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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER II

OR:Eng.

Before: Judge William H. Sekule, Presiding  
Judge Yakov A. Ostrovsky  
Judge Tafazzal H. Khan

Registry: Mr. John M. Kiyeyeu

THE PROSECUTOR  
VERSUS  
EMMANUEL BAGAMBIKI, SAMUEL IMANISHIMWE  
AND  
YUSUF MUNYAKAZI

CASE No. ICTR 97-36-I

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DECISION ON THE DEFENCE MOTION FOR DISCLOSURE IN RESPECT  
OF SAMUEL IMANISHIMWE

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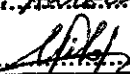
The Office of the Prosecutor:

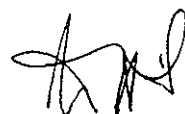
Mr. William T. Egbe

Counsels for the Defendant Samuel Imanishimwe:

Ms. Marie Louise Mbida Kanse Tah  
Mr. Georges So'o

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International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
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NAME / NOM: Dr. Antoine K. M. MINDUA	
SIGNATURE: 	DATE: 21. 10. 1998



**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal")**  
SITTING AS Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Yakov A. Ostrovsky and Judge Tafazzal H. Khan (the " Trial Chamber ");

CONSIDERING the indictment submitted by the prosecutor dated 9 October 1997 against Emmanuel Bagambiki, Samuel Imanishimwe and Yusuf Munyakazi, which was confirmed by a decision of this Tribunal rendered on 10 October 1997 by Judge Lennart Aspegren;

CONSIDERING the initial appearance of the accused Emmanuel Bagambiki, Samuel Imanishimwe and Yusuf Munyakazi which took place on 24 October 1997;

MINDFUL of the provisions of rule 66 (A) (i) of the Tribunal's Rules of Procedure and Evidence (the "Rules") regarding disclosure of evidence;

TAKING into account the defense motion and the prosecutor's written response to the motion;

HAVING heard arguments of the parties on 25 March 1998.

**THE DEFENSE ARGUED:**

**Regarding defects in the form of the indictment due to irregularity in the disclosure of the supporting documentation and absence of prior statements obtained from the accused:**

The defense contends that:

- (i) On 3 December 1997 it received from the prosecutor a 41 page document entitled "supporting documentation" which contained bits and pieces of documents on the Rwandan administration and laws of the Republic of Rwanda, fragments of quotations from articles, publications and reports of the Human Rights Commission which do not amount to a disclosure as required by rule 66 (A) of the rules;
- (ii) The Prosecutor, contravened the provisions of rule 66(A) (i) and (C) of the Rules by her failure to disclose prior statements obtained from the accused and the identity of witnesses in sufficient time to allow preparation of the defense case;
- (iii) Failure to disclose the statements is a contravention of both rule 66 (A) (i) of the Rules and of Article 6 of the Convention for the Protection of Human Rights and Fundamental freedoms;
- (iv) The documents received from the prosecutor fail to give the identities of the witnesses or the interviewer and are not complete statements but merely redacted;



(v) The omission is another defect in the procedure and renders the disclosure a nullity;

(vi) In the circumstances of this case, the Trial Chamber should declare that the purported disclosure to the accused of the supporting documents referred to under rule 66(A)(i) of the Rules of Procedure and Evidence are null and void on the grounds of defects in the form;

(vii) The prosecutor should be given 30 days starting from the date of the decision to comply with the requirements of the law; in particular rule 66(A)(i).

**THE PROSECUTOR RESPONDED:**

(I) That under rule 66(A)(i) she is required to disclose the supporting documentation that accompanied the indictment at the time of the confirmation not the individual content of the supporting documents;

(ii) That on 17 March 1998 she submitted the prior statement obtained from the accused to the Registry thus meeting her disclosure obligation;

(iii) That rule 66(A) (ii) requires the Prosecutor to disclose statements of witnesses it intends to use at trial at least 60 days before start of the trial;

(iv) That in light of what is stated above, the defense motion should be dismissed.


**AFTER HAVING DELIBERATED:**

WHEREAS the instant motion seeks an order to compel the prosecutor to disclose to the defence the prior statement of the accused and further particulars on witnesses and their statements;

WHEREAS in support of this motion, the defence submitted that further particulars are important to enable the defence to prepare its case which is a basic right guaranteed under Article 20 of the Statute;

WHEREAS the Prosecutor, in her submission has opposed the defence request on the grounds that further particulars are not needed at this stage and that, under rule 66(A)(ii) the Prosecutor is required to disclose statements of her witnesses not later than 60 days prior to the start of the trial which in the present case has not been fixed;

WHEREAS the Trial Chamber takes note of the right of the accused to a disclosure guaranteed under Article 20 (4) of the Statute which right include being provided with initial statement of the accused;



MINDFUL of the fact that the prosecutor informed the Trial Chamber that she disclosed the documents to defence;

WHEREAS the prosecutor has disclosed the prior statement, obtained from the accused, to the defence only on 17 March 1998;

MINDFUL of the fact that rule 66(A)(ii) of the Rules requires the prosecutor to disclose statements of witnesses it intends to use at the trial to prove the guilt of the accused at least 60 days before the hearing of the trial;

NOTING that there is no date fixed for the start of trial of this case;

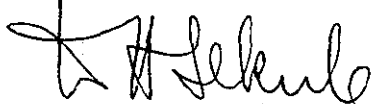
OBSERVING HOWEVER that as a general principle, the prosecutor should not necessarily wait for the arrival of the 60<sup>th</sup> day before the commencement of trial, to fulfil its disclosure obligation. Thus, in the instant case, although the prosecution is not in violation of rule 66(A)(ii) of the Rules, in view of the fact that the accused made his initial appearance more than one year ago, the Prosecutor should have made a concerted effort to continue and complete its disclosure obligations at the earliest opportunity.

**FOR THESE REASONS THE TRIBUNAL,**

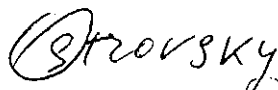
OBSERVES that the prosecutor violated rule 66(A)(i) by not disclosing the prior statement obtained from the accused within the 30 day prescribed period. However, because the disclosure has been made, albeit in a delayed fashion, the defence motion on this issue need not be addressed.

DISMISSES the motion on all other points including the request for the disclosure of the identity of protected witnesses, in accordance with rule 69, because this portion of the request is premature.

Arusha, 21 October 1998



William H. Sekule  
Presiding Judge



Yakov A. Ostrovsky  
Judge



Tafazzal Hossain Khan  
Judge

[SEAL OF THE TRIBUNAL]

