unavailable to testify starting on 21 June 2010, then the Defence case shall be scheduled to commence on that day, which will allow for the filing of any possible Rule 98*bis* Motion, the scheduling of a pre-defence conference and the filing of a pre-defence brief; and

**ORDERS** that, if the Prosecution confirms that Witness ANAC will be present to testify starting on 21 June 2010, then the Defence case shall be scheduled to start on or around 11 October 2010 to allow for the filing of any possible Rule 98*bis* Motion, the scheduling of a pre-defence conference and the filing of a pre-defence brief.

Arusha, 15 April 2010



William H. Sekule  
Presiding Judge




Solomy Balungi Bossa  
Judge



Mparany Rajohnson  
Judge

[Seal of the Tribunal]

<sup>9</sup> T. 18 March 2010, pp. 2-3, 77, 81-84.

<sup>10</sup> *Id.*, pp. 81-82.