

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-98-44-T
CHAMBER III

THE PROSECUTOR
OF THE TRIBUNAL
v.
ÉDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA

MONDAY, 7 JUNE 2010
0948H
CONTINUED TRIAL

Before the Judges:

C.M. Dennis Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

For the Registry:

Mr. Constant Hometowu
Mr. Issa Mjui

For the Prosecution:

Mr. Don Webster
Ms. Maria Wilson
Mr. Takeh Sendze

For the Accused Édouard Karemera:

Ms. Dior Diagne-Mbaye

For the Accused Mathieu Ngirumpatse:

Mr. Frédéric Weyl

For the Accused Joseph Nzirorera:

Mr. Peter Robinson

Court Reporters:

Ms. Jean Baigent
Ms. Tanya West
Ms. Deirdre O'Mahony

PROCEEDINGS

1

2 MR. PRESIDENT:

3 Good morning, everybody.

4

5 Mr. Registrar, could you open the proceedings, please.

6 MR. HOMETOWU:

7 Thank you, Mr. President.

8

9 Trial Chamber III of the International Criminal Tribunal for Rwanda, composed of Judge Dennis Byron,
10 presiding, Judge Gberdao Gustave Kam and Judge Vagn Joensen, is now sitting in open session
11 today, Monday, the 7th of June, 2010, for the continuation of the trial in the matter of the
12 Prosecutor versus Karemera et al., Case No. ICTR-98-44-T.

13

14 Thank you.

15 MR. PRESIDENT:

16 Thank you.

17

18 The appearances are the same.

19 MR. WEBSTER:

20 Actually, there's a slight adjustment, Your Honours. Good morning to everyone, to the Bench and to
21 the parties. I'd like to inform the Court that we have two new interns working with us for the next
22 few months. The first is Alain Noupoué. The last name is spelt N-O-U-P-O-U-E. And the other is
23 Jessica Singer. Both of them are seated right here behind me. So we can welcome them to the trial.

24 Thank you.

25 MR. PRESIDENT:

26 Thank you, Mr. Webster. We do welcome you both to the Tribunal and to our trial. And we hope you
27 have a successful tour of duty while you're here.

28 MR. ROBINSON:

29 Excuse me, Mr. President. I also have a new intern I'd like to introduce to the Chamber this morning.

30 He's José Ordonez from the University of Ottawa in Canada. Thank you.

31 MR. PRESIDENT:

32 Yes. And we also welcome you to the Tribunal and to our trial and hope you have a useful tour of duty
33 and enjoy it.

34

35 Well, gentlemen, we -- and ladies, we now have to address the motions for continuance. We think that
36 we should separate the applications of Nzirorera and Ngirumpatse, and we would like to deal with the
37 Nzirorera motion first. We have considered already the filings in the matter, and we just thought that --

1 we wondered if there was any additional submissions that you would like to make before we give our
2 ruling.

3 MR. ROBINSON:

4 Well, Mr. President, I -- if you -- specially, if you've seen my reply brief, which has been filed this
5 morning, then I think I've said almost everything that I wanted to say. But since you're giving me this
6 opportunity, I don't completely want to pass on it, and, if you don't mind, I would just like to take a
7 few minutes to say something more.

8
9 And what I would really like to do at this time -- or say is, basically, a cry for help because, as the
10 situation stands now with a Defence attorney in Kigali locked up for words and deeds that he uttered
11 and published in connection with his representation of an accused person at this Tribunal, I think that all
12 of us are affected by that.

13
14 Certainly, the Defence sees that it's really impossible to do our jobs if the representation of our clients
15 will result in our own incarceration and the loss of our liberty simply for defending our clients. And
16 that's -- as I've said in my papers -- an unacceptable risk that I don't wish to take, and I don't think I
17 should have to take.

18
19 And for my brothers in the Prosecution, I ask them to join us because it affects them as well. If they
20 attain a conviction in a trial that's not fair against a defence that's not vigorous and unrestrained, then
21 they too are impacted and affected.

22
23 And the three of you are fathers on the Bench. And I ask for your help because you too are affected
24 when your trial judgements are the product of a one-sided trial in which one of the participants cannot
25 fairly and accurately present their side of the story. And I don't think that any of us in this courtroom
26 want that.

27
28 Now, you know that we've had international justice for 60 years now. There were many trials that
29 followed the Holocaust in Germany. And, to my knowledge, not a single lawyer who defended any of
30 those people found themselves in jail for things that they did in the course of that representation.

31
32 And while there are many laws against negating the Holocaust on the books in Germany and other
33 countries, Germany has been able to reconstruct itself quite well without enforcing those laws against
34 lawyers who practiced in the tribunals that followed the Holocaust.

35
36 And in Japan, that society has reconstructed itself quite well without ever resorting to jailing the lawyers
37 who defended people at the Tokyo tribunal. And in our more recent tribunals in Yugoslavia,

1 Sierra Leone, East Timor, those people have been able to move on 15 -- or 10 years after the fact
2 without jailing any of the lawyers who defended people at those tribunals.

3
4 And while I understand the concern of the Rwandan government, this is not a proper response. And,
5 for me, as an individual defence lawyer, I'm not prepared to allow myself to be subject to that kind of
6 repercussion for my work here in the Tribunal.

7
8 You know, today, a long way away in the United States, my daughter is taking the law school entrance
9 examination. She wants to be a human rights activist for Amnesty International or
10 Human Rights Watch -- or something like that. And I think if she looks back on her father's career till
11 this moment, I don't think she would be very proud of me if I conducted business as usual in the face of
12 the arrest of one of my colleagues for doing his job.

13
14 And so I'm not prepared to conduct business as usual. And I think all of you on the Bench, you're
15 fathers, you know how I feel. And, really, that's the most important thing to me.

16
17 And so I ask you, Mr. President and members of the Trial Chamber, to grant our motion to postpone the
18 trial, to stop these proceedings until it becomes clear that persons who appear before you -- before this
19 Tribunal cannot be subject to arrest and incarceration for their work. Thank you.

20 MR. PRESIDENT:

21 Yes, Mr. Weyl.

22
23 Mr. Weyl, are you addressing Nzirerera's motion at the moment or your own?

24 MR. WEYL:

25 Mr. President, it was my understanding from what you said that you had asked me to make additional
26 comments in support of our motion, if we had any additional submissions to make.

27 MR. PRESIDENT:

28 Yes, Mr. Weyl, that's quite correct. But I had indicated that I wanted to separate the two motions. I just
29 wanted to make certain -- I wanted to find out whether these remarks were supporting
30 Nzirerera's motion or supporting your own. That was what my question was.

31 MR. WEYL:

32 Mr. President, my submissions are in respect of my own motion. And you would understand that these
33 submissions would clearly dovetail with those which have been submitted by my learned colleague,
34 Peter Robinson.

35
36 We are faced with a very serious situation -- an extremely grievous situation. And I must say that this is
37 not only a matter for future generations, but it is something that relates to us ourselves. We are not

1 machines for processing files and making submissions in court. We are lawyers with consciences.

2
3 Today I have my own conscience laid bare before me. And, therefore, I must ask myself whether, in
4 my capacity as a lawyer, I will continue to perform my duties without betraying my profession, if I
5 proceeded under the circumstances that now prevail.

6
7 In France, we have something which is known as the right to withdraw whereby any worker who faces
8 danger can breach, so to speak, labour legislation in the face of danger. That is the way I feel today.
9 I feel that if, as a lawyer today, one is characterised as being a negationist because eight years ago
10 they dealt with some matters in front of any jurisdiction whatsoever in an attempt to defend certain
11 charges against individuals, including matters relating to genocide that have been raised, and that if, for
12 such reason, one were to be labelled as a negationist in a report, then I think that proceeding in those
13 circumstances would not be a sign of good caution.

14
15 However, the issue is not only the threat that hangs above our heads, but it is the danger that arises in
16 respect of our mission.

17
18 I am a lawyer today not to defend my prerogatives as a lawyer, but I am a lawyer in order to represent
19 the interests that I have been called to defend. That is why I must state clearly that today I do not feel
20 fully empowered to discharge my mission with the due guarantees in place.

21
22 I will, therefore, be erring if I continue to proceed without necessarily leading to a situation where I will
23 not be respecting the ethics of our profession. That happens to be the case with the arrest of
24 Peter Erlinder because it is today a situation where our rights have been taken over and are held
25 hostage in Kigali.

26
27 I was at pains to read Mr. Webster's reply to the motion. I was at a loss when I felt that it was the
28 Rwandan authorities who were supposed to react in the proper manner. And I was at a loss when I
29 read Mr. Webster's response, which should somehow have been in support of Mr. Erlinder.

30
31 But when I listened to Mr. -- when I read Mr. Webster's reply, I can hear Mr. Ngoga's voice, and that is
32 unacceptable.

33
34 You see, Mr. President, tomorrow you may have to call witnesses to this court and put them through the
35 rituals of questions from the Prosecutor when he repeatedly asks all the witnesses whether they do
36 accept that there was a genocide. Yes. Tomorrow would they have to account for having answered or
37 for not having answered?

1 Mr. Webster or another prosecutor could put those questions to the witnesses. And is that exposing
2 those witnesses to arrests -- to potential arrests tomorrow? Or to the risk of paying the same price that
3 Mr. Erlinder is paying today; namely, that they testified on behalf of the Defence?
4

5 Is it reasonable to expect that these people should be accused and even arrested tomorrow for having
6 appeared in that manner?
7

8 After reading Mr. Webster's response, Mr. President, how can it be expected of me to ask any question
9 whatsoever to any witness whatsoever without worrying about the manner in which I have put those
10 questions and without worrying that tomorrow, I might be held accountable for having been a
11 negationist in my questions -- a question which may have been interpreted by Mr. Ngoga and supported
12 by Mr. Webster as being contrary to Rwandan legislation?
13

14 How am I going to be able to file motions freely? How am I going to make submissions freely in this
15 court in that context? My submissions are not for myself -- my motions are not for myself. They are
16 part of the discharge of my sovereign and full and independent and inviolable duties as a lawyer.
17

18 So, today, our mission is under threat. It is not only us as lawyers who are under threat; it is our
19 mission itself which is under threat. And if that is the case, then the rights of the Accused to a fair trial
20 have also been trampled upon.
21

22 So, Mr. President, you must recognise that today the rights of the Accused have been trampled upon.
23 Their rights are in peril. Their rights have been compromised. And, in that context, it will be impossible
24 for us to continue to discharge our mission in this context without betraying it. And that is why I would
25 rather not be in a position where tomorrow, as I look in the mirror, I will see in my conscience that I
26 would have betrayed my own mission.
27

28 Mr. President, your Trial Chamber is the custodian of the fair trial rights of the Accused. And in that
29 capacity, I urge you to adjourn this trial -- these proceedings, which cannot proceed under threat of
30 procedure -- so long as the rights of the Accused are under threat in Kigali, and so long as the rights of
31 the Accused would not have been upheld fully, as well as the rights of a witness in the universal
32 application of the law, as far as the Accused are concerned, in respect of a free hearing for witnesses
33 without being subject to threat from the Rwandan authorities.
34

35 It is in this context that I ask you, Mr. President, to adjourn these proceedings. Thank you.

36 MS. DIAGNE-MBAYE:

37 Good morning, Mr. President. Good morning, Your Honours. On a point of methodology,

1 Mr. President, when you spoke, your position was that you wanted to rule on each of the
2 Defence motions that have been filed.

3
4 But you must have noticed, Mr. President, that there was no motion -- no written motion from
5 Édouard Karemera's Defence team. The simple reason was that our team knew that we would be
6 present in court this morning, that we would see you and that we would talk to you this morning and that
7 you would hear us this morning.

8
9 Mr. President, you yourself, at the beginning of our proceedings, provided a framework to guide our
10 proceedings when you indicated that you wanted to first rule on Mr. Weyl's motion, and then
11 Mr. Robinson went on to make a few submissions, followed by Mr. Weyl.

12
13 Now, my question is to ask, Mr. President, whether you would like to hear Karemera's Defence team or
14 would you, rather, first rule on the motions before you from my two learned colleagues.

15 MR. PRESIDENT:

16 Well, it depends on your position. We are willing to hear you on the motions filed by both Nzirorera and
17 Ngirumpatse. I don't understand. Are you saying that you wish to make an oral application as well? Or
18 you're just going to present submissions to support the motions that have already been filed?

19 MS. DIAGNE-MBAYE:

20 Mr. President, I would like to make an oral application, but which will be along the same lines as the
21 written motions of my learned colleagues, basically, on all points. But I would like it to be separate from
22 the motions by my colleagues. It is a separate, distinct and individual motion which states the position
23 of Mr. Karemera's Defence team, even if the points all coincide with those raised by -- in -- in the other
24 motions.

25
26 What I'm saying simply, therefore, Mr. President, in order not to waste time, is that my
27 two learned colleagues have already raised a number of points which include what Mr. Karemera's
28 Defence team would also be saying. But the fact is that, Mr. President, we do not need many hours to
29 make this application. All we are saying is that there is a threat -- there is extreme danger, and this is in
30 relation with what has just happened on the other side.

31
32 I was very unpleasantly surprised by the arrest of Mr. Erlinder because I had always believed that our
33 Tribunal was independent -- that our procedures were independent here in Arusha.

34
35 Now, Mr. President, when a learned colleague, Mr. Erlinder -- it could be me, it could be Mr. Robinson,
36 or it could be Mr. Weyl who would be in Kigali tomorrow. We are lawyers, and we are entitled to appear
37 in court across the world.

1 Now, if we have some clients in Kigali tomorrow, and simply because we are in Kigali, we are locked up
2 because of the statements and representations and applications that we made here at this Tribunal -- in
3 the context of the defence of persons who have been accused here before you -- Mr. President, I don't
4 know whether you understand the message that Kigali is sending out to the entire world. It is an
5 unacceptable message. It is a message that should not be entertained.

6
7 Mr. Erlinder is a learned colleague who has defended persons here in this Tribunal, and he has made
8 statements in that context. Now, Mr. President, it is true that lawyers cannot be above the law. They
9 may have some measure of immunity when it comes to advocacy, and this is recognised across the
10 world. We have the right, Mr. President -- so long as we are courteous to the court, we have the right to
11 say that which must be said in the exclusive defence of the interests of the accused persons.

12
13 Mr. Erlinder, Mr. President, in support of his client here in Arusha, made the statements and
14 representations that he deemed fit to be made in that context. And when he got to Kigali, under a very
15 ambiguous pretext, Mr. President, which we are not even able to understand, claiming that he is a
16 negationist or a revisionist lawyer, under those circumstances, he was arrested. And we now can say
17 that we don't even know what the real circumstances are.

18
19 So there is danger in the house, Mr. President, for him, for us. And, therefore, in order to uphold the
20 dignity of our profession, we cannot allow this to continue. It is for these reasons that we believe that
21 this morning, as has been the case always, you and your learned colleagues, the Honourable Judges,
22 would pay attention and heed our call. This situation is too serious for us not to take the necessary
23 decisions relating thereto.

24
25 Mr. President, my learned colleagues have written to you and told you that it is absolutely important for
26 all proceedings to be adjourned so that Mr. Erlinder, our learned colleague, should be taken out of
27 those dangerous hands which are holding him today.

28
29 Mr. President, until such a situation is clarified and our learned colleague is freed, it will not be proper
30 for us to appear before you and to continue with proceedings in the Prosecutor versus Karemera et al.,
31 because we do not know how far these serious things happening in Kigali can go.

32
33 That is why, Mr. President, we believe that you will understand our submissions when we apply for
34 these proceedings to be suspended.

35
36 As lawyers, those of us who are opposite the Prosecutor, who in his motion is fully satisfied with what is
37 happening to our learned colleague, Mr. Erlinder, Mr. President -- those of us on this side can only

1 come to the position whereby we cannot pretend to proceed as if there were no problem.

2
3 It is for this reason, therefore, that we ask for a suspension. We even urge you to support us in our
4 fight, or at least to release us to continue to fight for the release of our learned colleague, Mr. Erlinder.

5 Thank you.

6 MR. WEBSTER:

7 Once again, good morning to everyone. We, in the Prosecution, have taken very careful note of the
8 written submissions filed by Mr. Robinson and the Ngirumpatse team, and certainly
9 Madam Dior Diagne's oral submission of a few moments ago.

10
11 At this stage, I'd -- I would suggest that the record is -- is quite complete. I doubt that there's very much
12 that I can add, but perhaps a brief response is still appropriate.

13
14 I'll begin by addressing Mr. Weyl in particular, specifically concerning his allegation that the Prosecution
15 is simply the voice of Martin Ngoga in this courtroom. And I think any careful reading of our response
16 would give rise to some doubt and circumspection about Mr. Weyl's statement.

17
18 The Prosecution is independent. We may have made reference to Mr. Ngoga's public comments.
19 When the file -- when the response was filed, I did not have access to any written documentation from
20 Mr. Ngoga, but I do have access to such a document now.

21
22 I believe Mr. Ngoga wrote to the registrar of this Tribunal on the 2nd of June and indicated in response
23 to an enquiry that had been made of him that Mr. Erlinder's arrest is not at all related to his assignments
24 at the ICTR.

25
26 So if we bear in mind what Mr. Ngoga himself says, along with the three other issues that the
27 Prosecution addressed, if only obliquely in its response, this Chamber should have a global view of the
28 current situation.

29
30 In our response, we made reference to Mr. Erlinder's presence in Rwanda to represent
31 Victoire Ingabire. The circumstances under how he came to be assigned or solicited to represent her
32 are not clarified. But according to statements that he allegedly made, he was present in Rwanda in his
33 capacity as a defence attorney to a Rwandan political opposition figure.

34
35 The second thing that should be noted, which was also indicated in a footnote to our response -- in
36 our -- contained in our response, is that allegedly Mr. Erlinder filed a lawsuit against President Kagame
37 in Oklahoma, in his home territory -- Mr. Erlinder's home territory in Federal Court accusing him of

1 certain crimes committed in 1994.

2
3 So there's another issue, which is Mr. Erlinder's involvement in bringing lawsuits against Mr. Kagame
4 and other members of his government.

5
6 And then the third matter that we addressed in our response are comments that it seems Mr. Erlinder
7 made at a conference of international defence attorneys in Brussels, which had been organised a week
8 or so before his arrival in Rwanda.

9
10 And my understanding is that he delivered a paper -- the paper is available on the Internet. We
11 provided a copy and annex to our response. I'm not sure if that paper was written in 2009 or recently.
12 The only indication I have is that it comes from that international association of defence attorneys in
13 relation to conferences that they organised just recently in the year before.

14
15 So whether it comes from 2009 or 2010, I cannot be sure. But clearly, based on our response and what
16 I'm saying right now, the entire issue is sketched out before this Trial Chamber.

17
18 The Prosecution does not minimise the seriousness of the current situation. It is a matter of concern.
19 But the issue before us is what we can do in our capacity as lawyers and members of this trial to
20 address it or how it should be addressed or if it should be addressed.

21
22 My understanding is that Mr. Erlinder was stopped or arrested pursuant to Rwandan judicial
23 procedures. And as lawyers, we should be able to observe and respect the judicial procedures of
24 domestic national jurisdictions.

25
26 There are laws in Rwanda against negation of the genocide. Presumably, Mr. Erlinder was informed of
27 the charges against him. Based on Mr. Robinson's submission and the annexes to his submission, he
28 was pre -- he appeared before a judge. There was some discussion of him being granted bail. The
29 person that he allegedly went to represent in Rwanda was seated in the courtroom, herself having been
30 released on bail. So there are judicial procedures at work in Rwanda in relation to this particular
31 situation.

32
33 And I wonder what we can do independently as a separate jurisdiction to address Mr. Erlinder's
34 situation and the Defence's concerns by simply stopping this trial.

35
36 There are two independent judicial procedures that are ongoing: Our trial here, which needs to move
37 forward; and Mr. Erlinder's trial or his ability to confront the allegations against him in Rwanda. And I

1 don't see how the two can be related or should be related.

2
3 So without minimising the situation -- it is a situation of concern to all lawyers -- my suggestion is that
4 we simply allow the judicial processes to go forward, the judicial process in Rwanda with respect to
5 Mr. Erlinder and the judicial process in this Tribunal in this courtroom with respect to the trial that links
6 us all in this enterprise.

7
8 I understand Mr. Robinson's suggestion that some sort of symbolic gesture needs to be made, but I
9 wonder if this is the most appropriate symbolic gesture that we can offer. Simply stopping this trial to
10 protest an independent judicial process that's going on in a separate jurisdiction -- to me, it seems as if
11 we would be interfering with a judicial process in a separate jurisdiction. I don't see how that is
12 appropriate in the circumstance.

13
14 So I have no specific recommendation other than to oppose the Defence motions. This trial should go
15 forward. This trial cannot be linked to Mr. Erlinder's fate or the situation that he put himself in or that he
16 finds himself in.

17
18 As a lawyer, speaking independently of my status as a -- speaking for the Prosecution, but not
19 necessarily being the voice of the Prosecutor, it seems to me that the most appropriate thing to do is to
20 send some sort of judicial monitor to Rwanda to observe the trial process -- or the judicial process in
21 Rwanda and report back to the authorities of this Tribunal. But certainly stopping this trial is not going
22 to advance the course of justice or the situation that -- or will resolve the situation that Mr. Erlinder finds
23 himself in.

24
25 So with that I think the record is complete. The Prosecution made every effort to create a full public
26 record of this particular situation, including the representations that come from Mr. Ngoga and including
27 the very words that Mr. Erlinder pronounced recently in Belgium, which the Court can -- can read for
28 itself.

29
30 So the situation is fully -- to the extent that the situation can be fully summarised or briefed for the
31 Chamber, I think that has been done by the various submissions that have been made in writing. And
32 with that, I'll -- I'll conclude. It's a matter for the Court's discretion, but stopping this trial is not going to
33 address in any productive manner the situation that Mr. Erlinder finds himself in. Thank you.

34 MR. PRESIDENT:

35 Thank you.

36 MR. ROBINSON:

37 Mr. President, may I have a small time for reply?

1 MR. PRESIDENT:

2 You may.

3 MR. ROBINSON:

4 Thank you. I think the things that Mr. Webster has said are important to address, and I think they need
5 to be rebutted. And I appreciate the spirit in which he's made his comments, and I don't have any
6 problem with what he's said, and he's doing his job.

7
8 First of all, I think really if Mr. Erlinder was arrested for his representation of Victoire Ingabire, who's a
9 candidate for president in Rwanda, or for his lawsuit against President Kagame in the United States, I
10 never would have made that motion and I wouldn't be standing here asking the ICTR to do anything
11 about it.

12
13 While I might sympathise with Mr. Erlinder's plight, I wouldn't see it as the role of the ICTR to be
14 intervening in matters between Rwanda that don't really concern it. But the fact is that what
15 Mr. Erlinder is charged with -- and those charges were read to him on Friday -- deal exclusively with the
16 comments and papers he's written in connection with his representation of Major Ntabakuze at the
17 ICTR.

18
19 And so, therefore, as a factual matter, the Tribunal is implicated and involved. And Rwanda is a
20 member state of the United Nations, and they have an obligation not to take action which interferes with
21 a fair trial in this Tribunal. And a fair trial is impossible under these circumstances, not only for
22 Mr. Erlinder's client, who finds his lawyer locked up, but for all of us, and Mr. Nzirorera, in particular,
23 whose defence is that there was no state-sponsored genocide in Rwanda.

24
25 So I just leave you with five words: I can't do my job. Thank you.

26 MR. WEYL:

27 Mr. President, I have listened to Mr. Webster, and he has somehow addressed some of our objections.
28 But the crux of the matter remains that we know that Peter Erlinder was first charged in respect of
29 statements he had made. That is already documented and is beyond any controversy. But we also
30 know that some emotions were stirred because of these charges and it is for those reasons that the
31 Rwandan authorities tried to circumvent the lawyer's immunity by introducing new elements.

32
33 Maybe I did not say this a short while ago, but let me say it now. The communiqué of the spokesperson
34 of the Tribunal was rather distressful for me, because it simply said that the Tribunal was concerned
35 about Mr. Erlinder's situation, but that Mr. Erlinder was not on mission for the Tribunal and that he was
36 being charged for reasons that were not connected to the Tribunal. He went on to say that the Tribunal
37 was going to contact the Rwandan authorities to find out whether there were any elements in those

1 charges relating to his mission.

2
3 This, Mr. President, is also a cause for great concern. It is true that the intention of the Tribunal might
4 be good, but when you couch it in those words, the Rwandan authorities can understand this to be
5 giving them a freehand to do anything regarding Mr. Erlinder, so long as they can prove that the case is
6 not connected to the Tribunal and to Mr. Erlinder's activities here at the Tribunal.

7
8 So it lays us open to all manner of threat whereby cases can be brought against us by the
9 Rwandan authorities who would simply argue that this has nothing to do with the Tribunal because they
10 were statements made in Brussels, in The Hague, or at a working session in Paris, or where -- or
11 somewhere else in the area of the common law so -- it even went as far as charges or accusations
12 being made that Peter Erlinder had attempted suicide.

13
14 You see, so if there is no clear stance on the inviolate nature of our mission, then you leave way for
15 others to develop pretexts and obstacles to the performance of our duties. That is why we urge the
16 Tribunal to take a clear position and state clearly to the Rwandan authorities that they need to
17 cooperate with the Tribunal. And within the context of that cooperation, they must also recognise the
18 need to guarantee a fair trial and the inviolability of the lawyers' duties.

19
20 This is not, in any way whatsoever, asking or supporting the fact that the most fallacious or artificial
21 excuses be used to circumvent the lawyers' rights.

22
23 Mr. President, I have been working for the last ten years, and I am not able to count the number of
24 statements or acts that I have taken that can expose me to a similar nature of threat. I have made
25 statements at The Hague and I don't know how the Rwandan authorities would interpret them
26 tomorrow.

27
28 We do not know what the Rwandan authorities will interpret our statements or our work as
29 Defence lawyers will be in the future because all of us are under threat. And I'm not referring only to
30 myself as an individual, but I'm referring to the entire work of Defence teams and my particular duty as
31 a Defence lawyer of Mathieu Ndirumpatse and a Defence lawyer for this Tribunal.

32
33 That is why the Tribunal must have a clear and firm stance in respect of our rights to work as
34 Defence counsel, as allies of the Tribunal with a view to accomplishing the missions and duties of the
35 Tribunal without any leeway being given to the Rwandan authorities to slight or -- or undermine the
36 rights of the Defence, particularly in respect of its immunity. Thank you, Mr. President.

37 *(Pages 1 to 12 by Jean Baigent)*

1 1030H

2 MR. PRESIDENT:

3 Well, I think the morning recess coincides with our need for a short deliberation. So we'll take our
4 recess now.

5 (*Court recessed from 1031H to 1143H*)

6 MR. PRESIDENT:

7 Yes. We are now in a position to rule on the applications that are before us. This morning we'd
8 indicated that we thought we would separate the applications from each other. But having heard the
9 submissions presented, we have decided to give one ruling. And this ruling would include the written
10 motions filed by Nzirorera and Ngirumpatse as well as the oral application made on behalf of Karemera
11 this morning.

12

13 We have listened with interest, and as we have also read with interest, the submissions of all parties.
14 And we don't think it's necessary to go into detail on the background to these issues. The Chamber
15 wishes to state quite categorically that it's determined to guarantee a fair trial and to ensure that
16 the Accused have adequate facilities and time for the preparation and presentation of their defence. So
17 that is an issue which we have said several times before and which we reiterate.

18

19 Now, we take note that the -- when this matter developed, the Tribunal took immediately -- immediate
20 steps to find out whether there was any link between the arrest of Mr. Erlinder and the functioning of the
21 Tribunal. And I would like to exhibit the correspondence from the registrar and the response from the
22 *procureur général* of Rwanda which addresses these issues. And they will form par -- official part of our
23 record now.

24

25 The short answer from the *procureur général* was a denial that the arrest of Mr. Erlinder was related to
26 his work at the ICTR and an affirmation of their adherence to the obligations under the memorandum of
27 understanding, which in fact re -- grants immunity to lawyers as well as other officials of the Tribunal
28 who are on mission in Rwanda.

29

30 We are -- have not as yet heard anything or received any information which should cause us to
31 consider that this issue is directly connected with the Tribunal. However, we intend to continue to
32 monitor the situation, and we will be asking the registrar to continue to follow up and report to the
33 Chamber as matters develop.

34

35 I should mention at this stage that there is -- that we are a Trial Chamber with our own jurisdiction, and
36 it's not appropriate for us to impose a remedy -- as a remedy action aimed at pressurising another
37 government or another court to take any particular action. If it turns out that Rwanda is in breach of its

1 relationship to the Tribunal, then that is an issue which will be addressed by the President of the
2 Tribunal invoking the powers of the Security Council.

3
4 At this point in time with the Trial Chamber, we're not in a position to express any further opinion on that
5 matter. What concerns us now is the issue of the conduct of -- of our trial. The proceedings have gone
6 on for quite a long time. The nature of the defence of the Accused has been clearly expressed over a
7 number of years. The case of Karemera -- the Defence case of Karemera has already been closed.
8 Nzirorera is in the final stages of his case presentation. We don't have any reason to -- to conclude that
9 this incident is going to have repercussions beyond the particular person, Dr. Erlinder.

10
11 The witnesses who are to be interrogated on behalf of Nzirorera, we have considered their testimony,
12 where they are, and we do not conclude that there's any risk involved. With regard to Ngirumpatse,
13 who is just about to conclude his -- commence his case, the situation is not much different because he
14 has already conducted his examinations -- his investigations to a considerable extent. And we are
15 aware that the witnesses who -- who will be called in before the court recess are not likely to be
16 affected by any action that the government of Rwanda may -- may take.

17
18 We -- we consider that the immunities which lawyers have while on mission to Rwanda in the pursuit of
19 their work defending accused persons before this Tribunal does provide sufficient assurances for them
20 to be able to conduct their work independently and without fear. And I can assure everybody that the
21 Tribunal will be monitoring this carefully. And the -- if there's any reason that requires further action, the
22 matter will be reported to the Office of the President who will address this matter with the
23 Security Council.

24
25 We do not think that it would be an appropriate response to this issue to continue the trial at this time.
26 And for those reasons we -- we deny the motion for continuance. We also, as part of our disposition of
27 this matter, direct the registrar to continue monitoring the situation and to report to the Chamber from
28 time to time as matters develop.

29
30 Yes, Mr. Robinson.

31 MR. ROBINSON:

32 Yes, Mr. President. I thank you for your ruling. You've obviously taken a lot of time to think about it,
33 and it's the product of a lot of thought. And I have to say that I disagree with you concerning the risks of
34 proceeding, which is fine if we disagree. But you have your responsibilities, and I have mine. And so
35 my responsibility requires that I make a request for withdrawal of the assignment of counsel that was
36 made when I was assigned to represent Mr. Nzirorera back in 2002.

37

1 I'm making this request pursuant to the Directive on the Assignment of Counsel, Article or Rule 19(A),
2 and it's directed to the registrar, pursuant to that rule. And so my intention is to deposit this document
3 before the registrar with the request that I be allowed to withdraw from my assignment representing
4 Mr. Nzirorera because I -- as I told you, I'm -- it's an unacceptable risk to me and to my family to be
5 proceeding in this case with the defence that we have and subjecting myself to prosecution in Rwanda.
6 I simply won't do it.

7
8 So I would ask that you adjourn these proceedings so that I can present my request for withdrawal to
9 the registrar and undergo the procedures of Rule 19. And I also wish to inform you that, pursuant to the
10 code of conduct that applied to the Defence attorneys here at the ICTR, Article 5 says that "In providing
11 representation to a client, counsel must never permit their independence, integrity, and standards to be
12 compromised by external pressures."

13
14 And as I stand here before you today, I cannot meet that code of conduct, and I cannot comply with that
15 code of conduct because the conduct of the Rwandan government in jailing lawyers for their work in
16 connection with this Tribunal is external pressure that would most definitely affect my representation of
17 Mr. Nzirorera. So at this time I'm not prepared to proceed, Mr. President. I wish to have these
18 proceedings adjourned so that I may deposit my request for withdrawal of my assignment with the
19 registrar. And we will see what will happen from there. Thank you.

20 MR. PRESIDENT:

21 Yeah. Mr. Robinson, the Chamber considers that this is a very important case where the litigant
22 requires to be represented by competent counsel. Until your request for your assignment to be
23 withdrawn is approved, you still remain counsel in these proceedings. We do not consider it reasonable
24 to grant an adjournment for you to proceed with the withdrawal proceedings. We -- there's no
25 knowledge how that was -- how -- how those proceedings will continue, how they will progress. We
26 don't think that's a good reason to adjourn the trial at this stage. So your application for continuance on
27 that ground is not allowed.

28 MR. ROBINSON:

29 Well, Mr. President, this is now a matter that should be before the registrar. So I would like to find a
30 way to put my matter before the registrar. And I'll sit here in the courtroom if that's what you order me
31 to do, but I'm asking you to allow me to present my request to the registrar. He has the capacity and
32 the competence to decide that. And I appreciate it if I could pursue the rights that I have given to me
33 under the Directive on the Assignment of Counsel and that you not interfere with the registrar's ability to
34 make a decision at this point, although you may at some point have the opportunity to have this matter
35 before you. Thank you.

36 MR. PRESIDENT:

37 Well, you are at liberty to make your application before the registrar. There's no attempt to stop that.

1 I'm just saying that we're not adjourning the proceedings for that purpose.

2 MR. ROBINSON:

3 But here I am on the fourth floor in the courtroom, and the registrar's office is on the third floor. And I
4 have my papers ready. How do I give it to him?

5 MR. PRESIDENT:

6 Mr. Robinson, you are a very resourceful lawyer. You have been dealing with matters of -- this matter
7 quite successfully up till now. So I don't think you need my advice.

8 MR. ROBINSON:

9 Thank you.

10 MR. PRESIDENT:

11 Court will call the next witness, please.

12 *(Witness entered courtroom)*

13 MR. WEYL:

14 Mr. President.

15 MR. PRESIDENT:

16 Yes, Mr. Weyl.

17 MR. WEYL:

18 Mr. President, I have heard your decision and your statement, Mr. Robinson, namely, that we were
19 competent lawyers. And as I have stated to the Court before, there is no competent lawyer without a
20 conscience. Given the decision of the Court, I now must refer to my conscience. I do not intend to
21 make any comment on the decision of the Trial Chamber, but I simply want to draw the Trial Chamber's
22 attention to the position in which it has now put me. If my understanding is correct, the Trial Chamber
23 now believes that I should go to Kigali on Wednesday and then find out whether I will be subjected or
24 not to the same risks as Mr. Erlinder.

25

26 So must I sacrifice myself, therefore, to such a concrete experience in order to see whether or not the
27 Tribunal supports me? Particularly in respect of the arguments that may be put forth in respect of my
28 arrest or non-arrest. I am not ready to expose myself to this type of exercise. And so Mr. Ngirumpatse
29 cannot enjoy coherent, serene, and full defence.

30

31 And as I said a short while ago, the Trial Chamber is indicating to us that the witnesses we intend to call
32 in July will also be exposed to these types of risks. As I said, one has to consider what the witnesses
33 will say and also what questions the Prosecutor will put to them and then have to determine with them
34 whether they accept or not that there was genocide and that their answers will, therefore, expose them
35 to the Rwandan authorities. My question of conscience, therefore, is, can I take such a risk? And the
36 answer must be no.

37

1 Now, given that a witness is a key factor in my -- in the proceedings and given that I am, therefore,
2 expected to exercise restraint in the putting of my questions in view of what the answer of the
3 Rwandan -- or the reaction of the Rwandan government may be -- all of these things lead me to the
4 conclusion that I cannot freely discharge my duties as a lawyer. So I cannot be a lawyer who works
5 without his full conscience. And, therefore, that would lead to some measure of incompetence.

6
7 So the question is, am I able to fully discharge my mission? Maybe I do not understand things in the
8 same way as Mr. Robinson. But it is simply an observation that it is materially impossible for me to
9 discharge my duties without constraint so long as there is a constraint in place against which I do not
10 have clear guarantees from the Tribunal and in respect of which I must examine my own conscience.
11 And I must consider issues such as the price that witnesses would have to pay. For all these reasons I
12 am not able to accomplish my reason -- my -- my mission for reasons of conscience. And, therefore, I
13 can only be deemed to be incompetent.

14 MR. PRESIDENT:

15 Mr. Weyl, the -- we have to consider that this trial did not start today. It has been going on for
16 several years. You have been conducting the Defence of your client. You've interrogated many
17 witnesses, and many other witnesses have testified before the Court. Now, you cannot expect that this
18 Trial Chamber will be -- be -- make a decision as a sort of protest against the arrest of Mr. Erlinder. We
19 need to have considered the extent to which the -- it's reasonable to draw an inference that the Tribunal
20 is implicated in this matter. And we do not think that there is any material which entitles such an
21 inference to be drawn. And that's the basis on which our decision is made.

22
23 We are not of the view that it is reasonable to conclude that there's any risk that you or anybody else
24 conducting their work in connection with this trial will run any problems such as you have suggested
25 you might -- you are afraid of. So that's our view, and that's our ruling. So we are not satisfied that it's
26 necessarily reasonable to draw the inferences that you suggest ought to be drawn in these
27 circumstances. And that's the basis for our ruling.

28 MR. ROBINSON:

29 Excuse me, Mr. President. I don't wish to question your ruling. But don't you think you ought to get the
30 information from Rwanda as to what the charges are against Mr. Erlinder? They were read out in court
31 on Friday. They're contained in my art -- newspaper article that I attached to my reply brief. And you're
32 asking us to take a risk. But don't you think you ought to have sufficient information before you ask us
33 to do that? It's simple to do.

34 MR. PRESIDENT:

35 Arrangements have already -- the registrar has already undertaken this -- this -- these enquiries.

36 MR. ROBINSON:

37 So why don't we wait until those are completed, and then --

1 MR. PRESIDENT:

2 Well --

3 MR. ROBINSON:

4 -- we can move forward? We can move forward with adequate information, not with each of us
5 speculating.

6 MR. WEBSTER:

7 Your Honour, I'm -- I'm at a bit of a loss as to what is going on now. But when Mr. Weyl spoke a
8 few minutes ago, I didn't hear any application that this Chamber would be in a position to rule on. I
9 heard a -- a -- a statement of complaint, and the last sentence had to do with Mr. Weyl's assessment of
10 his own competence.

11

12 And now Mr. Robinson is joining in with another statement. I don't hear a motion for reconsideration or
13 anything that resembles an application.

14

15 So I think -- my suggestion is that we proceed. The Court has already made its decision. Mr. Robinson
16 has announced what he plans to do. I have been reviewing Article 19 and the directive that he referred
17 us to. And there are clear procedures that he can follow and that will be respected.

18

19 So there's really nothing else that anyone can do other than move forward at this stage, given my
20 understanding of -- of -- of the Chamber's ruling.

21 MR. PRESIDENT:

22 Mr. Robinson, on the surface your suggestion seems very rational and reasonable. But we had already
23 considered that. And I thought I had -- I thought I had already explained our position on -- on that issue.

24

25 If Rwanda's behaviour is in violation of its obligations to the -- to this trial and this Tribunal, that is an
26 issue which is monitored by the Security Council, not by a Trial Chamber. So we would not have
27 jurisdiction to adjudicate or impose remedies on that. This is a -- this is a matter which, through the
28 Office of the President, is addressed to the Security Council. So we -- we are not going to, at a
29 Trial Chamber level, adjudicate this issue in the way in which you are expecting us to do so.

30

31 But I have given you my assurance that if these -- if there is a reason to do so, the matter will be
32 referred to the Security Council promptly for its action, and that, to our view, is the appropriate channel
33 in which this matter needs to be addressed.

34 MR. ROBINSON:

35 Thank you, Mr. President. But, respectfully, I think you're ignoring the impact of the situation on the
36 fairness of the trial for Mr. Nzirorera and on the obligations that I have as his counsel. So I'm not asking
37 you to act as President in -- or to take act -- in any way to take action concerning what the

1 Rwandan government has with Mr. Erlinder.

2
3 I'm only asking you to take action necessary to preserve the fairness of these proceedings and the
4 integrity of my ability to represent my client. But you've ruled. I understand. And we can move on.

5 Thank you.

6 MR. PRESIDENT:

7 Yeah. Thank you, Mr. Robinson.

8
9 Yes, Mr. Weyl.

10 MR. WEYL:

11 Mr. President, in our motion -- I do not know whether the Trial Chamber considered this aspect of our
12 motion, namely, that the Tribunal should use its offices to ask the Rwandan authorities to guarantee
13 cooperation with the Trial Chamber and contribution to a fair administration of justice whereby the rights
14 of the Defence will be upheld. So I do not know whether the Trial Chamber fully considered and
15 addressed these -- this aspect of my motion which ultimately could lead to a suspension of the
16 proceedings if this has not been fully examined.

17
18 But let me refer to a concrete example. According to your decision, this is what you say -- Mr. --

19 MR. PRESIDENT:

20 Mr. Weyl, I don't think it's appropriate for regurgitation of my decision -- or the Trial Chamber's decision
21 on this matter. The specific enquiry which you have made has been addressed in the documents I
22 exhibited during my judge -- my -- and if the registry has not as yet distributed them, you will see that
23 this matter was addressed and there's a response from the Rwandan government. So thank you.

24 MR. WEYL:

25 Mr. President, I -- I was simply trying to raise a concrete problem. You -- you know --

26 MR. PRESIDENT:

27 Mr. Weyl, I think that we have addressed this matter. We are at the stage now where we have made a
28 ruling on your motion. I think we should proceed.

29 MR. WEYL:

30 Mr. President, if we were to proceed in these conditions -- let me say that Mr. Ngirumpatse's lawyer is
31 now under pressure, under threat and -- who does not have a sense of independence. And that,
32 therefore, raises a matter of conscience for me.

33
34 I would like to discuss this issue with him. Maybe we will talk about the situation of the Defence teams
35 as at now and to see how their mission can be discharged in circumstances where, according to my
36 concerns, I do not feel free with regard to my statements, my actions, and my undertakings.

37

1 The -- that does not give me the latitude to withdraw or submit my registry -- my -- my withdrawal to the
2 registry, but also puts me in a position where I feel that I am not competent or apt to defend him. And,
3 therefore, I am not able to act mindful of my oath to independently discharge my duties, as is my
4 obligation towards Mathieu Ngirumpatse. That is why I appeal -- I apply for a suspension so that I can
5 consult with my lawyer on this -- with my client, rather, on this particular matter.

6 MR. PRESIDENT:

7 We take note of your initial Freudian slip, Mr. Weyl, without further comment.

8 THE ENGLISH INTERPRETER:

9 Interpreter's apologies, Mr. President, for the slip.

10 MR. WEYL:

11 That does reflect all the problems we have. And I did not have any Freudian -- Freudian slip, so to
12 speak, and I'm sure the interpreter can confirm that.

13 THE ENGLISH INTERPRETER:

14 Interpreter had tendered apologies, Mr. President, already. Thank you.

15 MR. PRESIDENT:

16 Oh, dear. Mr. -- Mr. Weyl, what we had -- what we had heard, which apparently may -- may not have
17 been what you said -- I acknowledge that. But what we had heard was that you were going to consult
18 your lawyer. So my remark was I suppose a futile attempt to be in -- lighten the atmosphere somewhat.
19 So I'm sorry if you took it the wrong way.

20 MR. WEYL:

21 But then, Mr. President, the fact that you raised the issue once again raises another problem facing me,
22 namely, that under the present circumstances I need to talk to the president of my Bar association in
23 relation to my oath and, therefore, find out from him whether under these circumstances, and mindful of
24 the symbolism of my robes, whether I can continue to discharge my duties within the context of the
25 requirements pertaining thereto. For this reason I, therefore, apply for a suspension, not only to consult
26 with my client but also to contact the president of my Bar association on this matter. Thank you,
27 Mr. President.

28 MR. PRESIDENT:

29 All right. We -- Mr. Weyl, we -- we note your submissions, your concerns. We think we are going to
30 deny your application. This is not your witness. I think we can move forward. The issues connected
31 with your trip to Rwanda, we don't need to address immediately anymore. And I think we should just --
32 just proceed.

33

34 Good -- good -- yeah. Good afternoon, Mr. Witness.

35 THE WITNESS:

36 *Bonjour.*

37

1 MR. PRESIDENT:

2 Yes. Your -- I'm sorry that your initial attendance was affected by discussions on matters which were
3 not connected directly to your testimony.

4 MR. WEYL:

5 Mr. President, my apologies, but I think there was a translation problem. I said that, under the
6 circumstances, and in a joint trial where Mr. Ngirumpatse is also concerned, I don't know if I can
7 continue to sit here. And I will, therefore, wish that we adjourn so that I consult my professional order
8 so that my -- the president of my Bar association can tell me whether my continuing with the trial is
9 consistent with my oath of office and my professional obligations.

10

11 I cannot remain in this courtroom with that uncertainty without the Tribunal having given me the
12 permission and, therefore, adjourned so that I can consult the person before whom I am answerable
13 insofar as my professional obligations are concerned. I'm talk -- and I'm talking about the president of
14 my Bar association. So I do -- would like that we suspend proceedings so that I consult the president of
15 my Bar association.

16 MR. PRESIDENT:

17 Now, Mr. Weyl, there was no translation error. I understood exactly what your application was, and
18 your application was denied. We are the Judges in this Tribunal. You will have ample opportunity to
19 consult your Bar association, and you're at liberty to do so. But as of now we'll proceed.

20

21 Mr. Witness.

22 THE WITNESS:

23 *Oui.*

24 MR. PRESIDENT:

25 Are you hearing what's going on?

26 THE WITNESS:

27 What is going on?

28 MR. PRESIDENT:

29 That's probably quite an appropriate response. But -- but maybe my question was a little bit -- but -- but
30 you are hearing, and you are -- and we're hearing you.

31

32 Now, you -- you have been brought here to give evidence on behalf of Joseph Nzirorera. And as a
33 preliminary step, you have to take an oath to tell the truth. And the registrar will now assist you to do
34 that.

35 THE WITNESS:

36 By being in the box all morning, I don't think it would be appropriate for me to start now because right
37 now I am hungry. I would, therefore, like to ask whether I can be granted leave to go and eat before

1 coming back, if that is possible.

2 MR. PRESIDENT:

3 Mr. Witness.

4 THE WITNESS:

5 *Oui.*

6 MR. PRESIDENT:

7 Since -- since when I enquired it appeared that you did not understand what was going on, then I will
8 not consider you to be impertinent in your answer.

9

10 Now, will you allow the registrar to assist you in taking the oath, please.

11 THE WITNESS:

12 I have understood what is going on. Okay.

13 MR. PRESIDENT:

14 We -- we adjourn for lunch at 12:30, which is in 15 minutes from -- 10 minutes from now.

15

16 Mr. Registrar, will you administer the oath, please.

17 *(Declaration made by Janvier Busogi in French)*

18 MR. PRESIDENT:

19 Thank you, Mr. Witness.

20 THE WITNESS:

21 Thank you very much.

22 MR. PRESIDENT:

23 Now, you -- you'll give your testimony by responding to questions put to you by counsel designated for
24 that purpose. And you'll respond, first of all, to counsel representing Mr. Joseph Nzirorera.

25

26 I'm sorry. Is this -- is this a *90 bis* witness?

27 MR. ROBINSON:

28 No, Mr. President.

29 MR. PRESIDENT:

30 This -- this is a new witness; right?

31 MR. ROBINSON:

32 Yes.

33 MR. PRESIDENT:

34 I -- I'm sorry.

35 MR. ROBINSON:

36 No problem.

37

1 Mr. Witness -- excuse me -- Mr. President, the gentleman in front of you is Janvier Busogi. He's
2 testifying without any protective measures.

3
4 Mr. Busogi, you have come a long way, from the United States. And I just have to take a moment to
5 explain to you the situation in which I'm going to begin, and that is that today we have asked the
6 Chamber to postpone your testimony because we don't feel that those of us who are defending
7 the Accused here can do our jobs, given the arrest of one of our colleagues in Rwanda and the risk that
8 that poses to us as Defence counsel representing our clients in this courtroom.

9
10 And I want to apologise to you for having brought you a long way for what I'm about to do, but I hope
11 that you'll understand and you will forgive me.

12
13 Mr. President, I have no further questions for this witness. Thank you.

14 MR. PRESIDENT:

15 Mr. Robinson, is this an action of protest against the order the Trial Chamber has just made?

16 MR. ROBINSON:

17 Not at all, Mr. President. Until my application to withdraw is adjudicated, as I've told you, I'm not willing
18 to take the risks that my representation of an accused at this Tribunal entails. Therefore, since you've
19 insisted that I go ahead with this testimony before I've had an opportunity to present to the registrar my
20 application to withdraw, I'm not in a position to ask the witness any questions at this time.

21
22 If that application is adjudicated and I'm -- and denied and I'm forced to obey an order of the Chamber
23 in which I have to proceed, then we'll proceed. But at this time I'm going to follow the procedures. And
24 I'm not in a position to question the witness at this time.

25 MR. PRESIDENT:

26 So we take it this is an act of disobedience to our order that you should proceed.

27 MR. ROBINSON:

28 No. I've proceeded. I have -- I proceeded --

29 MR. PRESIDENT:

30 No. No. This is not -- this is not necessarily a proceeding. You see, what you're saying is this: That
31 you're denying the accused person the benefit of witnesses -- of testimony that you had previously
32 indicated was necessary for his defence.

33 MR. ROBINSON:

34 Yes, Mr. --

35 MR. PRESIDENT:

36 So you're -- you're taking an action which is interfering with the fairness of this trial out of protest for an
37 order with which you do not agree.

1 MR. ROBINSON:

2 No. Not out of protest, Mr. President, but out of the necessity that there is a conflict of interest between
3 myself and my client and that I can't --

4 MR. PRESIDENT:

5 Well, you're going to have to consider -- and I'm going to give you an opportunity -- see, I'll give you an
6 adjournment for this reason, to consider this: You'll have to consider whether this action is a contempt
7 of Court. No. No. You don't have to comment now.

8 MR. ROBINSON:

9 Okay.

10 MR. PRESIDENT:

11 We'll take a brief -- because it's often said, when one acts too quickly, one has a long time to recant it. I
12 think I understand the position you're in. I'm not trying to put any pressure on you.

13 MR. ROBINSON:

14 Okay.

15 MR. PRESIDENT:

16 But I think it's reasonable that you should have a chance to consider whether this action is
17 contemptuous of the Court.

18 MR. ROBINSON:

19 Thank you, Mr. President. I will do that.

20 MR. PRESIDENT:

21 So we will take an adjournment now.

22 *(Court recessed at 1225H)*

23 *(Pages 13 to 24 by Tanya West)*

24

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1 (Court resumed at 1412H)

2 MR. PRESIDENT:

3 Yes.

4
5 Mr. Robinson, just as a matter of information sharing, enquiries have been made, including with counsel
6 representing Mr. Erlinder. It does not appear that formal charges have been made as yet.

7
8 The court appearance that occurred on Friday had to do mostly with his continued detention and it's --
9 certain argumentations were presented on both sides in relation to that issue. And the information that
10 we have is that the matter has been -- has been fixed for decision-making this afternoon at 4 o'clock.

11
12 So we are not aware that formal charges have been made as yet. I don't know if you have other
13 information to the contrary.

14 MR. ROBINSON:

15 No, Mr. President. The information I have, which I received directly from Mr. Erlinder's counsel, was
16 that when he appeared on Friday, charges were read out to him, whether they've been filed as formal
17 charges or whether they were simply a description of what was -- he was being provisionally detained
18 for, I don't know. But those charges all related to his publications and statements made while he was
19 representing Mr. -- Major Ntabakuze, but that's the only information I have. And I agree that the
20 situation at this point is not such that we know exactly what he is charged with. And for that reason I
21 would like to ask you to not act precipitously or force me to act precipitously since we don't have that
22 information.

23
24 I want to also state that since we adjourned for lunch, I went to the registrar's office and asked to hand
25 in my application to withdraw the assignment of counsel and I was told that I have to do that through the
26 communication centre in the -- which was closed by the time I got there. But I did manage at 2 o'clock
27 to file that application. I left a copy with the registrar and asked for an appointment, and I was also told
28 that he was engaged in meetings continually so that when I returned at five minutes to two, his
29 secretary still did not have an opportunity to fix an appointment for me.

30
31 So those matters are pending at the moment, and I again think it's really precipitous to force me to go
32 forward when there is an application pending for my withdrawal before the registrar and when we don't
33 know exactly the charges against Mr. Erlinder.

34
35 I don't understand why we necessarily -- so -- these days that we're spending here are so precious that
36 you have to put me in a position where I might be in contempt or you might think I'm in contempt. I note
37 we didn't sit last week because you attended the ICC review conference in Kampala. We're not sitting

1 next week because you're attending the UN Security Council in New York. And I don't see why you
2 couldn't extend to me some small courtesy of suspending these proceedings until these matters are
3 clarified so that we don't have a confrontation that is, in the long run, possibly unnecessary. Thank you.

4 MR. PRESIDENT:

5 Mr. Robinson, I hope you're not accusing me of being discourteous to you.

6 MR. ROBINSON:

7 No. I'm asking for -- you haven't been discourteous to me in the least bit. I'm asking you for courtesy.

8 MR. PRESIDENT:

9 Yes. But isn't that normal? Just to request it suggests that you anticipate the opposite.

10 MR. ROBINSON:

11 Well, I think it would be discourteous to me if you were to try to hold me in contempt when there are
12 reasonable alternatives available. But as of right now, you've been perfectly courteous to me, and I
13 appreciate that.

14 MR. PRESIDENT:

15 Well, I don't think that the way I exercise my judicial discretion has anything to do with courtesy or
16 indulgence or any attitudes. It has to do with the -- what we perceive to be the correct way of applying
17 the law as we understand it to the factual situations that are being presented before us.

18 MR. ROBINSON:

19 Very well, Mr. President.

20 MR. PRESIDENT:

21 Mr. Weyl.

22 MR. WEYL:

23 Thank you, Mr. President. I just wanted to make two comments.

24
25 The first comment is that I heard what you said when we returned to this courtroom, and I understood
26 your comments to mean that there is a possibility of having time in order to know more about what is
27 going to happen at 4 p.m. Maybe this will give us an opportunity to -- for us to think together about a
28 possible adjournment till tomorrow morning so that we can look at the developments in new -- in light of
29 new developments.

30
31 So we're not talking about several days lost or several days gained, we're talking here about
32 one-and-a-half hours. As you yourself said, there's a necessity to further explore things. Maybe we
33 could adjourn proceedings till tomorrow morning. This is my suggestion.

34
35 Second point -- and maybe the Court could make a ruling on the second point. And maybe I could
36 further intervene on depending on what -- on how the Court reacts to my first comments. Maybe I'd
37 have to make a second comment.

1 Thank you, Mr. President.

2 MR. PRESIDENT:

3 Mr. Weyl, we -- we don't necessarily welcome serial submissions. So could you please complete your
4 submission by advising us of the second point that you have.

5 MR. WEYL:

6 Mr. President, my suggestion is that we adjourn -- rather, you adjourn because you are the
7 decision-makers -- we adjourn till tomorrow morning so that once again we could think out matters in
8 order to shed further light on the situation regarding the proceedings which will take place in Kigali at
9 4 p.m.

10

11 Secondly -- my second point is actually in anticipation in that the accused persons were here in the
12 proceedings this morning, and they have been moved by the current situation. The Accused asked me
13 to request you to see whether there's a possibility for one of them to read out a statement on behalf of
14 the three accused persons.

15

16 I'll respectfully request you, Mr. President, to allow Mr. Ngirumpatse to read out a short statement on
17 behalf of the three Accused here in order to show the situation facing us as well as the situation we are
18 talking about, including the -- even a threat of the withdrawal of Mr. Robinson's assignment.

19

20 So I'm requesting you, Mr. President, to allow Mr. Ngirumpatse to read out the statement on behalf of
21 the three Accused here.

22 MR. PRESIDENT:

23 Mr. Weyl, one of the main issues that I have mentioned this morning is this: That these are judicial and
24 court proceedings. You cannot invite a court to take actions, symbolic actions, to put pressure on
25 another court or another government to achieve a result that you want. Neither is it an appropriate
26 forum for a statement to be made which may be interpreted as a political statement.

27

28 We are a courtroom, a court, and that type of strategy is not something which forms part of our
29 procedures.

30

31 We also explained to you or to Mr. Robinson or to everybody that if events reveal that there has been a
32 violation by Rwanda, our Trial Chamber is not the appropriate forum to make adjudications on that
33 issue or to give remedies for it.

34

35 That's not something that we are competent to do. And in any event, the procedures involved involving
36 here and the other side would be a terrible distraction from the primary functions in which we are
37 engaged.

1 Under the statute of the ICTR, which governs us, the appropriate forum for addressing matters of this
2 nature is the Security Council. And so even finding out more about what has transpired -- in the
3 worst-case scenario that finding out more may reveal a need for further action, that further action will
4 not be taken by this Chamber, cannot be. And that's the position in which we find ourselves.

5 MR. WEYL:

6 Mr. President --

7 MR. PRESIDENT:

8 Mr. Weyl, one other thing I want to tell you is this, right. If we are going to grant an adjournment, we are
9 going to grant an adjournment. But we're not going to tolerate lawyers just talking for the
10 one-and-a-half hours to prevent us from doing our work.

11
12 If you think an adjournment is required, we will grant it, using our best judgment. If you don't think it's
13 required, we won't grant it, using our best judgment. But we're not going to appreciate constant talking
14 to spill out the time, if that's what you're trying to do.

15
16 Mr. Robinson, you enquired what is a few days, because we have had other adjournments. I think it's
17 important to clarify there that these adjournments were not based for my personal convenience, as one
18 may be interpreting your comments maybe.

19
20 These discussions were in fact -- these adjournments were fixed in full consultation with -- with the
21 parties and the Chambers. And the adjournment last week need not have lasted a full week had it not
22 been at the request of counsel for the Defence.

23
24 Now, having said that, when you add up one adjournment on to another, I think that over the last couple
25 of -- couple of months the number of days we have not sat in court is really quite a lot. And just -- and I
26 don't think it's a good reason to adjourn again because we have adjourned several times already.

27
28 Now, what is concerning us is this: This trial has been going on now for several years and as opposed
29 with one or two notable exceptions, it's been conducted in a satisfactory manner. We have felt and
30 commented on several occasions that the level of civility in the courtroom is good and we have in fact in
31 general been satisfied with the quality and professionalism of lawyers on all sides.

32
33 Now, we take this into account in deciding that it may be appropriate to wait until tomorrow to resume
34 the hearing because we have noted your plea not to force you into a position to be contentious.

35
36 Now, I don't quite fully understand how taking a decision that we consider to be right forces you to do
37 something which you consider to be wrong. But on the other hand, I suppose when one takes into

1 account the bigger picture, it may be better to give everybody an opportunity to overcome any
2 emotional feelings which may exist and may get in the way of a satisfactory way forward.

3
4 As I've indicated to you, I -- none of us on the Bench think that the -- our Court ought to be seen to be
5 taking an action to pressure any particular action by the Rwandan courts or the Rwandan government,
6 so that any adjournment that we give today until tomorrow morning is not predicated on any particular
7 behaviour which may develop.

8
9 I also indicated to you that if, in fact, we come to the conclusion that there is or there might be a
10 violation by Rwanda, this is not the forum for it to be addressed. And I've given you my assurance that
11 the Tribunal will be using its best offices to deal with these matters to ensure that the trial process
12 continues to be fair and that all accused persons have adequate time and facilities for the presentation
13 of their Defence.

14
15 So it's in this context, in an effort to ensure that we have a cool and calm atmosphere, that we have
16 decided that we will take the rest of the afternoon off and resume tomorrow morning.

17
18 So we will grant -- I am not certain whether it's your application or Mr. Weyl's application. So I'll let one
19 of you have the --

20 MR. ROBINSON:

21 I think we can give the credit to Mr. Weyl for that.

22 MR. PRESIDENT:

23 But whose -- whoever the application is we -- we grant it. And we will resume tomorrow morning.

24 MR. ROBINSON:

25 Mr. President, I appreciate that. One -- I would like to ask you about two things. First of all, the
26 witness, Mr. Busogi, took the oath and, therefore, technically I'm not allowed to talk to him. But I would
27 like to explain to him what has happened today and what his -- why he hasn't testified. And may I have
28 permission to have contact with him, even though he's taken the oath?

29 MR. PRESIDENT:

30 Yes. We consider that in the circumstances it's reasonable to grant that permission, and we grant you
31 leave to do that.

32
33 Mr. Registrar, we have granted leave.

34 MR. ROBINSON:

35 Thank you, Mr. President.

36
37 And, Mr. President, I don't -- maybe this isn't the appropriate time, and I don't want -- certainly don't

1 want to change your decision, which I appreciate. But you've mentioned several times that your view
2 and the view of the Trial Chamber that this is not the appropriate forum for dealing with Mr. Erlinder's
3 case, and I completely agree with you on that, and I'm not Peter Erlinder's lawyer.

4
5 But I feel like there's some kind of misapprehension on the part of the Trial Chamber, because this
6 motion has nothing to do with the remedies being sought for Mr. Erlinder but it has everything to do with
7 Mr. Nzirorera's right to a fair trial and my ability to represent him in this trial only. And so I think it has
8 everything to do with this trial, and the Trial Chamber has an obligation to rule on that and to consider
9 that not as a plea for some kind of political action on behalf of the Chamber but as a remedy for the
10 violation of the right to Mr. Nzirorera's fair trial and the violation of my own ability to defend him, given
11 the way Rwanda is applying its negationism and national security laws against people who have
12 worked at this Tribunal.

13
14 So I hope that while we're all thinking about things overnight, you can also take those comments into
15 consideration. Thank you.

16 MR. PRESIDENT:

17 Well, thank you for that. We -- I think -- I'm not certain again whether it was you -- I don't recall exactly
18 whether it was you or Mr. Weyl, but somebody did raise the issue of us taking a symbolic position to
19 see to the release of Mr. Erlinder. And that's why we made that remark, because we didn't want it to be
20 felt by anybody that anything that we took, or any decision that we took was aimed at influencing the
21 outcome of Mr. Erlinder's case in Rwanda. We don't intend to do that, and we don't think it would be a
22 correct posture for us to have. So we're just trying to clear the air on that issue.

23
24 As you have commented, rightly I think, we are concerned with guaranteeing a fair trial to the Accused
25 in this case, and to ensuring that they have adequate time and facilities for the presentation --
26 preparation and presentation of the Defence. And that's the issue that we have given our attention to.
27 And basically we -- we have not come to the conclusion that what has happened to
28 Mr. Erlinder goes beyond Mr. Erlinder. That's basically the fact of the matter, and we don't see it
29 spilling over. We don't think that there is reason for us to consider that it is likely to spill over in general
30 to the Trial Chamber.

31
32 And we also feel that in terms of the continued investigations that the MOU, the memorandum of
33 understanding that we have with Rwanda, provides protection to all lawyers and investigators pursuing
34 investigative work with regard to this trial. And we are committed to -- to be vigilant to ensure that those
35 immunities are respected. And I've indicated that if we had an indication that they're not, that the -- the
36 organ for ensuring compliance is the Security Council.

37

1 So it's not that we have not been concerned about the finish of this trial, but we -- that has been the --
2 our primary concern in this matter, and we will do everything that we can to ensure that those interests
3 are not prejudiced in any way.

4 MR. ROBINSON:

5 Thank you, Mr. President. I think we understand each other very well. Thank you.

6 MR. WEYL:

7 Mr. President, I don't want to draw the debates, but I understand that next week there will be a
8 Security Council meeting and this issue does not -- or doesn't have a -- disconnect (*sic*) with your trip.
9 So I think that when you're talking about the suspicion of a link between the mandate -- case -- I think
10 you understand Mr. Erlinder's personality and his involvement, the Defence. And so it's impossible not
11 to have some suspicion, Mr. President.

12 MR. PRESIDENT:

13 Mr. Webster, this would be a precedent if you don't wish to say something.

14 MR. WEBSTER:

15 There's really not much the Prosecution can say. I would like to comment, however. The discussion to
16 me was much more satisfying up to the point where Mr. Robinson rose a few minutes ago because I
17 don't really understand the implications of his last submission, and certainly not Mr. Weyl's. And so it's
18 hard to be satisfied where things are now because what can the Court do?

19
20 I mean as -- as the Trial Chamber stated around ten minutes ago, regardless of what we learn by
21 tomorrow morning, I don't see how it changes matters. But I agree, and I thank the Court for its
22 sensitivity to the passions of the moment so that we agree that maybe starting off on a fresh footing
23 tomorrow morning is the best thing to do. But quite frankly, I don't quite understand the implications of
24 Mr. Robinson's last -- last submission.

25
26 Regardless of what happens in Rwanda this afternoon, we're still going to have to proceed with -- with
27 this trial, and there are two distinct issues, one for the domestic jurisdiction and national jurisdiction in
28 Rwanda, and what we -- what we do here in the Tribunal, which I'm -- I'm simply reiterating what the
29 Chamber itself stated, but --

30 MR. PRESIDENT:

31 Mr. Webster, we are going to make another try at something I tried earlier this morning. We don't think
32 that we should try in this forum to assist you to understand Mr. Robinson.

33
34 We suggest that retreat to the Tribunal's canteen may be a good forum for both of you to try to
35 understand each other. And on that note we take our adjournment.

36 *(Court adjourned at 1444H)*

37 *(Pages 25 to 31 by Deirdre O'Mahony)*

CERTIFICATE

We, Jean Baigent, Tanya West and Deirdre O'Mahony, Official Court Reporters for the International Criminal Tribunal for Rwanda, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*stenotype*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

We further certify that we are not of counsel nor related to any of the parties to this cause and that we are in nowise interested in the result of said cause.

_____ Jean Baigent

_____ Tanya West

_____ Deirdre O'Mahony