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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule

Registrar: Adama Dieng

Date: 25 May 2001

The PROSECUTOR

v.

PAULINE NYIRAMASUHUKO *et al*

Case No. ICTR-97-21-T

& v.

SYLVAIN NSABIMANA & ALPHONSE NTEZIRYAYO

Case No. ICTR-97-29-T

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DECISION ON THE DEFENSE MOTIONS FOR AN EXTENSION  
OF THE TIME LIMIT FOR FILING THE NOTICE IN RESPECT OF  
EXPERT WITNESS STATEMENTS

(Rules 73 and 94 *bis* of the Rules)

The Office of the Prosecutor

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25.05.2001

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal");

**JUDGE WILLIAM H. SEKULE**, sitting as single judge to rule on this Motion, pursuant to Rule 73 of the Rules of Procedure and Evidence ("the Rules");

**BEING SEIZED of:**

(i) The "Notice to Chamber II pursuant to Rule 94 *bis* (B)(ii) of the Rules and, Alternatively, Motion for the extension of the time limit for filing of notice in respect of expert witness statements" filed by the Defense of Pauline Nyiramasuhuko on 25 April 2001;

(ii) The « Avis selon l'Article 94 *bis* B) ii) et, subsidiairement, Requête pour production hors délais de l'avis prévu à l'Article 94 *bis* B) ii) en vertu de l'Article 73 A) du Règlement de Procédure et de preuve dans l'affaire Alphonse Nteziryayo », filed on 2 March 2001;

(iii) The « Avis de l'Accusé Nsabimana et subsidiairement Requête pour production hors délais de l'avis prévu à l'Article 94 *bis* B) ii) en vertu de l'Article 73 A) du Règlement de Procédure et de preuve », filed on 19 March 2001 ;

**CONSIDERING** the "Response of the Prosecutor to the Defense Motions by Pauline Nyiramasuhuko, Sylvain Nsabimana and Alphonse Nteziryayo for an Extension of Time to File Notice Under Rule 94 *bis* (B)(ii), pursuant to Rule 73 (A)", filed on 2 April 2001;

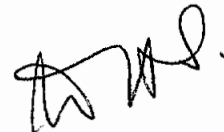
**CONSIDERING** that, pursuant to Rule 73 of the Rules, the instant Motions have been decided upon on the basis of the written briefs filed by the Parties;

**CONSIDERING** the Statute and the Rules of the Tribunal, particularly Rules 73 and 94 *bis* of the Rules;

**SUBMISSIONS OF THE PARTIES**

*The Defense*

1. The Defense of Accused Nyiramasuhuko, Nsabimana and Nteziryayo essentially submit that the statements of expert witnesses Guichaoua and Nowrojee which the Prosecutor disclosed to them in November 2000 were not "full statements", within the meaning of Rule 94(A) of the Rules. Consequently, the 14 days time limit, starting from the date of such disclosure, for the other party to notify its acceptance or not of the expert witness statements, pursuant to Rule 94 *bis* (B) of the Rules should not have started to run with respect to the experts.
2. Specifically, the Defense of the Accused essentially submit that:
  - (a) With respect to expert André Guichaoua, they have only received a report dated 1997, and not one, dated 1998, disclosed to other Defense teams in these joint proceedings; and/or that,
  - (b) With respect to Expert Binajfer Nowrojee, they have only received a book, entitled "Shattered lives" and published in 1996 by the organisation Human Rights Watch.



3. The Defense of all three Accused further submit that they have not received the reports by Experts Rony Zacharia and Allison Desforges. Consequently, the timeframes under Rule 94 *bis* (B)(ii) of the Rules have not started running. They further submit that these statements should have been disclosed sooner, so as to comply with the requirements of Rule 94 *bis* (A) of the Rules.
4. They accordingly request the Chamber, so as to protect the rights of the Accused to a fair trial, to,
  - (a) Declare that the statements of expert witnesses provided to them in November 2000 were not fully disclosed, within the meaning of Rule 94 *bis* (A) of the Rules; or, in the alternative,
  - (b) Extend the 14 days time limit provided for under Rule 94 *bis* (B)(ii) of the Rules for the filing of the notice of their wish, or not, to cross-examine these expert witnesses; and
  - (c) Allow the present notice of their wish to cross-examine these expert witnesses pursuant to Rule 94 *bis* (B)(ii) of the Rules.

***The Prosecutor***

5. The Prosecutor submits that she disclosed the statements of Expert witnesses Guichaoua and Nowrojee on 15 November 2000 to the Defense. This disclosure was a proper "disclosure to the opposing party as early as possible" in compliance with Rule 94 *bis* (A) of the Rules.
6. The Prosecutor further submits that the statements of the two other expert witnesses would be provided to the Defense as soon as the Prosecutor obtains them.
7. The Prosecutor urges the Chamber to declare the Motions inadmissible for being premature, as the timeframes under Rule 94 *bis* (B)(ii) of the Rules are to start running only from the filing of the statements of the expert-witness with the Trial Chamber.

**HAVING DELIBERATED,**

8. The Chamber notes that this dispute can be circumscribed to the issue of the starting point of the 14 days time period under Rule 94 *bis* (B) of the Rules, according to which, "[w]ithin fourteen days of the filing of the statement of the expert witness, the opposing party shall file a notice to the Trial Chamber indicating whether: (i) It accepts the expert witness statement; or (ii) It wishes to cross-examine the expert witness" (our emphasis).
9. This disposition is to be read in conjunction with Rule 94 *bis* (A) of the Rules, pursuant to which "the full statement of any expert witness called by a party shall be *disclosed to the opposing party* as early as possible and shall be *filed with the Trial Chamber* not less than twenty one days prior to the date on which the expert witness is to testify" (our emphasis).
10. In the view of the Chamber, these provisions clearly stipulate that the timeframes under Rule 94 *bis* (B) of the Rules run from the filing of the statements of the expert witnesses with the Trial Chamber. Indeed, Rule 94 *bis* (A) of the Rules circumscribes the *filing* of

the statements of expert witnesses to the lodging of the said statements with the Trial Chamber, as opposed to their *disclosure* to the opposing party.

11. The Chamber therefore agrees with the Prosecutor that no such filing has yet been made. The Defence submissions are accordingly premature.
12. This being said, and although the experts to be called by the Prosecutor in the instant proceedings might only be called at an advanced stage of the Trial, the Chamber recalls that the Prosecutor declared, at the pre-trial conference held on 19 April 2001, that they would obtain all the expert reports, and submit them immediately to the Defence, before the end of May. The Chamber accordingly wishes to remind the Prosecutor that disclosure of the statements of expert witnesses to the opposing Party is to be made as early as possible. Indeed, by thus distinguishing between filing and disclosure, Rule 94 *bis* (A) of the Rules emphasises the necessity of an early disclosure of the expert witness statements to the opposing party. In view of the impending commencement of the Trial in the instant proceedings, the Chamber directs the Prosecutor to report to the Chamber and to the Defense of all the Accused in the said proceedings, by Friday, 1 June 2001, before close of business, on the steps taken to obtain the full witness statements of Experts Zacharia and Desforjes, and on the earliest possible date when the said statements could be provided to the Defense of all the Accused in the instant proceedings.
13. The Chamber further notes that this dispute also arose in light of the way disclosure of the expert witness statements was made to the Defense, in that the Defense of all three Accused considered that they had not received the "full" witness statements of Experts Guichaoua and/or Nowrojee, as envisioned in Rule 94 *bis* (A) of the Rules.
14. The Chamber accordingly orders the Prosecutor to report to the Defense of all the Accused in this proceedings, and to the Chamber, on whether the disclosures done on 15 November 2000 constitute "full disclosure to the opposing party", within the meaning of Rule 94 *bis* (A) of the Rules, by Friday, 1 June 2001, before close of business.
15. Particularly, the Chamber notes that the Defense of Accused Nyiramasuhuko was allegedly provided with a version of Expert Guichaoua's report dated 1997, whereas other Defense teams in the instant proceedings received another version, dated 1998. The Trial Chamber accordingly orders the Prosecutor, after consultations with the Registry, to ascertain that the Defense of all the Accused have been, or will be provided with the same documents under Rule 94 *bis* of the Rules, and to report on the steps taken to this effect by Friday, 1 June 2001, before close of business.
16. Should full disclosure not have been made in respect of these experts, the Prosecutor would have to report to the Chamber and to the Defense of all the Accused in this case on the steps taken to obtain the full statements yet to be disclosed with respect to Experts Guichaoua and Nowrojee, and on the earliest possible date when full disclosure of these statements could be provided, by Friday, 1 June 2001, before close of business.



**FOR THE ABOVE REASONS,**

**THE TRIBUNAL,**

**I. DISMISSES** the Defense Motion;

**II. ORDERS** the Prosecutor to report to the Trial Chamber and to the Defense of all the Accused in the instant proceedings, through the Court Management Section of the Tribunal, by Friday, 1 June 2001, before close of business:

- (A) On the steps taken to obtain the full witness statements of Experts Zacharia and Desforges, and on the earliest possible date when the said reports could be provided to the Defense of all the Accused in the instant proceedings;
- (B) On whether the disclosures done on 15 November 2000 with respect to Experts Guichaoua and Nowrojee constitute "full disclosure to the opposing party", within the meaning of Rule 94 *bis* (A) of the Rules;
- (C) Should full disclosure not have been made with respect to Experts Guichaoua and Nowrojee, on the steps taken to obtain their full statement, and on the earliest possible date when full disclosure in respect of these statements could be provided;
- (D) After consultations with the Registry, on whether the Defence of all the Accused have been provided with the same documents under Rule 94 *bis* of the Rules, or how and when they will be provided with the same documents.

Arusha, 25 May 2001



William H. Sekule

Judge

(Seal of the Tribunal)