



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

UNITED NATIONS
NATIONS UNIES

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie
Tel: 255 27 2504207-11 2504367-72 or 1 212 963 2850 Fax: 255 27 2504000/2504373 or 1 212 963 2848/49

TRIAL CHAMBER III

Before: Judge William SEKULE
Judge Arlette RAMAROSON
Judge Joseph ASOKA NIHAL DE SILVA

Registrar: Adama Dieng

Filed on: 27 June 2005

JUDICIAL DECISIONS/ARCHIVES
ICTR
2005 JUN 27 P 4: 01

THE PROSECUTOR

v.

HOMISDAS NSENGIMANA

(Case No. ICTR-2001-69-I)

**PROSECUTOR'S RESPONSE TO DEFENCE MOTION FOR THE SETTING OF
A DATE FOR A PRE-TRIAL CONFERENCE
A DATE FOR THE COMMENCEMENT OF TRIAL
AND
A REQUEST FOR PROVISIONAL RELEASE**

Office of the Prosecutor:

William Egbe
Amina Ibrahim

Defense Counsel:

Emmanuel Altit

1. The Office of the Prosecutor (hereinafter, "The Prosecutor") respectfully files the present response to a Defence motion ("The Motion") dated 18 June 2005 and filed at the Registry of this Tribunal on 20 June 2005, in regard to the case *The Prosecutor v. Homisdas Nsengimana*.

Preliminary matters:

2. Having been notified of the Motion on 22 June 2005, at 12.18pm, pursuant to Rule 73 (E) of the Rules stipulating time limits applicable to a responding party, the Prosecutor files this response today Monday 27 June 2005, five days after receipt of the said Motion.
3. To the extent relevant to the present response, the Prosecution adopts and relies on the procedural history outlined in the Motion.

The issues:

4. The Prosecutor understands the main issues in the Motion to be the following:
 - (i) that a date be set for a pre-trial conference to determine a date for the commencement of trial, and
 - (ii) that the Accused be provisionally released from the Tribunal's custody.

Submissions:

On the setting of a date for the commencement of proceedings:

5. The Prosecutor does not oppose the motion, it being understood that the scheduling of cases for trial is a matter for the general administration of the Tribunal and its judicial calendar.
6. The Prosecutor notes that recently, Trial Chamber III dealt with a similar application in the case *The Prosecutor v. Emmanuel RUKUNDO*¹ and this is the position taken by the Chamber:

"As regards the question of the determination of a date for the commencement of the trial, the Chamber reiterates that it is a matter for the general administration of the Tribunal and its judicial calendar. The Tribunal evaluates priorities taking into account notably the gravity of the crimes charged, the

¹ *The Prosecutor v. Emmanuel Rukundo*, ICTR-2001-70-PT, Trial Chamber III, Decision on the Motion of the Defence for the Setting of a Date for the Commencement of Trial Or Alternatively, the Transfer of the Case to a National Jurisdiction, 1 June 2005.

rights of all accused to have a fair trial within a reasonable delay and the availability of Tribunal facilities in setting the judicial calendar. In the current situation, the Chamber cannot therefore set a date for a pre-trial conference.²

7. The Prosecutor submits that then, as now, the prerogative remains with the Tribunal in setting its judicial calendar.

On the request for provisional release:

8. The Prosecutor opposes the Motion on the ground that the Accused has failed to demonstrate that if released, he will appear for trial and will not pose a danger to any victim, witness or other person.
9. Provisional release under the Rules is provided for in Rule 65 (B). The Rule stipulates as follows:

(B) Provisional release may be ordered by a Trial Chamber only after giving the host country and the country to which the accused seeks to be released the opportunity to be heard, and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.
10. The applicable Rule makes it clear that it is for the Accused to prove that if released, he will return to the Tribunal for his trial and that he will not pose a danger to any victim, witness or any other person.
11. The conditions in Rule 65(B) are cumulative and not alternative to the extent that the Accused must satisfy all the conditions or fail to qualify for bail.
12. The Prosecutor notes that the Rule does not require consideration of the length of the detention of the Accused as a measure of his eligibility for provisional release from custody.
13. In support of the application for provisional release, the Defence has produced a letter dated 18 May 2005, from *Congrégation Saint-Jean* in France, signed by *Frère Jean-Pierre-Marie*, in which the author certifies that the *Congrégation* will be responsible for the Accused for the entire period he will be on provisional release, until the commencement of his trial. The letter concludes however that should the Accused violate any of the conditions attached to his provisional release, the *Congrégation* will terminate their suretyship and hand the Accused over to Austrian or French Authorities for transfer back to Arusha to be incarcerated while awaiting the commencement of his trial.
14. From the above, the Prosecutor submits that the information coming through from the letter of *Frère Jean-Pierre-Marie* does not provide the guarantees stipulated in Rule 65(B). Additionally, *Congrégation Saint-Jean* has no immigration powers

² Id paragraph 14, page 4.

and can therefore not guarantee the stay of the Accused in French territory for any duration.

15. Absent a showing that French or Austrian Authorities with immigration powers are willing to accept the Accused in either national territory and are prepared to provide the guaranty that if released he will appear at this trial and will not pose a danger to any victim, witness or other person, the Motion should be dismissed.

Prayer:

16. The Prosecutor prays that the Trial Chamber dismiss the Motion.

All of which is respectfully submitted by:

Arusha, 27 June 2005

William Egbe
Senior Trial Attorney



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input checked="" type="checkbox"/> Prosecutor's Office William EGBE (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. HOMISDAS NSENGIMANA			Case Number: ICTR-ICTR-2001-69-I
Dates:	Transmitted: 27/06/05		Document's date: 27/06/05	
No. of Pages:	5		Original Language: <input type="checkbox"/> English <input checked="" type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
Title of Document:	PROSECUTOR'S RESPONSE TO DEFENCE MOTION FOR THE SETTING OF A DATE FOR A PRE-TRIAL CONFERENCE. A DATE FOR THE COMMENCEMENT OF TRIAL AND A REQUEST FOR PROVISIONAL RELEASE			
Classification Level:		TRIM Document Type:		
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<input type="checkbox"/> Confidential		<input type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Submission from parties		
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		<input type="checkbox"/> Judgement <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities		

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

☐ Filing Party hereby submits only the original, and **will not submit** any translated version.

☐ Reference material is provided in annex to facilitate translation.

Target Language(s):

☐ English ☐ French ☒ Kinyarwanda

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☐ Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

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Translation	in	<input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda

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<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines:

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TRIAL CHAMBER III

Before: Judge William SEKULE
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 Judge Joseph ASOKA NIHAL DE SILVA

Registrar: Adama Dieng

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2005 JUN 27 P 14:01
 JUDGE OF THE TRIAL CHAMBER III
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THE PROSECUTOR

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2005 JUN 27 P 14:01
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 *** ERROR TX REPORT ***

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Filed on: 27 June 2005

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THE PROSECUTOR
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 *** ERROR TX REPORT ***

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ICTR-01-69-I
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Date:	27/06/2005	Case Name / Affaire:	The Prosecutor vs.	HORMISDAS NSENGIMANA
		Case No /Affaire No.:	ICTR-01-69-I	
To:	received by / reçu par:			
A:	<input type="checkbox"/> TC1		ALO:	received by / reçu par
	<input type="checkbox"/> Judge E. Mose, President		<input type="checkbox"/>	
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	<input type="checkbox"/> E. Nahamya, Co-ordinator (Muhimana)		<input type="checkbox"/>	
	<input checked="" type="checkbox"/> OTP / BUREAU DU PROCUREUR			
	<input type="checkbox"/> Trial Attorney in charge of case:	S. Arbia		
	<input checked="" type="checkbox"/> DEFENSE			
	<input type="checkbox"/> Accused / Accusé:	H. Nsengimana		
	<input type="checkbox"/> Lead Counsel / Conseil Principal	E. Atit		
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	All Decisions:	<input type="checkbox"/> Appeals Chamber Unit, The Hague		
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From:				
De:	<input type="checkbox"/> J.-P. Fomété (Chief, CMS)	<input type="checkbox"/> N. Diallo (TC1)	<input checked="" type="checkbox"/> R. Kouambo (TC2)	<input type="checkbox"/> C. Hometowu (TC3)
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Cc:				
	<input type="checkbox"/> A. Dieng	<input type="checkbox"/> A. Miller, OLA, NY	<input type="checkbox"/> E. G. Munlo	<input type="checkbox"/> S. Menon
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Subject	Kindly find attached the following document(s) / Veuillez trouver en annexe le(s) document(s) suivant(s):			
Objet:				

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27/06/2005

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