



**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 2010

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

**DECISION ON PROSECUTION MOTION OF 24 JUNE 2010
FOR LEAVE TO VARY ITS WITNESS LIST**

Office of the Prosecutor

Mr. Wallace Kapaya
Mr. William Egbe
Mr. Patrick Gabaake
Ms. Veronica Wright
Mr. Iskandar Ismail
Mr. Michael Kalisa
Ms. Faria Rekkas

Defence Counsel

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

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”);

BEING SEIZED of the “Prosecutor’s Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders [made pursuant to Rules 73*bis* (E), 54, 69, 75 of the Rules of Procedure and Evidence, Article 21 of the Statute of the Tribunal and the Inherent Criminal Jurisdiction of the Tribunal]”, filed confidentially on 24 June 2010;

CONSIDERING:

- (a) The “Defence Response to the Third Prosecutor’s Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders”, filed confidentially on 29 June 2010 (the “Response”); and
- (b) The “Prosecutor’s Reply to Defence Response to Prosecutor’s Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders”, filed confidentially on 2 July 2010 (the “Reply”);

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

NOW DECIDES the Motion pursuant to Rules 54, 66 and 73*bis* (E) of the Rules.

INTRODUCTION

1. On 19 March 2009, the Prosecution submitted its Pre-Trial Brief, which included a list of 16 witnesses it intended to call.¹
2. On 25 May 2009, the Prosecution filed an amended Pre-Trial Brief. The list of witnesses contained the same 16 persons, and added an Investigator.²
3. In a letter dated 25 August 2009, the Prosecution sought to add Witness ANAQ to its witness list. The Chamber took note of this addition on 7 September 2009.³
4. On 28 January 2010, the Chamber granted the Prosecution motion for leave to vary its witness list filed on 22 December 2009, and ordered that Witnesses ANAB,

¹ The Prosecutor’s Pre-Trial Brief (Filed pursuant to Rule 73 (B) (i) *bis* of the Rules of Procedure and Evidence), 19 March 2009, para. 206, Annex I.

² The Prosecutor’s Revised Pre-Trial Brief (Filed pursuant to Court Order dated 19 May 2009 and Rule 73 (B) (i) *bis* of the Rules of Procedure and Evidence), 25 May 2009, para. 206, Annex 1.

³ Letter from Mr. Wallace Kapaya, Senior Appeals Counsel, to Mr. Roger-Noel Kouambo, Coordinator, Trial Chamber II, Court Management Section, dated 25 August 2009; T. 7 September 2009, p. 11.

ANAI and ANAQ be dropped from the Prosecution list and that Witnesses AFS, ANAR, ANAS, ANAT and ANAU be added to it.⁴

5. On 1 February 2010, the Chamber granted the Prosecution leave to drop Witness ANAA from its list.⁵

6. On 9 March 2010, the Prosecution appended a statement by Witness AHJ to a motion to compel the Defence to disclose alibi particulars.⁶

7. In the first two sessions of the case, running from 23 September 2009 to 22 October 2009 and from 25 January 2010 through 18 March 2010, the Chamber heard 17 Prosecution witnesses. These were all of the Prosecution witnesses except Witness ANAC, whose appearance remained uncertain at the time of adjournment on 18 March 2010.⁷

8. On 24 March 2010, the Prosecution moved to admit into evidence, in lieu of oral testimony, a statement by Witness AHJ and other documents.⁸

9. On 29 April 2010, the Prosecution moved for leave to further vary its witness list by dropping Witness ANAC, as well as by adding Witness AHJ and two others. The Prosecution also sought to withdraw its motion of 24 March 2010.⁹

10. On 10 May 2010, the Prosecution filed a motion seeking leave to call “a maximum of three [03] prosecution witnesses” to rebut anticipated Defence alibi evidence.¹⁰ The Prosecution reiterated its desire to withdraw its motion of 24 March 2010, and also requested leave to withdraw its motion of 29 April 2010.¹¹

⁴ Decision on Prosecution Motion for Leave to Vary Its Witness List (TC), 28 January 2010 (“Decision of 28 January 2010”), p. 15.

⁵ T. 1 February 2010, pp. 69-70.

⁶ Prosecutor’s Supplementary Motion to Compel the Accused to Disclose Particulars of His Alibi [made pursuant to Rules 73(A), 67A(ii)(a), 54 and 89(C) of the Rules of Procedure and Evidence and the inherent criminal jurisdiction of the Tribunal], 9 March 2010, Annex D.

⁷ Decision on Prosecution Motion to Vacate the Trial Date (TC), 24 May 2010 (“Decision of 24 May 2010”), para. 8, citing T. 18 March 2010, pp. 81-84.

⁸ Prosecutor’s Motion to Admit Evidence in Lieu of Oral Testimony and Ancillary Reliefs [made pursuant to Rules 89(C), 92*bis*, 67 (A)(ii)(a), 54 and the Inherent Criminal Jurisdiction of the Tribunal], 24 March 2010, paras. 1, 14, 25-26, 37 (i), Annex B.

⁹ Prosecutor’s Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders [made pursuant to Rules 73*bis* (E), 54, 69, 75 of the Rules of Procedure and Evidence, Article 21 of the Statute of the Tribunal and the Inherent Criminal Jurisdiction of the Tribunal], 29 April 2010, paras. 1, 4, 9, 52-53, 57.

¹⁰ Prosecutor’s Extremely Urgent Motion for Leave to Vacate the Scheduled Trial Date and Extend the Date for Commencement of Third Phase of Prosecution Case [made pursuant to Rules 73*bis* (A) and 54 of the Rules of Procedure and Evidence, and the Inherent Criminal Jurisdiction of the Tribunal], 10 May 2010, para. 49 (vi). The bracketed “[03]” comes directly from the Prosecution motion. See also *id.*, para. 46.

¹¹ *Id.*, paras. 2, 7, 49 (vii). See also Prosecutor’s Rejoinder to Defence Response to the Prosecutor’s Extremely Urgent Motion for Leave to Vacate the Scheduled Trial Date and Extend the Date for Commencement of Third Phase of Prosecution Case [made pursuant to Rules 73*bis* (A) and 54 of the Rules of Procedure and Evidence, and the Inherent Criminal Jurisdiction of the Tribunal], 18 May 2010, paras. 3, 11.

11. On 24 May 2010, the Chamber granted in part the Prosecution motion of 10 May 2010, and ordered that if the Prosecution intended to vary its witness list in order to rebut the alibi, then it should file an appropriate motion by 24 June 2010. The Chamber also granted the variation of the Prosecution's witness list by dropping Witness ANAC, as well as the withdrawal of the Prosecution motions of 24 March and 29 April 2010.¹²

12. On 29 June 2010, the Chamber denied the Defence motion for certification to appeal the Decision of 24 May 2010.¹³

SUBMISSIONS OF THE PARTIES

Prosecution Motion

13. The Prosecution requests the Chamber for leave to vary its witness list by adding Witnesses ANAW, DAK, AHJ, ANAX and ANAY, and for an extension of the protective measures for Prosecution witnesses to these five individuals.¹⁴

14. The Prosecution submits that the anticipated testimony of these five potential witnesses has probative value. It is the Prosecution's expectation that:

- (a) Witness ANAW will discuss the feasibility of travel between Kigali and Gisenyi from 7 through 12 April 1994;
- (b) Witness DAK will address the conditions of various routes between Kigali and Gisenyi between 7 April and 6 May 1994;
- (c) Witness AHJ will testify about the conditions at the French Embassy around 10 April 1994, including whether some Ministers could freely enter and exit the Embassy in the company of escorts;
- (d) Witness ANAX will describe an *Interahamwe* attack in Gisenyi on 7 April 1994, and will testify that Witness ANAE told her that she saw Ngirabatware elsewhere in Gisenyi on 7 April 1994; and
- (e) Witness ANAY will state that he saw Ngirabatware in Gisenyi around 8 April 1994, and will also "describe the conditions under which he saw him".¹⁵

¹² Decision of 24 May 2010, p. 9.

¹³ Decision on Defence Motion for Certification to Appeal the Trial Chamber's Decision on Prosecution Motion to Vacate the Trial Date (TC), 29 June 2010, p. 6.

¹⁴ Motion, paras. 1, 4, 55-57.

¹⁵ *Id.*, paras. 43, 45-46 (i). The Chamber notes that, in the Prosecution Motion, there are no paragraphs 47 through 53. Paragraph 46 has four subheadings: b, c, d and e. This same paragraph also contains 15 subsections, labeled (b) through (p). Throughout this Decision, citations to paragraph 46 refer to the subsections.

15. The Prosecution claims that the Defence should suffer no prejudice from the addition of these five witnesses. They will discuss matters within Ngirabatware's personal knowledge, and sufficient time exists for the Defence to prepare for their testimony. Even if prejudice may result, the appropriate remedy would be to grant additional time to the Defence to prepare for cross-examination.¹⁶

16. According to the Prosecution, good cause exists for the variation of its witness list. This variation is justified by the late Defence disclosure of alibi particulars, by the recent Appeals Chamber Judgements in the *Zigiranyirazo* and *Nchamihigo* cases, and by this Chamber's Decision of 24 May 2010. Moreover, the Prosecution has acted diligently in pursuing the issue of alibi disclosure, and in identifying potential witnesses to testify about the alibi.¹⁷

17. The Prosecution also submits that the variation will serve the interests of justice, as the Prosecution has a right and a duty to present its case-in-chief effectively. Furthermore, the variation will promote judicial economy, and the five witnesses should be finished testifying by the deadline envisioned by the Chamber's Decision of 24 May 2010.¹⁸

Defence Response

18. The Defence prays the Chamber to dismiss the Prosecution Motion. In the alternative, the Defence seeks immediate disclosure of the new witnesses' previous statements and transcripts of their testimony before the Tribunal, immediate Prosecution assistance in relaying any other statements of these witnesses, an order that the Prosecution case will recommence at least 60 days after the Defence receives these documents, and a postponement of the Defence case-in-chief until at least January 2011.¹⁹

19. The Defence disputes that the anticipated evidence of the proposed witnesses will be relevant. Because Witnesses ANAW and DAK did not travel between Kigali and Gisenyi from 6 through 12 April 1994, they cannot speak to the time necessary to complete such a trip, but can offer only second-hand information about the condition of the roads. Witness AHJ arrived at the French Embassy on 10 April 1994, and his testimony is irrelevant to the allegations of 7 and 8 April 1994.²⁰

20. The Defence emphasizes that, contrary to the Chamber's Decision of 24 May 2010, the Prosecution has proposed witnesses for purposes other than alibi rebuttal. Witnesses ANAX and ANAY will not address the feasibility of travel from Kigali to Gisenyi, but rather will charge Ngirabatware with new allegations. Witness AHJ's

¹⁶ *Id.*, paras. 46 (j)-(n).

¹⁷ *Id.*, para. 54. See also *id.*, paras. 5-31.

¹⁸ *Id.*, paras. 39-44, 46 (o)-(p).

¹⁹ Reply, paras. 120-125, 134-136.

²⁰ *Id.*, paras. 29-30, 39-40, 43, 47, 128.

anticipated testimony pertains only to the travel of unidentified “Ministers”, and does not address the alibi of Ngirabatware.²¹

21. The Defence also submits that the Prosecution has not acted diligently or shown good cause for the requested variance at this late stage of the proceedings. The Prosecution knew, before the commencement of trial, that Ngirabatware’s alibi placed him in Kigali from 6 through 12 April 1994. Because the issue of travel between Kigali and Gisenyi could have been addressed earlier, there is no good cause for the late addition of Witnesses ANAW and DAK. As for Witness AHJ, the Defence assails the Prosecution’s wavering approach to his evidence since the Prosecution first disclosed his statement on 9 March 2010. No good cause exists for Witness AHJ’s late addition.²²

22. According to the Defence, its disclosure of alibi has not violated the Rules. Furthermore, the Prosecution has not indicated how it was prejudiced by any alleged violation.²³

23. The Defence, however, will suffer prejudice if forced to face new witnesses at the close of the Prosecution case-in-chief. Moreover, the Defence cannot effectively cross-examine these witnesses without timely access to their statements and an adequate opportunity to investigate their anticipated evidence.²⁴

24. Finally, the Defence claims that the Prosecution has breached its Rule 66 obligations by failing to disclose documents pertaining to the potential witnesses. The Defence requests immediate disclosure of these documents, as well as Prosecution assistance in obtaining other relevant documents.²⁵

Prosecution Reply

25. The Prosecution states that, due to the late disclosure of alibi particulars, it only learned the relevance of the five proposed witnesses after 3 May 2010. Because their evidence will rebut Ngirabatware’s alibi, and will not charge him with new crimes, the Defence will not be prejudiced by any variation to the witness list.²⁶

26. Furthermore, the Chamber should disregard the Defence request that, if the Prosecution Motion is granted, its case-in-chief should not commence until January 2011. About one month ago, the Defence argued that an adjournment of its case-in-chief until

²¹ *Id.*, paras. 43-45, 47-56.

²² *Id.*, paras. 31-38, 41, 43, 60, 72.

²³ *Id.*, paras. 57-86.

²⁴ *Id.*, paras. 104-107, 109, 116-118, 121.

²⁵ *Id.*, paras. 93-108, 110, 112-114, 129, 131-132.

²⁶ Reply, paras. 5-9, 11-12, 14-15. The Chamber notes that the Prosecution Reply identifies the proposed witnesses as Witnesses ANAW, DAK, AHJ, ANAK and ANAV. See *id.*, paras. 7-9, 11, 13, 15. Given the context, the Chamber considers that these submissions are meant to refer to Witnesses ANAW, DAK, AHJ, ANAX and ANAY.

mid-November 2010 constituted prejudicial delay. This dichotomy shows that the Defence submissions on this issue should not be taken seriously.²⁷

27. The Prosecution undertakes to disclose additional documents relating to these five witnesses as soon as they become available.²⁸

DELIBERATIONS

28. As a preliminary matter, the Chamber notes that, contrary to Defence suggestions,²⁹ the Prosecution filed its Motion on 24 June 2010.³⁰ This comports with the deadline set out in the Decision of 24 May 2010,³¹ and the Chamber will consider the merits of the Motion.

29. Rule 73bis (E) permits the Prosecutor to “move the Trial Chamber for leave to reinstate the list of witnesses or to vary his decision as to which witnesses are to be called” after the commencement of trial, if the Prosecutor believes it to be in the interests of justice. Whether to grant such a motion is a matter for the Chamber’s discretion.³²

30. Variations to a witness list must be supported by good cause and be in the interests of justice.³³ The jurisprudence of this Tribunal has consistently held that the following factors are relevant to the Chamber’s analysis of these issues:³⁴

²⁷ *Id.*, para. 16.

²⁸ *Id.*, para. 13.

²⁹ See Response, paras. 26, 130.

³⁰ The Motion bears a time stamp of 5.32 p.m. on 24 June 2010. See Motion, p. 1.

³¹ Decision of 24 May 2010, p. 9.

³² Decision of 28 January 2010, para. 49.

³³ *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Nzabonimana’s Motion for the Variation of Its List of Witnesses (TC), 4 June 2010 (“*Nzabonimana Decision*”), para. 32, citing *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Casimir Bizimungu’s Motion to Vary Witness List; and to Admit Evidence of Witness in Written Form in Lieu of Oral Testimony (TC), 1 May 2008 (“*Bizimungu et al. Decision of 1 May 2008*”), para. 12; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T (“*Bagosora et al.*”), Decision on Bagosora Motion to Present Additional Witnesses and Vary Its Witness List (TC), 17 November 2006, para. 2.

³⁴ *Nzabonimana Decision*, para. 32, citing *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, Consolidated Decision on Prosecution Oral Motion to Reduce Defence Witness List and Defence Motion to Vary Witness List (TC), 16 January 2009, para. 7; *Bizimungu et al. Decision of 1 May 2008*, para. 13; *The Prosecutor v. Augustin Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Nzuwonemeye’s Request to Vary His Witness List (TC), 31 January 2008, para. 3; *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Decision on the Defence Motions for Additional Time to Disclose Witnesses’ Identifying Information, to Vary Its Witness List and for Video-Link Testimony, and on the Prosecution’s Motion for Sanctions (TC), 11 September 2007, para. 10; *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Defence Motion to Vary the Defence Witness List (TC), 28 March 2007, para. 3; *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Decision on Accused’s Motion to Expand and Vary the Witness List (TC), 28 March 2006, para. 11. See also *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-I, Decision on Prosecutor’s Motion to Vary His Witness List (TC), 11 August 2009, paras. 11-12, citing *Bagosora et al.*, Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73bis (E) (TC), 26 June 2003, para. 14; *The*

1) The materiality and probative value of the testimony in relation to existing witnesses and allegations in the indictment; 2) the complexity of the case; 3) any potential prejudice to the opposing party; 4) the justification offered for the late variation of the witness list; 5) the timing of the late disclosure; and 6) any delays in the proceedings occasioned by the proposed variation.

31. The Chamber recalls that it has addressed these factors in its Decision of 24 May 2010. After observing that the Defence appears to have disclosed its alibi information in a piecemeal fashion that has not been specific and consistent, the Chamber concluded that this apparent lack of clarity and specificity may have denied the Prosecution the opportunity to investigate effectively the Defence alibi.³⁵ In light of this, the Chamber considers that good cause exists for the addition of any witness whose anticipated testimony will address the alibi.

32. As for Witness AHJ, the Defence claims that there is no good cause for his addition, in part because the Prosecution addressed his evidence in four distinct submissions before the present Motion.³⁶ Three of these prior submissions came before the Defence notice of 3 May 2010, and the other submission sought to withdraw a pending motion filed before this Defence notice. Because of this timing, these previous submissions are not relevant to the Chamber's consideration of good cause as to this Witness.

Witnesses ANAW, DAK and AHJ

33. The anticipated testimonies of Witnesses ANAW and DAK address the possibility of travel between Kigali and Gisenyi between 7 and 12 April 1994, whereas Witness AHJ is expected to discuss conditions at the French Embassy around 10 April 1994.

34. The Chamber considers that their anticipated testimony may be relevant and have probative value. Various paragraphs of the Indictment allege Ngirabatware's crimes in Gisenyi in April 1994,³⁷ and these Witnesses' evidence may help to shed light on whether Ngirabatware's alibi is reasonably possibly true

35. Furthermore, the Chamber does not consider that the addition of these Witnesses will prejudice the Defence, for the reasons stated in the Decisions of 24 May and 29 June 2010. The Defence will have adequate time to prepare for the evidence of three alibi rebuttal witness, and will have sufficient time prior to the commencement of the Defence case. Accordingly, the Chamber grants the Prosecution request to add Witnesses ANAW, DAK and AHJ to its witness list.

Prosecutor v. Ferdinand Nahimana et al., Case No. ICTR-99-52-T, Decision on the Prosecutor's Oral Motion for Leave to Amend the List of Selected Witnesses (TC), 26 June 2001, para. 20.

³⁵ Decision of 24 May 2010, paras. 32-36.

³⁶ See, for example, Response, para. 37. The Prosecution's earlier submissions with respect to Witness AHJ are described above in the Introduction. See paras. 6, 8-10.

³⁷ See, for example, Indictment, paras. 16, 25-26, 42-43, 52-52.

Witnesses ANAX and ANAY

36. The Chamber recalls that its Decision of 24 May 2010 permitted the Prosecution “to take steps to vary its witness list in order to rebut the alibi”.³⁸ The Prosecution proposes two witnesses – Witnesses ANAX and ANAY – whose anticipated testimony ascribes a range of potentially criminal acts to Ngirabatware outside of Kigali, but does not directly address the alibi.³⁹ In light of this, the Chamber considers that there is no good cause for the addition of these witnesses at this time.

The Defence’s Requested Relief in the Alternative

37. In its Response, the Defence requested various reliefs in the event that the Chamber grants the Prosecution Motion. Because leave has been granted for the addition of Witnesses ANAW, DAK and AHJ, the Chamber will consider the Defence requests related to these Witnesses.

38. On the issue of disclosure, the Prosecution asserted that it disclosed, in its Motion of 24 June 2010, the unredacted statements of the Witnesses.⁴⁰ Even after the Defence surmised that other statements existed,⁴¹ the Prosecution confirmed that it had already disclosed all such statements.⁴²

39. According to the Tribunal’s jurisprudence and Rule 66 (A)(ii), the Prosecution has an obligation to disclose previous statements of all Prosecution witnesses to the Defence. For the purposes of this Rule, a “statement” includes the transcripts of a witness’s testimony in another case, if the witness is to testify on the same subject matter as before.⁴³

40. In discharging its disclosure obligations under Rule 66 (A)(ii), the Prosecution is presumed to act in good faith.⁴⁴ Here, the Prosecution has confirmed that it disclosed, on 24 June 2010, the statements of Witnesses ANAW, DAK and AHJ.⁴⁵ The Chamber considers that the Prosecution has fulfilled its duty under Rule 66 (A)(ii).

41. Although the Prosecution filed the present motion on 24 June 2010, it appears that the Defence did not receive it until 25 June 2010.⁴⁶ Rule 66 (A)(ii) requires disclosure of

³⁸ Decision of 24 May 2010, p. 9. See also *id.*, para. 36.

³⁹ See Motion, paras. 45-46, 46 (f)-(g), Annexes C-D.

⁴⁰ *Id.*, para. 55.

⁴¹ Response, paras. 96, 113-114.

⁴² Reply, para. 13.

⁴³ *The Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82-PT, Decision on Defence ‘Requete en Urgence de la Defense Concernant les Manquements du Procureur a Ses Obligations de Communiquer les Pieces et Ses Effets sur le Calendrier du Proces’ (TC), 27 February 2009 (“*Ntawukulilyayo* Decision”), para. 4, citing *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-I, Decision on Prosper Mugiraneza’s Motion to Require Strict Compliance with Rule 66 (A)(ii) (TC), dated 5 May 2004, para. 8.

⁴⁴ *Ntawukulilyayo* Decision, para. 5, citing *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera’s Motion on Notice of Violation of Rule 66(A)(ii) for Witnesses ALZ and AMC, and for Remedial and Punitive Measures (TC), 11 July 2007, para. 8.

⁴⁵ Motion, para. 55; Reply, para. 13.

⁴⁶ See Response, paras. 26, 130.

any witness statements “[n]o later than 60 days before” the trial date. Accordingly, the Chamber schedules the testimony of these Witnesses to commence on 24 August 2010, and in order to expedite the remainder of the Prosecution’s case-in-chief, directs that the new Witnesses be made available as of this date.

42. However, in line with its prior considerations of scheduling,⁴⁷ the Chamber directs that the Prosecution case-in-chief will recommence on 23 August 2010, when the Chamber will address any pending trial issues, including the admission of exhibits into evidence.

43. The Defence also asks that the Prosecution take immediate steps to obtain various documents pertaining to Witnesses ANAW, DAK and AHJ.⁴⁸ The Prosecution has affirmed that it will “disclose other information or documents relating to the [] witnesses as soon as it is available.”⁴⁹ In light of the need to advance the proceedings, the Chamber urges both Parties to cooperate in this matter.⁵⁰

44. The Defence also requests an adjournment of its case-in-chief until at least January 2011. Currently, at least two months will elapse from the expected end of the Prosecution case-in-chief and the scheduled commencement of the Defence case on 15 November 2010.⁵¹ The Defence does not address why it deems this an insufficient amount of time to prepare for its case-in-chief, and the Chamber denies this request.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Motion in part;

ORDERS that Witnesses ANAW, DAK and AHJ be added to the Prosecution witness list;

ORDERS that the protective measures set out in the Chamber’s Decision of 7 May 2009 be applied to the new Witnesses;

URGES the Parties to cooperate in obtaining any documents pertaining to the new Witnesses;

DIRECTS that the Prosecution case-in-chief will recommence on 23 August 2010;

DIRECTS that the testimony of the new Witnesses will commence on 24 August 2010; and

⁴⁷ Decision of 24 May 2010, para. 36.

⁴⁸ Response, paras. 97-101, 113-114.

⁴⁹ Reply, para. 13.

⁵⁰ See Decision on Defence Extremely Urgent Motion on Issues Related to the Preparation of the Trial (TC), dated 17 September 2009, para. 49.

⁵¹ The Chamber previously stated that the break between the Prosecution and Defence case would not exceed two months. See Decision on Trial Date (TC), 12 June 2009, para. 56.

DIRECTS that the new Witnesses be made available as of 24 August 2010.

Arusha, 15 July 2010

William H. Sekule
Presiding Judge

Solomy Balungi Bossa
Judge

Mparany Rajohnson
Judge

[Seal of the Tribunal]