

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-18-116-PT

Date: 7 October 2020

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Vagn Joensen
Registrar: Mr. Abubacarr Tambadou
Order of: 7 October 2020

PROSECUTOR

v.

**MAXIMILIEN TURINABO
ANSELME NZABONIMPA
JEAN DE DIEU NDAGIJIMANA
MARIE ROSE FATUMA
DICK PRUDENCE MUNYESHULI
AUGUSTIN NGIRABATWARE**

PUBLIC

**ORDER CONCLUDING THE WRITTEN EXCHANGES
PROCEDURE AND SCHEDULING THE PRE-TRIAL
CONFERENCE AND TRIAL PROCEEDINGS**

Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Rashid S. Rashid

Counsel for the Defence:

Mr. Maximilien Turinabo
Mr. Stéphane Bourgon
Mr. Anselme Nzabonimpa
Mr. Geoffrey Roberts
Mr. Jean de Dieu Ndagijimana
Mr. Philippe Laroche
Ms. Marie Rose Fatuma
Mr. Gatera Gashabana
Mr. Dick Prudence Munyeshuli
Mr. Kurt Kerns
Mr. Augustin Ngirabatware
Mr. David Hooper

I, VAGN JOENSEN, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and the Single Judge in this case;¹

RECALLING the order issued on 21 September 2020 requesting the parties to provide written submissions in place of a status conference as well as written submissions on any factual and legal circumstances relevant to prospective decisions that may be taken under Rules 81(C), (D), and/or (E) of the Rules of Procedure and Evidence (“Rules”);²

NOTING the submissions filed by the Prosecution³ on 28 September 2020 as well as the submissions filed by Mr. Augustin Ngirabatware,⁴ Mr. Jean de Dieu Ndagijimana,⁵ Mr. Dick Prudence Munyeshuli,⁶ Ms. Marie Rose Fatuma,⁷ Mr. Maximilien Turinabo,⁸ and Mr. Anselme Nzabonimpa⁹ on 26 and 28 September 2020;

NOTING the responses filed by Fatuma,¹⁰ Ngirabatware,¹¹ Nzabonimpa,¹² Munyeshuli,¹³ and Turinabo¹⁴ on 30 September 2020 and 1 and 2 October 2020;

¹ Order Assigning a Single Judge, 11 September 2018, p. 1. *See also Prosecutor v. Maximilien Turinabo et al.* and *Prosecutor v. Augustin Ngirabatware*, Case Nos. MICT-18-116-PT and MICT-19-121-PT, Decision on Prosecution Motion for Joinder of the *Ngirabatware* and *Turinabo et al.* Contempt Cases, 10 December 2019, pp. 14, 15.

² *See* Order Regarding the Status Conference and Submissions on any Prospective Decisions Taken Under Rules 81(C), (D), and/or (E), 21 September 2020 (“Status and Pre-Trial Conferences Order”), pp. 1, 2. In ordering written exchanges in place of a status conference, I noted: (i) none of the Accused is detained based on the indictments in this case; (ii) the proven ability and efficacy of the court and counsel to exchange views in the spirit of Rule 69 of the Rules through written exchanges; and (iii) the need to avoid in person proceedings and international travel in the context of a pandemic unless absolutely necessary for the conduct of evidentiary proceedings. *See* Status and Pre-Trial Conferences Order, p. 1. On 21 September 2020, a separate order on the procedure for the conduct of trial was also issued. *See* Order on the Procedure for the Conduct of Trial, 21 September 2020 (“Trial Procedures Order”).

³ Prosecution Submissions in Compliance with Order Regarding the Status Conference and Submissions on any Prospective Decisions Taken Under Rules 81(C), (D), and/or (E), 28 September 2020 (confidential, with confidential Annex A) (“Prosecution Submission”).

⁴ Ngirabatware’s Submissions in Compliance with the “Order Regarding the Status Conference and Submissions on any Prospective Decisions Taken Under Rules 81(C), (D), and/or (E)” Issued on 21 September 2020, 26 September 2020 (“Ngirabatware Submission”).

⁵ Jean de Dieu Ndagijimana’s Rule 69 Submissions Pursuant to the Single Judge’s Order of 21 September 2020, 28 September 2020 (public, with confidential Annex A) (“Ndagijimana Submission”).

⁶ Munyeshuli Submissions in Relation to the 21 September 2020 Order Regarding the Status Conference, 28 September 2020 (public, with confidential Annex A) (“Munyeshuli Submission”).

⁷ *Observations de la Défense de Marie Rose Fatuma à l’«* Order Regarding the Status Conference and Submissions on any Prospective Decisions Taken Under Rule 81(C), (D), and/or (E) *»,* 28 September 2020 (public, with confidential annexes A to C) (“Fatuma Submission”).

⁸ Submissions on Behalf of Maximilien Turinabo to “Order Regarding the Status Conference and Submissions on any Prospective Decisions Taken Under Rules 81(C), (D), and/or (E)”, 28 September 2020 (confidential) (“Turinabo Submission”).

⁹ Nzabonimpa Defence Written Submissions Following “Order Regarding the Status Conference and Submissions on any Prospective Decisions Taken Under Rules 81(C), (D), and/or (E)”, 28 September 2020 (with annexes A to C) (“Nzabonimpa Submission”).

¹⁰ *Observations supplémentaires de la Défense de Marie Rose Fatuma à l’«* Order Regarding the Status Conference and Submissions on any Prospective Decisions Taken Under Rule 81(C), (D), and/or (E) *»,* 30 September 2020 (confidential) (“Fatuma Response”).

OBSERVING that the Prosecution, in view of my provisional observations as to the scope of its case and my powers under Rule 81(C) of the Rules, has reduced its witness list and revised its estimates on the time required for the examination-in-chief of the remaining witnesses subject to certain reservations;¹⁵

OBSERVING that the Prosecution, although expressing certain reservations, no longer intends to call Witnesses TNN1, TNN2, TNN4, TNN5, TNN13, and TNN17 (“Removed Witnesses”);¹⁶

OBSERVING that the Prosecution intends to admit the evidence of Witnesses TNN3, TNN9, TNN18, TNN19, and TNN20 through Rule 110 of the Rules;¹⁷

FINDING that the revisions to the Prosecution’s witness list, including the removal of Removed Witnesses, comports with the projected time frame in which the Prosecution may present its case-in-chief,¹⁸ and that it is therefore appropriate, pursuant to Rule 81(C) of the Rules, to adopt the revised witness list as indicated in Annex A to the Prosecution submission and without prejudice to the Prosecution’s ability to seek to add, *inter alia*, the Removed Witnesses at a later date;¹⁹

OBSERVING the Prosecution’s position that it will commence its case with “the core fact witnesses”²⁰ and its prior, informal indication that: (i) these witnesses are Witnesses TNN30,

¹¹ Ngirabatware’s Response to the “Prosecution Submissions in Compliance with Order Regarding the Status Conference and Submissions on any Prospective Decisions Taken Under Rules 81(C), (D), and/or (E)”, 1 October 2020 (confidential) (“Ngirabatware Response”).

¹² Nzabonimpa Defence Response to “Prosecution Submissions in Compliance with Order Regarding the Status Conference and Submission on any Prospective Decisions Taken Under Rules 81(C), (D), and/or (E)”, 1 October 2020 (“Nzabonimpa Response”).

¹³ Munyeshuli’s Response to Prosecution Submissions in Compliance with Order Regarding the Status Conference and Submission on any Prospective Decisions Taken Under Rules 81(C), (D), and/or (E), 1 October 2020 (confidential) (“Munyeshuli Response”).

¹⁴ Response on Behalf of Maximilien Turinabo to “Prosecution Submissions in Compliance with Order Regarding the Status Conference and Submissions on any Prospective Decisions Taken Under Rules 81(C), (D), and/or (E)”, 2 October 2020 (confidential) (“Turinabo Response”).

¹⁵ Prosecution Submission, paras. 3, 4, Annex A, Registry pagination (“RP.”) 16262 (“Revised Witness List”).

¹⁶ Prosecution Submission, para. 3, Annex A, RP. 16262. *See also* Prosecution Motion to Amend Its Rule 70(E) Exhibit List and First Motion for Admission of Documents from the Bar Table (Material Seized from the Accused on 3 September 2018), 30 July 2020 (confidential, with confidential annexes A to F), Annex E, RP. 14240.

¹⁷ Prosecution Submission, Annex A, RP. 16262. The Prosecution has recently submitted that it may seek to admit Witness TNN9’s evidence through Rule 111 of the Rules. *See* Prosecution Response to Defence Request for Certification to Appeal “Order on the Procedure for the Conduct of Trial”, 7 October 2020 (confidential) (“Prosecution Response of 7 October 2020”), para. 2.

¹⁸ *See* Order on Trial Preparations, 31 August 2020 (“Order of 31 August 2020”), Annex, paras. 11-22.

¹⁹ Witnesses TNN1, TNN2, TNN4, TNN5, TNN13, and TNN17 are no longer prospective witnesses and are stricken from the witness list. *See also infra* Annex, paras. 8, 9.

²⁰ Prosecution Submission, para. 3.

TNN31, TNN6, TNN12, TNN11, and Investigator Tomasz Blaszczyk; and (ii) it intends to present their evidence in this order;²¹

FINDING that the Prosecution should commence the presentation of its evidence as it has indicated and should provide notice of the order in which it intends to call the remaining witnesses consistent with the Trial Procedures Order;²²

OBSERVING submissions concerning reductions that could be ordered under Rules 81(D) and/or (E) of the Rules;²³

FINDING that it is presently unnecessary to issue any orders under Rules 81(D) and/or (E) of the Rules;

CONSIDERING that, in addition to the determinations above, a pre-trial conference pursuant to Rule 81(A) of the Rules on Wednesday, 21 October 2020 will facilitate the resolution of any final matters that must necessarily be raised before starting the evidentiary phase;²⁴

CONSIDERING that opening statements as provided under Rule 100 of the Rules should commence on Thursday, 22 October 2020;

CONSIDERING that the Prosecution should commence to present evidence of its case-in-chief on Monday, 26 October 2020, bearing in mind that it is expected that the Arusha Branch of the Mechanism shall be closed on Thursday, 29 October 2020;²⁵

CONSIDERING that the attached Annex further addresses salient and material submissions to further facilitate trial preparations;

FOR THE FOREGOING REASONS,

ADOPT the Revised Witness List without the reservations presented by the Prosecution;

²¹ This indication from the Prosecution was made pursuant to Article 14 of the Statute and through *inter partes* email to my Senior Legal Officer on 21 September 2020.

²² See Trial Procedures Order, Annex, para. 12. Proceeding in this manner largely eliminates Defence concerns as to the indeterminate nature of the Prosecution’s anticipated witnesses in terms of the exact witnesses to be called as well as the order in which they will appear. See Nzabonimpa Submission, paras. 18-22, 24; Ngirabatware Submission, para. 16; Turinabo Submission, paras. 32-34; Ndagijimana Submission, para. 15; Fatuma Submission, paras. 12-14; Fatuma Response, paras. 4, 5; Turinabo Response, paras. 4, 5.

²³ Prosecution Submission, para. 6; Nzabonimpa Response, paras. 4-8.

²⁴ My Senior Legal Officer emailed the parties and the Registry on 1 October 2020 indicating my intention to hold a pre-trial conference on Wednesday, 21 October 2020, for opening statements to commence on Thursday, 22 October 2020, and for the Prosecution to commence with the presentation of its case on Monday, 26 October 2020.

²⁵ The closure of the Arusha Branch of the Mechanism for Maulid Day on 29 October 2020 depends on the lunar phase.

ORDER that the pre-trial conference pursuant to Rule 81(A) of the Rules shall be held on Wednesday, 21 October 2020;

ORDER that opening statements under Rule 100 of the Rules shall commence on Thursday, 22 October 2020;

ORDER any Defence team that elects not to make an opening statement prior to the commencement of the Prosecution case to give notice of this by Friday, 16 October 2020;

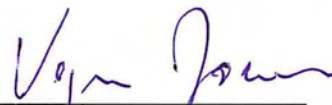
ORDER that the Prosecution shall commence to present evidence of its case-in-chief on Monday, 26 October 2020 and should, subject to any required variations, do so in the order identified above;

INFORM the parties that specific times in relation to the aforementioned hearings will be communicated after further consultation with the Registry; and

INSTRUCT the parties to review the Annex to this Order for further information related to trial preparations.

Done in English and French, the English version being authoritative.

Done this 7th day of October 2020,
At Arusha,
Tanzania



Judge Vagn Joensen
Single Judge

[Seal of the Mechanism]

ANNEX

A. Introduction

1. I thank the parties for proceeding with written exchanges in the spirit of Rule 69 of the Rules and for presenting submissions in anticipation of any decisions that may be taken pursuant to Rules 81(C), (D), and/or (E) of the Rules. This Annex will address the most salient and material submissions to facilitate further trial preparation.

B. Status of the Accused

2. I take note of the updates reflecting that the Accused who chose to address their health are doing well.²⁶ Ngirabatware is not detained in relation to this case, and, while I note his concerns related to his conditions of detention,²⁷ he should address them through the relevant rules and regulations and raise any issues before me when they impact his fair trial rights.

C. Commencing Trial and Safety Concerns Related to Proceedings in Arusha

3. Ngirabatware has requested a six month delay for the trial start date;²⁸ however, neither he, nor any other Accused has unequivocally asserted that he or she is not prepared for the trial to start the week of 19 October 2020 as has been projected since 19 August 2020.²⁹ Certain Defence teams request that trial start no earlier than 26 October 2020.³⁰

4. In view of the submissions received as well as the need to commence trial proceedings, starting trial during the week of the 19 October 2020 without the presentation of evidence provides reasonable accommodation for all parties and adequately accounts for any specific delays that have been requested. I recognize that, particularly as it concerns Counsel for Turinabo, it may be impossible to abide by the quarantine period required under the 11 August 2020 policy adopted by the Principals on Access to Mechanism Premises for Travelers (“Travel Policy”). In addition, many other counsel have informally asked for waivers for their teams. Paragraph 6 of the Travel Policy allows this quarantine period to be waived where operational requirements necessitate it, and

²⁶ See Nzabonimpa Submission, para. 2; Ndagijimana Submission, para. 2; Turinabo Submission, para. 23; Fatuma Submission, para. 2.

²⁷ See Ngirabatware Submission, paras. 13, 18.

²⁸ See Ngirabatware Submission, paras. 11, 12.

²⁹ See Order of 31 August 2020, p. 2, n. 14. Certain parties have expressly stated that they are ready to start trial. See Prosecution Submission, para. 1; Munyeshuli Submission, para. 3; Ndagijimana Submission, para. 16; Munyeshuli Response, paras. 2, 6. See also Turinabo Response, para. 9.

waivers, subject to necessary safety and health restrictions, will be granted when warranted. Such waivers will be accompanied by appropriate mitigating measures such as obtaining a negative COVID-19 test prior to entering the premises, the wearing of face masks, and restrictions on movement around the premises during what would normally be the period of quarantine. I consider it necessary to authorize waivers for Accused, as necessary, and members of defence teams, and I will be issuing a memorandum to the Registrar on this issue in conformity with the Travel Policy in the coming days.

5. I further note that the Defence almost uniformly remains concerned about the risks the COVID-19 global pandemic presents to commencing trial safely in Arusha.³¹ I remain concerned about the wellbeing of everyone participating in this trial and am mindful of the particular risks posed by, for example, international travel. Notwithstanding, extensive measures have been adopted by the Registry to minimize transmission of the novel coronavirus among staff and on the premises of the Mechanism, and no fundamental shortcomings have been identified in the briefing received.³² As participants arrive for the commencement of trial, the Registry and I will monitor circumstances that threaten the health and safety of any participants in this trial and persons on the Mechanism's premises. Adjustments, while also upholding the obligations set forth under Articles 18 and 19 of the Statute, will be made as necessary.

6. Finally, I am mindful that some Accused may have concerns about attending trial in Arusha,³³ and I encourage that consultations between the Defence and the Registry continue to assist Accused's determination as to whether to follow from the Kigali Field Office ("KFO") or be

³⁰ Fatuma Submission, para. 6; Ndagijimana Submission, para. 11; Turinabo Submission, para. 31. Due to a professional scheduling conflict, Counsel for Turinabo cannot travel to Arusha prior to 16 October 2020 and submits that Wednesday, 21 October 2020 would be the earliest he may appear in court. *See* Turinabo Submission, para. 30.

³¹ *See* Nzabonimpa Submission, paras. 3-10; Turinabo Submission, paras. 11-18; Ndagijimana Submission, paras. 6-10; Ngirabatware Submission, paras. 8-11; Fatuma Submission, para. 3. *See also* Munyeshuli Submission, para. 3.

³² I note Defence submissions reflecting their concerns about: (i) risks posed by airline travel, the need for temporary accommodation, reliance on taxis and restaurants; (ii) the lack of public health data and information of government action to control the virus's spread, as well as anticipated congregations of the public in connection with the upcoming presidential election; and (iii) the lack of personal insurance through the Mechanism, delays related to COVID-19 testing and receiving results, the availability of adequate medical treatment and the proximity of hospitals to Arusha, and the effectiveness of the Mechanism's medical evacuation policy should someone become sick with COVID-19. *See* Turinabo Submission, paras. 11-18; Nzabonimpa Submission, paras. 4-10; Ndagijimana Submission, paras. 6-10; Fatuma Submission, para. 3; Ngirabatware Submission, paras. 8-11. *See also* Munyeshuli Submission, para. 3. These circumstances do not, if at all, uniquely burden the Defence nor are they insurmountable. We are all individually burdened with using our best judgement and taking precautions in light of public health advice. To the extent the COVID-19 global pandemic places an exceptional burden on Defence resources as teams take reasonable and necessary measures to protect their health and safety while participating in this trial in Arusha, this should be raised with the Registry. However, none of the present concerns implicate the Accused's fair trial rights warranting further delays to the commencement of trial given the extensive health and safety measures adopted by the Mechanism to allow this trial to proceed safely.

tried in his or her presence from Arusha. However, the commencement of this trial will not be delayed due to failure of an Accused to give sufficient notice to the Registry of his or her intention to be tried in his or her presence in Arusha.³⁴

7. Furthermore, I have unequivocally stated that, in the context of this case, the fundamental right to be tried in one’s presence under Article 19(4)(d) of the Statute would be exercised through physical presence in the courtroom at the Arusha Branch of the Mechanism.³⁵ Following proceedings from the KFO, while allowable (and even encouraged given the exceptional circumstances), will result in a waiver of that right pursuant to Rule 98 of the Rules. Reasonable delays to ensure the connectivity detailed by the Registrar and ordered by me to allow the Accused to follow from the KFO will be accommodated.³⁶ However, the parties should not expect unduly long adjournments for technical reasons interrupting the Accused’s ability to follow from the KFO.³⁷

D. Prospective Rule 110 and Rule 111 Witnesses

8. The Order removes Witnesses TNN1, TNN2, TNN4, TNN5, TNN13, and TNN17 from the Revised Witness List.³⁸ The Prosecution has indicated that it may seek to present some of their evidence pursuant to Rule 111 of the Rules,³⁹ and the Defence objects that doing so is inconsistent with the four week notice period required under the Trial Procedures Order.⁴⁰ Likewise, the Prosecution has identified evidence it seeks to admit pursuant to Rule 110 of the Rules,⁴¹ and the Defence further objects to admitting this evidence without cross-examination.⁴²

9. In view of the Order, there is presently no need to rule on any objections. Any Prosecution motion to admit evidence under Rules 110 and 111 of the Rules will be considered in light of the specific circumstances and justifications made in the motions.

³³ See, e.g., Nzabonimpa Submission, paras. 13, 14; Turinabo Submission, paras. 26, 27; Ndagijimana Submission, paras. 3, 4.

³⁴ See Decision on Order to Show Cause, 11 September 2020 (“Decision of 11 September 2020”), p. 7.

³⁵ See Order of 31 August 2020, Annex, para. 6; Decision of 11 September 2020, n. 38.

³⁶ See Order of 31 August 2020, Annex, para. 7 and references cited therein.

³⁷ See Nzabonimpa Submission, para. 17.

³⁸ See *supra* p. 2, n. 19.

³⁹ Prosecution Submission, para. 4. See also Prosecution Response of 7 October 2020, para. 2.

⁴⁰ See Munyeshuli Response, para. 3; Nzabonimpa Response, para. 2; Turinabo Response, para. 6.

⁴¹ Prosecution Submission, Annex A, RP. 16262.

⁴² Nzabonimpa Response, para. 3; Turinabo Response, paras. 2, 3.

E. Interpretation of the Decision of 11 September 2020

10. The original *Turinabo et al.* Accused object to the Registry's interpretation of the Decision of 11 September 2020 that, in essence, it is not required to provide support to the unconditionally released Accused during the trial proceedings if they choose to attend them in Arusha.⁴³ This is now the subject of a motion filed by Ndagijimana and supported by Turinabo.⁴⁴

11. On 5 October 2020, the Registrar informed the unconditionally released Accused that the Registry is willing to provide daily subsistence assistance for accommodation and incidental expenses during the Prosecution case.⁴⁵ In view of the Registry's change in position, and mindful of the considerable discretion the Registrar has in implementing the Decision of 11 September 2020,⁴⁶ the relevant submissions, Motion of 30 September 2020, and Joinder of 2 October 2020 no longer raise issues impacting upon the fairness of proceedings warranting my intervention and are dismissed on this basis.

F. Limits on Cross-Examination of Prosecution Witnesses

12. I note the objections to the general limits on cross-examining Prosecution witnesses.⁴⁷ The submissions request more time to cross-examine: (i) anticipated *viva voce* witnesses in light of the numerous prior statements and testimony given by them;⁴⁸ and (ii) witnesses whose evidence may be presented under Rule 111 of the Rules.⁴⁹ The submissions do not presently warrant changes to the general provisions, which may be reviewed on a case-by-case basis and adjusted upon a showing of good cause.⁵⁰

⁴³ See Nzabonimpa Submission, paras. 3, 11-13; Munyeshuli Submission, paras. 5, 6; Ndagijimana Submission, paras. 3-5; Turinabo Submission, paras. 25-27; Fatuma Submission, Annex A, RP. 16250, 16249, paras. 1-5.

⁴⁴ See Motion for Clarification of the Single Judge's Decision on Order to Show Cause, 30 September 2020 (confidential, with confidential annexes A and B) ("Motion of 30 September 2020"); Joinder on Behalf of Mr Turinabo to Ndagijimana's "Motion for Clarification of the Single Judge's Decision on Order to Show Cause", 2 October 2020 (confidential, with confidential annex A) ("Joinder of 2 October 2020").

⁴⁵ See Letter, IRMCT/A/IO/2020/759, 5 October 2020.

⁴⁶ Decision of 11 September 2020, para. 13.

⁴⁷ See Ndagijimana Submission, paras. 12-14, Annex, RP. 16220-16218, paras. 1-9; Turinabo Submission, para. 37. Fatuma has indicated that it is likely that she will request more time to cross-examine Witness TNN6 given that the six Defence teams will have to share four hours for cross-examination. See Fatuma Response, para. 6. Before doing so, I would encourage Fatuma first seek additional time for cross-examination from Defence teams whose interests in cross-examining this witness are materially less compelling. Cf. Munyeshuli Response, para. 4 (noting that, *inter alia*, Witness TNN6 can give little evidence "in relation to Munyeshuli's limited charges").

⁴⁸ See, e.g., Ndagijimana Submission, para. 13, Annex, RP. 16220-16218, paras. 1-9.

⁴⁹ See Turinabo Submission, para. 37; Turinabo Response, para. 6.

⁵⁰ See Trial Procedures Order, Annex, paras. 11, 19. See also Order of 31 August 2020, Annex, paras. 18-21 (evaluating the appropriate amount of time for cross-examination of Prosecution witnesses in this case).

13. However, I take this opportunity to emphasize that credibility challenges should be focused on circumstances of greatest relevance to the conduct at issue in this trial. Credibility challenges that do not relate to facts testified to by the witness in his or her evidence-in-chief *in this case* are challenges of a collateral nature, and counsel must allocate time for such challenges judiciously. Cross-examination on such collateral challenges should be targeted – no miniature trials about whether a witness lied in a prior case will be held in this proceeding.⁵¹ Likewise, re-conducting lines of cross-examination that witnesses in this case were subjected to in prior proceedings will not warrant additional time for cross-examination. The parties should also take heed of the numerous decisions that make clear what is not relevant or material to either party’s case in light of the charges in the indictment.⁵²

G. Video-Conference Link and Participation from the Kigali Field Office

14. The ability to utilize video-conference link is set forth under Rule 96 of the Rules and the general procedure for requesting it has been specified in the Trial Procedures Order.⁵³ The Prosecution Submission cannot reasonably be understood as motion for video-conference link,⁵⁴ and it is therefore presently unnecessary to rule on Defence objections to this method of presenting evidence.⁵⁵ However, and particularly as it relates to possible video-conference link from the KFO, the notion that counsel will examine the witness *in situ* should be dispelled.⁵⁶ Spatial limitations to the site dedicated for witness testimony eliminate the feasibility of this course of action,⁵⁷ and counsel should expect to remotely examine any witness who testifies from the KFO.

15. Furthermore, the Witness Support and Protection Unit (“WISP”) has recently expressed concerns about witnesses and Accused coming into contact at the KFO, and the Prosecution has stated its desire to explore an alternative venue for video-conference link to avoid such

⁵¹ That certain witnesses lied in Ngirabatware’s trial was the basis of his review proceedings, which have concluded.

⁵² See, e.g., Decision on Jean de Dieu Ndagijimana’s and Augustin Ngirabatware’s Motions for Disclosure in Relation to Witnesses ANAE, ANAL, ANAM, and ANAF, 14 September 2020 (confidential), n. 41; Decision on Prosecution Motion for Admission of Evidence of TNN10 Pursuant to Rule 110, 5 November 2019 (confidential), p. 4; Decision on Maximilien Turinabo’s Request for Disclosure of Information in the Possession of the Witness Support and Protection Unit, 22 July 2019 (confidential), p. 3, n. 19.

⁵³ Trial Procedures Order, Annex, para. 21.

⁵⁴ Prosecution Submission, para. 5.

⁵⁵ See Munyeshuli Response para. 4; Ngirabatware Response, paras. 3-5; Nzabonimpa Response, para. 2; Turinabo Response, paras. 7, 8.

⁵⁶ See Prosecution Submission, para. 5. See also Fatuma Submission, para. 7.

⁵⁷ See Registrar’s Submission in Response to the “Order Concluding Written Exchanges in lieu of the Status Conference and Order for Submissions” of 30 June 2020, 17 July 2020 (confidential) (“Registrar’s Submission of 17 July 2020”), para. 24 (“The size of the room is sufficient to allow for the presence of two (2) people at the recommended 1.5 metres distance.”).

interaction.⁵⁸ Notably, this concern runs contrary to prior assurances suggesting that contact between the Accused and witnesses at the KFO may be avoided.⁵⁹

16. A witness's contact with an Accused is a *de facto* element of a criminal trial in view of, *inter alia*, a Defendant's right to be tried in his or her presence. The present submissions do not require any extraordinary measures to establish a new video-conference link in Kigali given the considerable potential logistical hurdles.⁶⁰ Should a witness testify via video-conference link from the KFO and should any Accused choose to follow the proceedings from that location, the Registry, including the WISP, must take appropriate measures to ensure that no contact with an Accused or anyone else places undue duress on a witness while participating in the proceeding. Protective measures, instructions to the parties as to the proper procedures for contact with witnesses, and the threat of contempt for improper contact with a witness present sufficient safeguards in this context. The WISP should counsel any witnesses who may be directed to testify from the KFO on the protections afforded to them to alleviate their concerns.

H. Responses to Recently Filed and Anticipated Prosecution Bar Table Motions

17. Nzabonimpa requests, *inter alia*, deferring all responses to future Prosecution bar table motions "towards the end of the Prosecution's case."⁶¹ The Prosecution has recently filed its second bar table motion.⁶² Provisionally, it appears prudent to decide bar table motions towards the end of the Prosecution case and after hearing witnesses, who, in some cases, proposed exhibits presently tendered as part of bar table motions may be admitted through. Therefore, I will allow the Defence to file responses to the latest Prosecution bar table motion, and any further bar table motion one week after the last Prosecution witness has testified.⁶³

⁵⁸ See Registrar's Submission in Response to the "Order on Trial Preparations" of 31 August 2020, 14 September 2020 (confidential), paras. 7-10; Prosecution Submission, para. 5.

⁵⁹ See Registrar's Submission of 17 July 2020, para. 24 ("The Registry further notes that the location of this second VTC room at the KFO is far removed from the other VTC room, allowing for the separate and safe movement of witnesses and the Accused, if present at the KFO at the same time.").

⁶⁰ See Order of 31 August 2020, Annex, para. 3. See also Registrar's Submission of 17 July 2020, para. 25; Registrar's Further Submission in Relation to the "Order Concluding Written Exchanges in lieu of the Status Conference and Order for Submissions" of 30 June 2020, 19 August 2020 (confidential), para. 15.

⁶¹ See Nzabonimpa Submission, para. 34. See also Nzabonimpa Submission, paras. 31-33.

⁶² Prosecution Motion to Amend Rule 70(E)(iii) Exhibit List and Second Motion for Admission of Documents from the Bar Table (Material Obtained from Registry and Seizures from Ngirabatware at the United Nations Detention Facility), 30 September 2020 (confidential, with confidential annexes A to C).

⁶³ This is without prejudice to Ngirabatware's response to the Prosecution's second bar table motion, filed on 5 October 2020. See Ngirabatware's Response to "Prosecution Motion to Amend Rule 70(E)(iii) Exhibit List and Second Motion for Admission of Documents from the Bar Table (Material Obtained from Registry and Seizures from Ngirabatware at the United Nations Detention Facility)", 5 October 2020.

I. Remote Appearances and Following of Proceedings

18. Given the exceptional circumstances surrounding the COVID-19 pandemic, the Registry has made extraordinary accommodations to allow Counsel to appear from The Hague and for the Accused to follow from the KFO. Counsel who choose to appear from The Hague shall place on the record that the Accused agree to the remote appearance of counsel. Likewise, Accused who choose to follow the proceedings from the KFO (or not follow the proceedings at all) should, or should have his or her counsel, indicate on the record that he or she has voluntarily and unequivocally waived the right to be tried in his or her presence.

J. Conclusion

19. I once again thank the parties for their cooperation and professionalism.



I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	IRMCT Registry/ <i>Greffe du MIFRTP</i>	<input checked="" type="checkbox"/> Arusha/ <i>Arusha</i>	<input type="checkbox"/> The Hague/ <i>La Haye</i>
From/ De :	<input type="checkbox"/> President / <i>Président</i>	<input checked="" type="checkbox"/> Chambers / <i>Chambre</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
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Case Name/ Affaire :	Prosecutor v. Maximilien Turinabo et al.	Case Number/ Affaire n° :	MICT-18-116-PT
Date Created/ Daté du :	7 October 2020	Date transmitted/ Transmis le :	7 October 2020
		No. of Pages/ Nombre de pages :	12
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	<input checked="" type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>
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