S’il y a quelqu’un qui a foi en la justice pénale Internationale, c’est peut être bien l’ancien maire de la Commune de Mabanza près de Kibuye au Rwanda, Ignace Bagilishema. Libéré au terme d’un procès qui a duré un an, il s’apprête à gagner son pays d’accueil. Le film des événements tragiques qui ont conduit à son arrestation et son procès continueront longtemps à le hanter.

En ce matin du 7 juin 2001, l’événement vient de la Chambre de première Instance I du Tribunal. Le juge Erik Møse et ses pairs rendent le jugement dans l’affaire qui oppose le Procureur à Bagilishema. Celui qui est encore pour quelques heures un accusé a emporté la conviction de deux des trois juges de la Chambre. Il n’est pas coupable. Le Procureur n’a pas pu établir au-delà de tout doute raisonnable sa culpabilité.

L’application de cette décision va se heurter à une équation : Quel Pays dans lequel les garanties de sa représentation future seront accordées va accueillir « le libre prisonnier » ? Si Bagilishema et ses avocats ont pu mesurer avec joie l’indépendance des Juges, leur euphorie s’est vite évaporée tant l’équation paraît insurmontable.

Le 20 septembre, la France vient au secours du Tribunal. Dans une lettre que le Ministre des Affaires étrangères adresse au Vice-président, la France se dit disposé à accueillir Bagilishema aux conditions fixées par le Tribunal. La lettre précise que cette décision a été prise en vertu de la sacrée présomption d’innocence.

Si Bagilishema s’envole aujourd’hui pour la France, il le doit sûrement à cette confiance en la justice internationale affichée depuis son arrestation et à la ferme détermination de ses défenseurs Mes. Roux et Diabira qui n’ont cessé depuis l’arrestation de leur client de se battre dans le cadre légal de la justice pénale Internationale.

Message from the Registrar

Thanks to the determination of a team of staff members from several different sections the last obstacles to the preparation and publication of a Bulletin dealing with the judicial work of the Tribunal have been overcome. By harnessing modern communications technology the team has given life to a project long delayed by inadequate publishing resources which have prevented the regular production of a paper based publication.

Following the establishment of a Website, the building of the TRIM electronic archive of judicial documents and the publication of all documents concerning the Tribunal in the form of a CD-ROM, the Tribunal is now pleased to present its first electronic judicial Bulletin. Great efforts have been made and success achieved thanks to the work of colleagues working as a team and who have been able to demonstrate that, even in a difficult environment, perseverance will always win the day.

In the Tribunal’s area of work, which gives rise to such great expectations and hopes, only men and women united in a common cause can succeed by progressive achievements (which might in other contexts and for other people seem insignificant) in giving the driving force to our daily work. This Bulletin, which will at first appear every two months is centred upon the decisions delivered by the Chambers of the Tribunal and is part of a wide-ranging information strategy of which it is but one element.

We hope that it will meet the expectations of readers.

Adama Dieng, Registrar
Mot du Greffier

C’est grâce à la détermination d’une équipe que les derniers obstacles liés à la publication et à la large diffusion du bulletin électronique consacré aux décisions judiciaires du Tribunal ont été vaincus. S’alliant les outils modernes de Communauté l’équipe a donné naissance à ce projet longtemps retardé à cause de la pauvreté des infrastructures d’édition qui empêche toute possibilité de publication régulière sur papier.

Après la mise en place du site Web, le démarrage de l’archivage judiciaire électronique, TRIM et la publication des jugements sous forme de CD-ROM, voilà que le Tribunal publie à présent son premier journal électronique judiciaire. Tant et tant de choses ont été tentées et réussies, grâce au travail d’hommes et de femmes réunis au sein d’une équipe, qui ont fini par nous convaincre que malgré un environnement difficile la persévérance finit toujours l’emporter.

Dans le domaine d’intervention qui est le nôtre, qui suscite tant d’attente et d’espoir, seuls des collaborateurs soudés autour d’un idéal parviennent, à travers des réalisations qui paraissent insignifiantes pour certains et en d’autres lieux, à insuffler le dynamisme nécessaire à la réussite de nos actions quotidiennes. Ce bulletin axé sur les décisions rendues par les différentes Chambres du Tribunal à paraître tous les deux mois s’inscrit dans un vaste programme d’information et de sensibilisation dont il ne constitue qu’un volet.

Puisse cette publication combler les vœux de ses nombreux destinataires.

Adama Dieng, Greffier

Registrar Unveils Initiatives to Promote Tolerance

In early September 2001, the Registrar of the ICTR Mr. Adama Dieng (Senegal) unveiled a series of initiatives to promote tolerance in the workplace of the Tribunal and address alleged or potential issues of racism, racial discrimination and intolerance.

Editor’s Note

Note de la Redaction

Public interest in the work of the International Criminal Tribunal for Rwanda has steadily increased in parallel with its growing output of Judgments, decisions and other orders. This Bulletin has been established in order to satisfy the demand from practising and academic lawyers, international and non-governmental organisations, the press, students and other observers of the Tribunal for concise information on judicial and other developments.

It will contain general news information on recent events and developments in the Tribunal such as the news items on pages 1 to 3 of this issue as well as summaries of decisions of particular interest and a list of all decisions adopted by the Chambers in the period covered. Occasional review articles will summarise current legal issues of more general interest.

Initially the Bulletin will be published bimonthly on the first day of each “even” month. Later it is envisaged that it will become a monthly publication. In view of the resources available the Bulletin will initially be published only in electronic format via the Tribunal’s Website and distributed to those on our e-mailing list. To subscribe please send an e-mail to ictr-press@un.org with “Bulletin subscription” in the subject box.

Also for reasons of resources, contributions to the Bulletin will be published in whichever of the Tribunal’s official languages they are submitted. Only exceptionally will a full translation of any contribution be published.

Contributions, comments and suggestions for improvements to the Bulletin are welcomed and should be addressed to The Editor, ICTR Bulletin du TPIR, ictr-press@un.org.
These measures are being undertaken in the spirit and context of the efforts of the United Nations to eliminate racism and related vices.

The Registrar stated that it was the Tribunal’s responsibility to promote tolerance within its workplace, which was multiracial and multicultural. This was in conformity with the UN Secretary-General Kofi Annan’s statement at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, in Durban, South Africa in early September where he said it was important to confront and deal with issues of racism.

The Registrar initiated measures whereby a questionnaire on issues of racism, discrimination and intolerance would be disseminated to staff of the Tribunal by its management, to be completed anonymously by staff members. The aim of the questionnaire is to compile scientific data on the real feelings and attitudes of staff of the Tribunal to these issues as they relate to the Tribunal’s workplace. These would be followed by discussions by staff at Section level followed by a Staff Assembly to discuss the results of the whole exercise. The Spokesman of the Tribunal, Mr. Kingsley Moghalu, said the initiative was illustrative of the Registrar’s management philosophy of openness and transparency.

ICTR Library Goes Digital

Some Library users may already benefit from the ICTR Library’s electronic services that have been introduced this year, such as desktop delivery of news or even recent access to valuable online database.

This is contained in a circular issued by the Library informing users of the various electronic services and announcing forthcoming developments in electronic information delivery.

The circular said a desktop information delivery service was now available for press coverage of ICTR from the Lexis-Nexis Database (English language news items from Europe and North America).

Individual profiles can also be created, whether one’s interest resides in news information on ICTY, Sierra Leone or a specific legal topic.

In October this year, the Library will release the long-awaited CD-ROM entitled ICTR Basic Documents and Case Law 1195-2000, a bilingual database, which contains information on all ICTR cases from 1995 to 2000 and United Nations Official Documents of relevance to the ICTR. All documents will be easily retrievable from a menu and user-friendly search engine.

Also the Library will soon upload a new version of its Web page, featuring access to electronic journals, an electronic reference shelf and selected Internet legal information sources.

The comprehensive range of online databases offered is listed on the Library page of the Tribunal’s website. Library staff will be pleased to provide any further information or assistance, which readers may require.

Seventeen Accused on Trial

(See p. 6)
Focus on Recent Decisions and Orders of the Tribunal: Contempt

ICTR TCII, ‘Butare’ Cases,

(i) “Decision on The Prosecutor’s Allegations of Contempt, The Harmonisation of The Witness Protection Measures and Waiving to the Prosecutor’s Counsel”, 10 July 2001

(ii) “Order in the Matter of the Prosecutor’s Ex Parte Further Allegations of Contempt”, 19 July 2001

Legal Basis: 46 RPE, 77 RPE

Keywords: Contempt, Request for investigations, Prima facie assessment, Warning to Prosecutor’s Counsel

1. The Prosecutor’s Initial Allegations of Contempt

The ‘Butare’ trial, which comprises 6 Accused, opened on 12 June 2001. Two days later, the Prosecutor filed an extremely urgent Motion requesting that the Chamber order an investigation on allegations of intimidation of several of their witnesses and on attempts made to steal documents identifying one such witness in a Butare Préfecture Commune Office. The allegations singled out a number of individuals, some of whom had allegedly been identified. Among them were two investigators assigned to the Defence for Kanyabashi and one, assigned to the Defence for Nsabimana. In her further submissions, the Prosecutor however withdrew all her allegations against the latter Investigator, in light of new information that there was an error in his regard.

The Defence replied in writing to the Prosecutor’s allegations. Both Parties were heard on 25 April 2001.

Trial Chamber II was the first Trial Chamber of the Tribunal to render a written Decision on allegations of Contempt of the Tribunal relating to tampering with prosecution witnesses.

2. The Chamber’s Decision of 10 July 2001

As a preliminary matter, the Chamber agreed with the Prosecutor “that investigations in respect of such conduct could fall within the ambit of Rule 54 of the Rules (…) notably in light of the fundamental necessity to protect the safety and security of witnesses”.

The Standard of Prima Facie Admissibility of Allegations of Contempt

However, considering “the gravity of such allegations and the fact that, should (…) the Prosecutor’s request for investigations [be granted], a trial would commence within the trial” the Chamber, “bearing in mind the principle of the presumption of innocence”, emphasised that, consistent with ICTY jurisprudence, “the Prosecution is to justify its request for investigations by prima facie satisfying the Trial Chamber that there are reasonable grounds to believe that contemntuous conduct may have taken place, which may be attributable to the alleged contemnor”.

The Chamber, applying a strict prima facie assessment of the evidence, dismissed the Prosecutor’s Motion “[without] assessing the counter-evidence produced by Counsel for Kanyabashi” in respect of the allegations against members of their Defence team. The Motion was thus dismissed, since the Prosecutor had adduced only hearsay evidence in support of its allegations consisting of two affidavits by OTP personnel referring to allegations said to have been made by witnesses.

The Prosecutor’s request was also dismissed in view of (1) the lack of clarity and precision of the allegations made which were not brought with the precision expected of an indictment, as the case should be in respect of contempt and (2) the “substantial doubt [cast] on the overall reliability of the allegations.

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1 The ‘Butare’ joint Cases are: The Prosecutor v. Pauline Nyiramasuhuko & Arsène Shalom Ntahobali (Case No. ICTR-97-21-T), Sylvain Nsabimana & Alphonse Nteziroyayo (Case No. ICTR-97-29-T), Joseph Kanyabashi (Case No. ICTR-96-15-T) and Elie Ndayambaje (Case No. ICTR-96-8-T).
2 Hereinafter, “the Decision of 10 July 2001”.
3 Hereinafter, “the Order of 19 July 2001.”
4 RPE refers to the Rules of Procedure and Evidence of the Tribunal, otherwise referred to as “the Rules”.
5 Other keywords in respect of the Decision of 10 July 2001: Witness Protection Measures (Harmonisation of), Contact with another party’s witnesses, Equality of arms, Conflict of interests. This commentary will focus solely on Contempt.
7 A “Decision on Prosecution Motion for Contempt of Court and on Two Defence Motions for Disclosure Etc.” was rendered, on 16 July 2001, by Judge Erik Mose, sitting as a single Judge pursuant to Rule 73(A) of the Rules (Trial Chamber I, Cases The Prosecutor v. Elisaphan Ntakirutimana, No. ICTR-96-10-T, and Gérard Ntakirutimana, No. ICTR-96-17-T) on allegations of contempt raised against the Accused. The latter had provided the statement of a Prosecution witness in the Ntakirutimana Case to the Defence for Accused Musema, who appended the said statement to a Motion filed before the Appeals Chamber for disclosure of exculpatory material under Rule 68 of the Rules. Trial Chamber I, noting “[the] breach of para. 4 of the witness protection order [of 22 August 2000]” (at para. 9), dismissed the Prosecution’s Motion for Contempt while emphasizing that “[t]he handing over of the witness statement to Alfred Musema occurred in a specific context, which was closely connected with Rule 68” (at para. 12). Another Decision. Oral Decisions have been rendered by the Tribunal on allegations of contempt, including in respect of intimidation of witnesses or contacts with the opposing party’s witnesses in breach of witness protection orders, notably in the Case The Prosecutor v. Ntagerura et al., No. ICTR-99-46-T (See, Transcripts of 7 June 2001).
8 Decision of 10 July 2001 at para. 4.
9 Id., at para. 5.
10 Ibid.
11 Id., at para. 6.
12 Id., at para. 10.
13 See, Id., at para. 8(ii).
made in view of the error made in respect of the investigator for Nsabimana.

**Warning to the Prosecutor under Rule 46 of the Rules**

Finally, after stating that “should any such allegations be brought in the future by a party, this must be done on the basis of properly prepared and substantiated submissions,” the Chamber addressed a warning to the Prosecutor for “having conducted themselves improperly and recklessly in respect of the disclosure of the identity of Defence personnel allegedly in contempt of the Tribunal,” with a particular emphasis on the subsequently withdrawn allegations against the investigator for Nsabimana, who had been targeted as “a former Interahamwe”. The Chamber noted that those allegations “may since have been echoed in the Rwandese and international Media (...) thus possibly jeopardising the security, if not the life, of the concerned Defence investigator, and thus possibly hampering the Defence investigations.”

2. The Prosecutor’s Further Allegations of Contempt and the Chamber’s Order of 19 July 2001

The issue was however to be further pursued by the Prosecutor who filed anew the above allegations against the same alleged members of the Defence for Accused Kanyabashi and other unidentified individuals on 14 July 2001, following reception, on 11 July 2001, of seven witness statements relating to the said allegations which had been collected by her Office in Kigali.

The Chamber did however not rule, at this stage, on the reiterated Prosecutor’s requests for orders to summon witnesses and initiate proceedings under Rules 46 and 77 of the Rules.

Indeed, the Prosecutor’s new Motion had been filed *ex parte*, out of concern to protect the witnesses whose unredacted statements were attached to the Motion.

The Chamber therefore, “[considering] the gravity of the allegations made”, *inter alia* ordered the Prosecutor, on 19 July 2001, “to serve the Defense with the Motion with Annexure, in English and French, as soon as possible and in any case [within 7 days from the date of the Decision]”, while ordering her “should some of the concerned witnesses need protection, to make all such applications to the Trial Chamber without delay and [authorising her], in the meantime, to use pseudonyms for such witnesses, and/or redact their statements.” The Prosecutor’s Motion was filed *inter partes*, its annexures redacted, on 25 July 2001.

It can be derived from the wording of the Order of 19 July 2001, and particularly from the right granted to the concerned parties to file “any preliminary submissions”, that the allegations of contempt remain at a preliminary stage of review. It is therefore after a hearing with the Parties, which is to be held on 26 October 2001, that the Chamber will decide whether “[it] is (...) satisfied that the contemptuous conduct alleged may have taken place, and/or may be attributed to the Defence teams concerned.” If so, Trial Chamber II of the ICTR could be the first Chamber of the ICTR to either initiate contempt proceedings by ordering an investigation and/or summoning all necessary witnesses, as requested by the Prosecutor, or direct the Parties to themselves call all such witnesses and conduct investigations in view of a subsequent hearing.

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14 Id., at para. 8(iii).
15 Id., at para. 12.
16 Id., at para. 33.
17 Id., at para. 30.
TRIALS IN PROGRESS
PROCES EN COURS
(as at 28 September)

For up-to-date information on the progress of trials, please consult the Judicial Calendar and the Status of Detainees on the Tribunal’s website: [www.ictr.org](http://www.ictr.org)

“Cyangugu Case” (Bagambiki, Imanishimwe, Ntagerura)
Trial Chamber III, Judges Williams (presiding), Ostrovsky and Dolenc.
Trial opened 18 September 2000; 71 days of hearings, Case adjourned on 26 September 2001 until 19 November 2001, Prosecution case nearing completion.

“The Media Case”, (Barayagwiza, Nahimana and Ngeze)
Trial Chamber I, Judges Pillay (presiding), Møse and Gunawardana.
Trial opened 23 October 2000, adjourned on 14 September after 95 days of hearings. Case will resume on 12 November 2001.

Semanza,
Trial Chamber III, Judges Ostrovsky (presiding), Williams and Dolenc.
Trial opened 16 October 2000, 28 days of hearings. Prosecution case closed. Case resumes on 1 October with opening of Defence case.

Kajelijeli,
Trial Chamber II, Judges Sekule (presiding), Maqutu and Ramaroson.

Kamuhanda
Trial Chamber II, Judges Sekule (presiding), Maqutu and Ramaroson.

“Butare Case”, (Nyiramusukoo, Ntahobali, Nteziryayo, Nsabimana, Ndayambaje and Kanyabashi)
Trial Chamber II, Judges Sekule (presiding), Maqutu and Ramaroson.

“Ntakirutimana Case”, (Elizaphan Ntakirutimana and Gérard Ntakirutimana)
Trial Chamber I, Judges Møse (presiding), Pillay and Vaz.
Trial opened 18 September 2001, 8 days of hearings. Case will continue until 10 October and then from 17 October to 31 October.

Initial Appearances and New Indictments

Five accused have recently made their initial appearances:

Samuel Musabyimana
The accused was Bishop of the Anglican Church in Shyogwe Diocese in Gitarama prefecture. He is alleged to have registered refugees in his diocese by reference to their ethnicity and on the basis of this register Tutsi were attacked and killed. Additionally he is alleged to have supervised the activities of militia in general and in particular at roadblocks.

He was arrested in Nairobi under warrant and has been charged on three concurrent counts: pursuant to Article 6(1) and (3) with genocide, or in the alternative, complicity in genocide; pursuant to Article 6(1) with conspiracy to commit genocide; pursuant to Article 6(1) and (3) with extermination as a crime against humanity.

At his initial appearance on 2 May 2001 the accused pleaded not guilty and he has subsequently had counsel assigned.

Sylvestre Gacumbitsi
The accused was bourgmestre of Rusumo commune in Kibungo prefecture. He is alleged to have killed persons; to have ordered his subordinates to kill and rape persons; to have led attacks at which civilians were killed and to have distributed weapons.

He was arrested in Kigoma, Tanzania under the Rule 40 bis procedure and has been charged pursuant to Article 6(1) and (3) of the ICTR statute with genocide, or in the alternative, pursuant to Article 6(1) with complicity in genocide. Concurrently he is charged pursuant to Article 6(1) and (3) with extermination, murder and rape as crimes against humanity.

At his initial appearance on 26 June 2001 the accused pleaded not guilty.

Simeon Nchamihigo
The accused was the Deputy Prosecutor in the Cyangugu prefecture. He is alleged to have organised and participated in the campaign against the Tutsi in Cyangugu prefecture by compiling lists of persons to be killed; by restricting the movement of persons
within the prefecture and in particular detaining refugees in Kamarampaka Stadium; by supervising roadblocks and the activities at roadblocks.

He was arrested in Arusha, Tanzania under the Rule 40 bis procedure and has been charged pursuant to Article 6(1) of the ICTR statute concurrently on three counts, namely: genocide, or in the alternative, complicity in genocide; extermination, or in the alternative, murder as a crime against humanity; violations of Article 3 common to the Geneva Conventions and Additional Protocol II.

At his initial appearance on 29 June 2001 the accused pleaded not guilty.

Jean Mpambara
The accused was the bourgmestre of Rukara commune in Kibungo prefecture. He is alleged both to have prepared for a campaign to destroy the Tutsi in Rukara commune and to have participated directly in the execution of that campaign, most notably by ensuring that large numbers of the Tutsi population gathered at public buildings where they were subsequently massacred.

He was arrested in Kigoma, Tanzania under the Rule 40 bis procedure and has been charged pursuant to Article 6(1) of the ICTR statute with genocide.

At his initial appearance on 8 August 2001 the accused pleaded not guilty.

Emmanuel Rukundo
The accused was a military chaplain at Ruhengeri and then Kigali prefectures.

He is alleged to have been actively opposed to the Tutsi since the early 1970s and during April and May 1994 to have sought out and killed Tutsi in and around his diocese.

He was arrested in July in Switzerland under warrant and he has been charged pursuant to Article 6(1) with three concurrent counts: genocide or in the alternative complicity in genocide; murder as a crime against humanity and extermination as a crime against humanity.

At his initial appearance on 26 September 2001 the accused pleaded not guilty to all counts.

An indictment has been confirmed and a warrant issued for the arrest of Athanase Seromba.

The indictee was a Catholic priest at Nyange parish in Kibuye prefecture. He is alleged to have been involved in the campaign to destroy the Tutsi and most notably to have aided in the massacre of more than 2000 Tutsi taking refuge in his Church.

He has been charged pursuant to Article 6(1) of the ICTR statute with three concurrent counts: genocide, or in the alternative, complicity in genocide; murder as a crime against humanity; extermination as a crime against humanity.

As yet the indictee has not been arrested. He was last known to be in Italy and a request has been made to the Italian authorities for his detention.
Defence Attorney on behalf of his client, and disposed of by the Chamber. Therefore, the Prosecutor argued that, although the second Attorney, if he so wished, might be present in the Courtroom, he should not take part in the proceedings concerning the prosecution’s motion.

The second Attorney replied that other issues not raised and considered at the time he made his request for disclosure arose in the current proceedings; which fully justified his presence and involvement.

The Chamber first recalled that a similar request had already been made by the second Attorney and considered by the Chamber. However, in the interest of justice, the second Attorney would be allowed to be present and take part in the proceedings as long as he did not repeat arguments made previously.

**Subject: Oral Decision on the Production of Detainee Witness Records**

*Case: Nahimana, Ngeze, Barayagwiza*  
*Case No.: ICTR-99-52-I, (“Media Case”)*  
*Chamber: TCI*  
*Date of Decision: 4 September 2001*

In the course of the cross-examination of a Prosecution's witness designated as LAG (a witness currently detained in the central prison of Cyangugu for his participation in the genocide of 1994), Defence Counsel for Nahimana requested that the Prosecutor be ordered to give all the documents concerning the judicial proceedings against LAG in Rwanda. The Prosecutor objected that she did not possess such documents and was not obliged to provide them.

Following this application, the Chamber ordered the Office of the Prosecutor to obtain from the Rwandan Government criminal records (such as plea agreement, dates of conviction if any, sentencing...), of detainee witnesses that have testified or intend to testify before the Tribunal. The Chamber further stated that the Prosecutor has to obtain such documents systematically, in order to shorten the examinations. It will indeed avoid lengthy cross-examinations on the issue of criminal records.

**Subject: Decision on the Prosecutor’s Application to Add Witness X to its List of Witnesses and for Protective Measures (Judge Gunawardana dissenting)**

*Case: Nahimana, Ngeze, Barayagwiza*  
*Case No.: ICTR-99-52-I, (“Media Case”)*  
*Chamber: TCI*  
*Date of Decision: 14 September 2001*

The Chamber had been seized of an ex-parte application pursuant to rule 66(C) of the Rules for the addition of this witness and for special protective measures.

The Judges examined two issues:

- The necessity to add Witness X:

  The Trial Chamber, after reviewing the Prosecutor's attachments, which included an affirmation from the Prosecutor's Investigator, concluded that X would be highly material to the Prosecution's case, given his stature. He is a key witness and an insider in the higher echelons of authority.

  The Defence, notably, opposed the late disclosure of statements, the fact that the Investigator's information was not disclosed to them. The Chamber decided that Rule 66 (A)(ii), which aims at giving the Defence sufficient notice of the case, was not violated and the Defence was not taken by surprise. The Defence itself conceded this fact, it was indirectly aware of the content of Witness X's testimony. The Chamber noted that this witness is going to replace six others, whose statements have long been disclosed to the Defence.

- The special protective measures:

  The TC granted the disclosure of X's identity and of 9 unredacted transcripts, 30 days before his testimony because of the security considerations.

  Regarding the application for X to testify in The Hague, the Chamber took into account Resolution 955 (1994) para.6 from the Security Council (which allows the Tribunal to meet away from its seat when it considers it necessary for the efficient exercise of its functions), Rule 71(D) of the Rules and ICTY case law. It considered that this was an alternative solution which would not be implemented unless it was absolutely necessary. Therefore, the Chamber directed WVSS to inform X of all the special security measures he would be accorded while in Arusha (such as being moved around from place to place) in order to ascertain whether he is willing to testify in Arusha. In the event that he declines to testify in Arusha, the Chamber authorized the video-link solution.

**Subject: Decision on disclosure and return of material**

*Case: Ndindillyimana*  
*Case No.: ICTR-2000-56-1 –T*  
*Chamber: TCIII*  
*Date of Decision: 24 September 2001*

In its motion the Defence sought the return of two categories of items in the possession of the Prosecutor: items seized by the police on the Accused's arrest, and items gathered by a Belgian investigating judge that were then transferred to the Prosecutor. The Defence also sought to compel the Prosecutor to provide disclosure of witness statements and exculpatory evidence pursuant to Rules 66 and 68.
The Chamber noted that Rule 41(B) only applies to materials that have been seized from the Accused, but that it was not clear whether the materials in the possession of the investigating judge were seized from the Accused or gathered from other sources. The Chamber ordered the Prosecutor to immediately return any materials seized from the Accused that are of no evidentiary value.

The Chamber dismissed the motion for disclosure since the Prosecutor was not shown to be in breach of any rule.

Subject: Decision on the Defence Motion for Disclosure

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In response to a request by the Defence for disclosure of, inter alia, copies of 1200 pages of "the Belgian files", the Chamber recalled the principle of a limited right for the Defence to receive copies of material which they deem to be necessary for the Defence of the Accused upon inspection of the said material pursuant to Rule 66(B) of the Rules (See also, Nsabimana and Nteziryayo Decision on Disclosure of 18 September 2001). The Chamber thus granted this request.

The Chamber dismissed the Defence request for disclosure of the questionnaires listing the questions asked to the Prosecutor’s witnesses during the interview by Prosecution investigators, as it noted that “the specific questions asked to particular prosecution witnesses at the time of collection of their statement, if any, should the concerned investigators have written them down and kept record thereof, would constitute notes of investigators falling under Rule 70(A)”.

Further, the Chamber, in accordance with Rule 66(A)(ii) and Rule 68, dismissed the request for disclosure of the full statements of specific prosecution witnesses. On the basis of Rule 66(B), the Chamber granted the request for the disclosure of the statements of Jean Kambanda pertaining to a specific paragraph in the Accused’s Indictment.

Subject: Decision on the Prosecutor’s motion for, Inter Alia, Modification of the Decision of 8 June 2001

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On 8 June 2001, the Chamber delivered two Decisions in the Butare Cases, ordering the Prosecutor, inter alia, to disclose on the fact sheets attached to witness statements, the name of the investigators and interpreters conducting the interview and the place of the interview, and to immediately disclose all her unredacted witness statements and the identity of the witnesses not yet disclosed. The Prosecutor was also required to seek leave for the non disclosure of the said information upon providing the Chamber with precise reasons to that effect.

1. In her Motion of 14 June 2001, the Prosecutor requested leave for the said non-disclosure.

In its Decision of 25 September 2001, the Chamber was not satisfied with the reasons given by the Prosecutor not to disclose the names of the interpreters and investigators conducting the interviews and the request was accordingly dismissed.

As for the place of the witness interview, the Chamber noted that the Prosecutor submitted that this information would, in fact, provide the Defence with the current address of the witnesses, since the place of the interview often coincided with the residence of the concerned witness or some nearby location. The Chamber therefore granted this request.

2. In her Motion, the Prosecutor further requested rolling deadlines for disclosure of the identity and unredacted statements of her Witnesses to the Defence. The Chamber noted that:

“the Prosecutor thereafter submits that her request is based on new information which allegedly affects the security of her witnesses. Thus, the Prosecutor’s apparent appeal is, in fact, a request for review of the Decision of 8 June 2001.”

The Chamber further recalled the following principle:

“a review of a Decision on protective measures for witnesses, or, as in this case, of one having an impact on the protection of one party’s witnesses can at all times be requested on the basis of new information, notably in regard of a change in the circumstances surrounding the initial Decision.”

The Chamber however found that none of the reasons submitted by the Prosecutor provide good cause to modify the Decision of 8 June 2001.

Subject: Decision on Defence Motion for Judgement of Acquittal

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Relying on Rule 98bis, Semanza’s Defence requested that the Chamber enter a Judgement of Acquittal on all 14 counts in the indictment. The Defence argued that various witness testimonies are contradictory, unreliable, "inconsistent and imaginary", "hard to believe", and the like. The Defence also raised a number of issues outside the scope of Rule 98bis, such as, for example, problems in the indictment and supporting materials, the fact that the Prosecution did not call all possible witnesses or charged all possible perpetrators.
The Prosecutor opposed the Motion on the ground that the evidence she produced is sufficient under the relevant test of Rule 98bis, that is "whether evidence has been produced upon which a reasonable judge of the facts may safely convict, if he or she believed the evidence". The Prosecutor also pointed out that the statutory time period for complaining about problems in the indictment had lapsed a long time ago.

The Chamber DENIED the Motion. Basing its position on the Appeals Chamber's Judgement in the case of Prosecutor v. Jelisic (5 July 2001), the Trial Chamber interpreted Rule 98bis as follows: "A judgement of acquittal shall be ordered at the close of the case for the Prosecution if the Chamber finds that the evidence, if believed, is insufficient for a reasonable trier of fact to find that guilt has been proved beyond reasonable doubt." In light of this interpretation and considering the Defence submissions the Chamber concluded that the Defence has failed to show that the evidence produced by the Prosecutor, if accepted, is insufficient for a conviction.

The Chamber referred to ICTY jurisprudence on the issue of credibility and reliability of evidence in the context of a motion for acquittal and concluded that in the instant case it did not need to reach a decision on these matters. Only in the case where the Prosecution's evidence would be so weak, as a result of the presentation or cross-examination, that the Prosecution essentially would be left without a case, would the Chamber need to examine credibility and reliability.

Finally, the Chamber addressed in turn the various matters outside the scope of Rule 98bis and admonished the Defence for wasting the Tribunals' resources by raising in a lengthy way such matters and for filing voluminous materials that could be of no use to the Chamber in deciding a Motion for Acquittal under Rule 98bis.

**Sujet: Décision sur la requête de l’Accusé en retrait de ses conseils**

**Affaire:** Nzirorera  
**No.de l’Affaire:** ICTR-98-44-T  
**Chambre:** II  
**Date de la Decision:** 3 octobre 2001

A la majorité, la Chambre de première instance II a rejeté la requête de l’Accusé en retrait de ses conseils - le Juge W. C. Matanzima Maqutu exprimant une opinion séparée et dissidente - et a ordonné au Greffe d’examiner les questions de partage d’honoraires, y compris les allégations avancées dans la présente affaire, et de prendre toutes les mesures nécessaires afin d’informer tous les accusés ainsi que les conseils de la défense devant ce tribunal que la pratique du partage d’honoraires est inacceptable et mérite sanction d’après le Règlement.

Arguments des parties :

1. L’Accusé avait, entre autre, argué du fait qu’il avait perdu confiance en ses conseils au motif que ces derniers n’étaient ni diligents ni compétents, manquaient de loyauté et d’honnêteté.


Délibéré

3. La Chambre de première instance II a examiné si les allégations de l’Accusé permettaient de démontrer l’existence de circonstances exceptionnelles et le bien fondé de la requête en retrait du Conseil et ce, en application de l’Article 45 (H) du Règlement. La Chambre a conclu qu’elle n’était pas satisfaite par les arguments de l’Accusé.

4. Enfin, la Chambre s’est penchée sur les allégations de tentatives de partage d’honoraires divulguées par Mr Mc Cartan et a conclu ce qui suit :

Traduction non officielle du paragraphe 25 de la Décision du 21 septembre 2001 :

« La Chambre a pris en considération les soumissions des parties ainsi que les correspondances déposées ou produites et est d’avis que la demande de l’Accusé de partage d’honoraires aurait pu avoir eu lieu et que, le refus par le conseil d’accéder à cette requête a pu être à l’origine de la requête en retrait. Quoi qu’il en soit, même si cela était le cas, le refus par le conseil de commettre un acte irrégulier ne pourrait en aucune manière constituer des circonstances exceptionnelles et prouver le bien fondé permettant de justifier le retrait d’un conseil commis d’office en application de l’Article 45 (H) du Règlement. »
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