



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-99-54-T  
28-02-2011  
(10234-10231)

10234  
Frída

OR: ENG

**TRIAL CHAMBER II**

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

Registrar: Mr. Adama Dieng

Date: 28 February 2011

JUDICIAL RECORDS ARCHIVES  
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**The PROSECUTOR**

v.

**Augustin NGIRABATWARE**

Case No. ICTR-99-54-T

**SCHEDULING ORDER**

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

**Office of the Prosecutor**

Mr. Wallace Kapaya  
Mr. William Egbe  
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

**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. On 24 May 2010, the Chamber scheduled the Defence case-in-chief to commence on 15 November 2010. The Defence case was expected to continue through 17 December 2010, and from 17 January through 11 February 2011.<sup>1</sup>
2. On 31 August 2010, the Prosecution closed its case-in-chief after having called 20 witnesses;<sup>2</sup>
3. On 21 October 2010, the Defence filed its Pre-Defence Brief, and announced its intention to call 96 witnesses;<sup>3</sup>
4. The Chamber held a Pre-Defence Conference on 25 October 2010, and urged the Defence to examine its witness list to ensure that it includes only witnesses that are required for the presentation of an adequate and clear Defence;<sup>4</sup>
5. On 26 October 2010, the Defence disclosed the order of appearance of the first 10 witnesses it intended to call, none of whom included the Accused;<sup>5</sup>
6. On 9 November 2010, the Defence stated that the Accused would testify at some point during the first trial session from 15 November through 17 December 2010;<sup>6</sup>
7. On 12 November 2010, the Defence informed the Chamber and the Prosecution that the Accused would testify as the first Defence witness on 15 November 2010;<sup>7</sup>
8. On 15 November 2010, the Chamber heard oral submissions by the Parties concerning the Prosecution Motion to postpone the commencement of the Defence case;<sup>8</sup>

<sup>1</sup> Decision on Prosecution Motion to Vacate the Trial Date (TC), 24 May 2010, para. 38. The Court Management Section reminded the Parties of these dates on 4 November 2010. See Reminder Notice – Commencement of Defence Case In the Matter of “The Prosecutor vs. Augustin Ngirabatware” (ICTR-99-54-T), 4 November 2010, para. 1.

<sup>2</sup> T. 31 August 2010, p. 56.

<sup>3</sup> Pre-Defence Brief, 21 October 2010, para. 5. The Chamber notes that the chart spanning pages 7 through 10 of the Pre-Defence Brief appears to list only 95 witnesses who might testify.

<sup>4</sup> T. 25 October 2010, p. 7.

<sup>5</sup> Augustin Ngirabatware / ICTR No. 99-54-T / Pre Defence Conference – follow up issues, 26 October 2010, Annex 1 (Order of appearance of the 10 first witnesses the Defence intends to call).

<sup>6</sup> Testimony of the Accused, Dr. Augustin Ngirabatware, 9 November 2010, p. 1.

<sup>7</sup> Testimony of the Accused, Dr. Augustin Ngirabatware, 12 November 2010, p. 1.



9. In an oral Decision on 16 November 2010, the Chamber denied the Prosecution Motion, and ordered the Defence case to begin immediately;<sup>9</sup>

10. From 16 November through 14 December 2010, and from 3 February through 14 February 2011, the Accused testified in his own Defence;<sup>10</sup>

11. On 22 November 2010, the Defence appeared to list a potential new witness for the first time;<sup>11</sup>

12. On 24 January 2011, the Defence stated that it would no longer seek to call a particular individual, and that “[a]s for the other witnesses that the Defence does not intend to call, the Defence cannot make a final determination of the matter until it speaks with Dr. Augustin Ngirabatware, namely at the end of his testimony”;<sup>12</sup> and

13. After the Accused completed his testimony on 14 February 2011, the Chamber directed the Defence to file, before the end of the first week of March, an updated list of the witnesses that it realistically intends to call. The Chamber also reserved the right, after this list is filed, to make a determination as to the number of witnesses to be called by the Defence. Finally, the Chamber stated that it would inform the Parties about the resumption of trial once it had been decided upon;<sup>13</sup>

**RECALLING** also that Rule 73ter (D) permits the Chamber to “order the Defence to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts”;

**TAKING INTO ACCOUNT** the Defence request that the next trial session not be longer than eight weeks, and that it commence “on or immediately after” 18 April 2011, and **NOTING** the Defence acknowledgement “that the Judicial calendar and other case commitments take precedence” over the preferences of the Defence team;<sup>14</sup>

**NOTING** that the Prosecution does not appear to have made any requests pertaining to the scheduling of the case;

<sup>8</sup> T. 15 November 2010, pp. 2-22.

<sup>9</sup> T. 16 November 2010, pp. 2-5.

<sup>10</sup> The Chamber adjourned the proceedings on 17 January and 31 January 2011, pursuant to Defence requests. T, 17 January 2011, p. 2 (adjourning pending a Decision by the Bureau); T. 31 January 2011, pp. 2-5 (adjourning for three days).

<sup>11</sup> Augustin Ngirabatware / ICTR No. 99-54-T / Additional Identifying information of Defence protected witnesses, 22 November 2010, p. 9 (listing an individual identified as DWAN-168).

<sup>12</sup> Defence Response to Prosecutor’s Extremely Urgent Motion for an Order Requesting Cooperation from French Authorities Pursuant to Article 28 of the Statute of the Tribunal and Rules 73 (A) and 54 of the Rules of Procedure and Evidence and Counter Motion on Disclosure of the Said Immigration Records, 24 January 2011, para. 13 (notifying the Chamber and the Prosecution that the Defence will not call DWAN-90 as a witness).

<sup>13</sup> T. 14 February 2011, pp. 114-116.

<sup>14</sup> See Email from Defence Lead Counsel on 11 February 2011.

**CONSIDERING** the scheduling of other matters before the Tribunal, as well as other case commitments, particularly those in which the Judges of this Chamber may be involved;

**CONSIDERING** also the time frames already given to the Defence for the production of an updated list of witnesses;

**THE CHAMBER HEREBY:**

**ORDERS** that the Defence case-in-chief be scheduled to resume on 6 June 2011, and that the Parties be prepared for the proceedings to continue through 15 July 2011, and expects that during this period of time, the Defence will be able to complete its case-in-chief;

**ORDERS** that the Parties be prepared for the proceedings to resume from 15 August through 26 August 2011, should it become necessary;

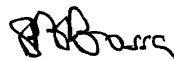
**DIRECTS** the Defence to file, no later than 4 March 2011, an updated list of the witnesses that it intends to call, specifying at least which paragraphs of the Indictment each witness will be expected to testify about; and

**DIRECTS** the Defence to identify no later than 11 March 2011, the order of appearance of at least its next 20 witnesses, and to ensure that it has disclosed the requisite particulars of these witnesses.

Arusha, 28 February 2011



William H. Sekule  
Presiding Judge



Solomy Balungi Bossa  
Judge



Mparany Rajohnson  
Judge

[Seal of the Tribunal]

