

ICTR-99-54-T
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(10096 - 10092)

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Mwema



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-54-0475

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Solomy Balungi Bossa
Judge Mparany Rajohnson

Registrar: Mr. Adama Dieng

Date: 01 February 2011

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

JUSTICE
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**DECISION ON THREE PROSECUTION MOTIONS
TO COMPEL IMMEDIATE DISCLOSURE BY THE DEFENCE**

Office of the Prosecutor

Mr. Wallace Kapaya
Ms. Veronic Wright
Mr. Patrick Gabaake
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

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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 "Chamber");

BEING SEIZED of:


- (a) the "Prosecutor's Extremely Urgent Motion to Compel the Defence to Immediately Disclose Identifying Information and Other Particulars of Defence Witnesses", filed on 18 October 2010 (the "First Prosecution Motion");
- (b) the "Prosecutor's Additional Extremely Urgent Motion to Compel the Defence to Immediately Disclose Missing Identifying Information and Other Particulars of Defence Witnesses", filed on 20 October 2010 (the "Second Prosecution Motion"); and
- (c) the "Prosecutor's Extremely Urgent Motion to Compel the Defence to Immediately Disclose Defence Witness Statements And Other Reliefs" filed on 27 October 2010 (the "Third Prosecution Motion");

CONSIDERING:

- (a) the "Defence Response to Prosecutor's Extremely Urgent Motion to Compel the Defence to Immediately Disclose Identifying Information and Other Particulars of Defence Witnesses and to Prosecutor's Additional Extremely Urgent Motion to Compel the Defence to Immediately Disclose Missing Identifying Information and Other Particulars of Defence Witnesses", filed on 21 October 2010 (the "First Defence Response");
- (b) the "Prosecution Objections to Defence Response to Prosecution's Additional Extremely Urgent Motion to Compel the Defence to Immediately Disclose Missing Identifying Information and Other Particulars of Defence Witnesses", filed on 22 October 2010;
- (c) the "Defence Rejoinder to Prosecutor's Objections to Defence Response to Prosecution's Additional Extremely Urgent Motion to Compel the Defence to Immediately Disclose Missing Identifying Information and Other Particulars of Defence Witnesses", filed on 25 October 2010;
- (d) the "Defence Response to the Prosecutor's Extremely Urgent Motion to Compel the Defence to Immediately Disclose Defence Witness Statements and Other Reliefs", filed on 1 November 2010 (the "Second Defence Response"); and

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

NOW DECIDES the three Prosecution Motions pursuant to Rule 73 of the Rules.



INTRODUCTION

1. On 15 and 19 October 2010, the Defence provided identifying information for its witnesses.¹
2. On 15 November 2010, the Chamber heard oral submissions by the Parties concerning the Prosecution Motion to postpone the commencement of the Defence case.²
3. In an Oral Decision on 16 November 2010 ("Oral Decision"), the Chamber denied this Motion, ordered the Defence to disclose further information concerning its witnesses, and ordered that the Defence case begin immediately.³
4. On 16 and 22 November 2010, the Defence provided further identifying information for its witnesses.⁴

SUBMISSIONS OF THE PARTIES

Prosecution

5. The Prosecution prays the Chamber to order the Defence to immediately disclose the identifying information for all of its witnesses, including their parents' names, present residential address, and current nationality and occupation. If the Defence fails to disclose this information, it should be barred from calling the witnesses with incomplete identifying information. The Prosecution also asks the Chamber to order the immediate disclosure of all witness statements and Defence exhibits.⁵

Defence

6. The Defence asks the Chamber to dismiss the three Prosecution Motions. A subsequent disclosure of additional identifying information has rendered these requests moot. The Defence has already disclosed the witness statements in its possession, and has complied with its obligation to disclose the list of exhibits.⁶

DELIBERATIONS

7. As a preliminary matter, the Chamber notes that the Prosecution seeks to bar the Defence from calling any witness whose particulars have not been disclosed. The Prosecution did not provide any legal basis to support its request, but merely places it in

¹ Identifying information of Defence protected witnesses, 15 October 2010; Additional Identifying information of Defence protected witnesses, 19 October 2010.

² T. 15 November 2010, pp. 2-22.

³ T. 16 November 2010, pp. 2-5.

⁴ Additional Identifying information of Defence protected witnesses, 16 November 2010; Additional Identifying information of Defence protected witnesses, 22 November 2010.

⁵ First Prosecution Motion, para. 4, p. 3; Second Prosecution Motion, paras. 6, 10; Third Prosecution Motion, paras. 15-16.

⁶ First Defence Response, paras. 36-37; Second Defence Response, paras. 7, 15, 21-24, 31, 34.

the prayer for relief.⁷ As such, the Chamber considers this request to be unsubstantiated, and will not address it here.⁸

8. In the Oral Decision, the Chamber ordered the Defence to disclose additional information about its witnesses. The Chamber noted the Defence's position that it has disclosed all witness statements in its possession, and denied the Prosecution request for disclosure of further witness statements. The Chamber ruled, however, that should any additional witness statements become available, these should be disclosed immediately to the other party. The Chamber also denied the Prosecution prayer to be provided with the Defence exhibits.⁹

9. Because the Oral Decision addressed the various relief sought by the Prosecution in its three Motions, the Chamber dismisses these Motions as moot.

10. The Chamber recalls that, in the Oral Decision, it ordered the Defence to disclose all identifying information of its first 10 witnesses immediately, and to disclose the omissions as to other witnesses before 23 November 2010.¹⁰ The Chamber expects that this has been done, and anticipates that the Parties will inform the Chamber if there are any remaining omissions that prevent the identification or location of listed Defence witnesses.

11. The Chamber also recalls that, in the Oral Decision, it ordered the Defence to disclose immediately the complete residential addresses of witnesses residing outside of Rwanda, or explain why such information is lacking.¹¹ Because it does not appear that the Defence has complied with this order,¹² the Chamber directs the Defence to comply with this order immediately.

⁷ Second Prosecution Motion, para. 10.

⁸ See Decision on Defence Motion for Reconsideration, or, in the alternative, Certification to Appeal the Oral Decision of 18 March 2010 (TC), 15 April 2010, para. 5.

⁹ T. 16 November 2010, pp. 2-5.

¹⁰ *Id.*, pp.3-4.

¹¹ *Id.*

¹² See Additional Identifying information of Defence protected witnesses, 22 November 2010, pp. 3, 5-9.




FOR THE ABOVE REASONS, THE CHAMBER

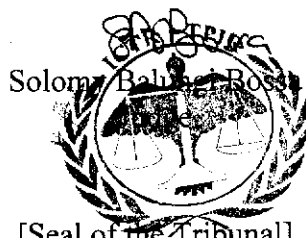
DISMISSES the three Prosecution Motions as moot; and

DIRECTS the Defence to comply immediately with the Chamber's order described in paragraph 11 of this Decision.

Arusha, 01 February 2011



William H. Sekule
Presiding Judge



[Seal of the Tribunal]



Mparany Rajohnson
Judge