

ICTR-96-3-T  
13 MARCH 1997  
(494-491)

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International Criminal Tribunal for Rwanda

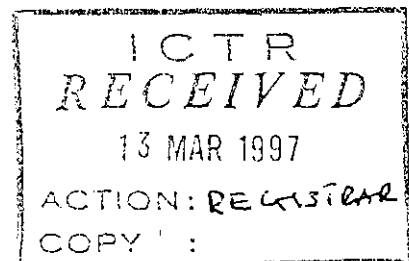
TRIAL CHAMBER I

OR: ENG

Before: Judge Yakov A. Ostrovsky, Presiding Judge  
Judge Lennart Aspegren  
Judge Navanethem Pillay

Registry: Mr. Frederik Harhoff  
Mr. Jean-Pelé Fomété

Decision of: 7 March 1997



THE PROSECUTOR  
VERSUS  
GEORGES ANDERSON NDERUBUMWE RUTAGANDA

Case No.: ICTR-96-3-T

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**DECISION ON TWO REQUESTS FILED BY THE DEFENCE FOR SUBMISSION  
OF CERTAIN DOCUMENTS AND ON THREE FURTHER DEFENCE REQUESTS  
ON VARIOUS OTHER ISSUES**

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The Office of the Prosecutor:

Mr. Yacob Haile-Mariam

The Counsel for the Accused:

Mr. Luc De Temmerman  
Ms. Tiphaine Dickson

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**THE TRIBUNAL,**

SITTING AS Trial Chamber I, composed of Judge Yakov A. Ostrovsky, Presiding Judge, Judge Lennart Aspegren and Judge Navanethem Pillay;

UPON RECEIVING five motions submitted on 9 October 1996 by the Defence Counsel, Mr. Luc De Temmerman, pursuant to Rule 54 of the Tribunal's Rules of Procedure and Evidence ("the Rules"), two of which pertain to the submission of certain documents alleged to be in the Prosecutor's possession, while the remaining three motions relate to other issues, notably the reimbursement of expenses, the Defence Counsel's work plan, and an extension of the time limit for presentation of preliminary motions;

**AFTER HAVING DELIBERATED,**

**A. Regarding the Two Motions on Submission of Certain Documents**

**1. The Three Belgian Dossiers**

WHEREAS the Defence Counsel has requested the transmission of a copy of the three dossiers No. 36/95, 57/95 and the so-called "Marchal-file" (hereinafter "the three Belgian dossiers"), which allegedly form part of the Belgian files established by the Belgian Examining Magistrate Van Der Meersch in Brussels and deferred to the Prosecutor's Office in Kigali from the Belgian Court of Appeal;

WHEREAS Rule 66 (B) of the Rules obliges the Prosecutor, on request, to permit the Defence to inspect any books and documents in her possession which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence at trial;

WHEREAS, in the Chamber's opinion, Rule 66 (B) is intended to cover inspection of material primarily related to the crimes for which the accused is charged;

WHEREAS Rule 68 of the Rules further requires that the Prosecutor disclose to the Defence, as soon as practicable, the existence of any exculpatory evidence known to the Prosecutor;

WHEREAS the Prosecution, in its oral submission during the hearing on 7 February 1997, disclaimed possession of the so-called "Marchal-file" and further indicated that it did not at this moment intend to use the two other Belgian dossiers as evidence against the accused, but nevertheless asserted its readiness to let the Defence inspect these particular files received from Belgium;

WHEREAS, under Rule 75(A) of the Rules, the Chamber may proprio motu order appropriate measures for the protection of victims and witnesses, provided that such measures are consistent with the rights of the accused.

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## **2. The Assassination File**

WHEREAS the Defence Counsel has requested the transmission by the Prosecutor of its investigation files on the assassination of the Presidents of Rwanda and Burundi on 6 April 1994 (hereinafter "the assassination file");

WHEREAS Rule 70(A) of the Rules establishes that reports, memoranda and other internal documents prepared by a party are not subject to disclosure or notification;

WHEREAS the Prosecutor, during the hearing on 7 February 1997, argued that it is only obliged under Rule 66(B) to hand over to the Defence all important and exculpatory evidence and material in the Prosecutor's possession which is directly related to the crimes for which the detainee is accused;

WHEREAS the Prosecutor has pronounced that it has not indicted, and indeed has no intention of indicting, the accused for being responsible in any way for the assassination of the Rwandese President, and that the investigation of this event is immaterial and inconsequential to the specific charges brought against the accused in the indictment;

WHEREAS the Prosecutor, for these reasons, has objected to handing over its material concerning the assassination of the President;

## **B. Regarding the Three Motions on Other Issues**

### **3. Payment and Reimbursement**

WHEREAS the Defence Counsel has requested an order to ensure that financial resources be made available by the Registrar to the Defence in accordance with a three-month budget attached to the said motion;

WHEREAS the Chamber has already pointed out to the Defence Counsel, in its decision of 25 September 1996, that any request relating to the calculation and payment of remuneration or reimbursement of expenses incurred by his assignment as a defence lawyer by the Tribunal shall be addressed to the Registrar pursuant to Article 30 of the Directive on Assignment of Defence Counsel;

### **4. Extension of the Period for Submission of Preliminary Motions**

WHEREAS the Defence Counsel has requested an order to extend the period for submission of preliminary motions until such time as the Tribunal has provided the Defence with adequate means to perform its task;

WHEREAS the Defence Counsel finally withdrew this motion during the hearing on 7 February 1997;

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## 5. Submission of the Defence's Work Plan

WHEREAS the Defence Counsel has submitted its work plan, including a list of some of the Defence witnesses to be called to testify before the Chamber;

WHEREAS the Chamber does not consider the Defence Counsel's work plan as a proper motion as it does not call for any operative action to be taken by the Chamber;

## FOR THESE REASONS

With regard to the two motions for submission of certain documents:

(1) REFERS the Defence Counsel's request for transmission of the three Belgian dossiers to the Prosecutor in accordance with Rules 66(B) and 68 of the Rules;

(2) REFERS, also, the Defence Counsel's request for transmission of the Prosecutor's material on the assassination of the Rwandese President to the Prosecutor in accordance with Rules 66(B) and 68 of the Rules;

DECIDES, however, pursuant to Rule 75(A) of the Rules, that the identity and whereabouts of victims and witnesses mentioned in the three Belgian dossiers and in the Prosecutor's material on the assassination of the Rwandese President, to the extent in which this material is disclosed to the Defence, shall not be divulged to the public and the media; and


with regard to the remaining three motions:

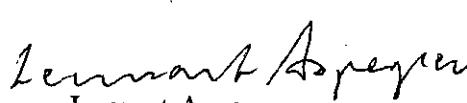
(3) REMINDS the Defence Counsel of the Chamber's decision of 25 September 1996 concerning payment of remuneration or reimbursement of expenses and directs Counsel anew to address these questions to the Registrar;


(4) DISREGARDS the Defence Counsel's motion for extension of the period for submission of preliminary motions, since this motion was withdrawn by the Defence;

(5) TAKES NOTE of the Defence Counsel's work plan;

Arusha, 7 March 1997.

  
Yakov-A. Ostrovsky  
Presiding Judge

  
Lennart Aspegren  
Judge

  
Navanethem Pillay  
Judge



(Seal of the Tribunal)