



ICTR-2000-56-I  
(2378 - 2376)  
24-9-2001

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

Before: Judge Lloyd George Williams, Presiding  
Judge Yakov Ostrovsky  
Judge Pavel Dolenc

Registrar: Adama Dieng

Date: 24 September 2001

**THE PROSECUTOR**

v.

**AUGUSTIN NDINDILYIMANA**

**Case No. ICTR-00-56-I**

JUDICIAL RECORDS ARCHIVES  
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**DECISION ON DEFENCE URGENT MOTION FOR THE DISCLOSURE OF  
EVIDENCE AND FOR THE RETURN OF SEIZED ITEMS**

The Office of the Prosecutor:  
Chile Eboe-Osuji  
Patricia Wildermuth  
Amanda Reichman

Counsel for the Accused:  
Christopher Black

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the Tribunal),**

**SITTING** as Trial Chamber III, composed of Judges Lloyd George Williams, presiding, Yakov Ostrovsky and Pavel Dolenc (the Chamber);

**BEING SEISED** of the Defence's "Urgent Motion for the Disclosure of Evidence and for the Return of Seized Items" filed on 9 August 2001 (the Motion);

**CONSIDERING** the Prosecutor's Response filed on 15 August 2001;

**NOW CONSIDERS** the matter solely on the basis of the briefs of the parties, pursuant to Rule 73(A) of the Rules of Procedure and Evidence (the Rules).

**SUBMISSIONS OF THE DEFENCE**

1. The Defence seeks the return of two categories of items currently in the possession of the Prosecutor. First, the Defence requests that the Prosecutor return items seized by the Belgian Police upon his arrest pursuant to the Warrant of Arrest issued by the Tribunal, that are now in the custody of the Prosecutor. Similarly, the Defence seeks to compel the Prosecutor to turn over items that were previously in the possession of a Belgian Investigating Judge and that were transferred to the Prosecutor in Arusha.
2. The Motion also requests that the Prosecutor comply with Rules 66(A)(ii) and 68. As of the date of filing, the Defence had only received 11 witness statements despite requesting full disclosure by letter dated 14 August 2000. The Defence argues that the Accused is materially prejudiced by the current non-disclosure, as he is not able to know the case against him.

**SUBMISSIONS OF THE PROSECUTOR**

3. The Prosecutor opposes this Motion and claims that it is "overhasty" as there has been communication between the parties regarding disclosure. The Prosecutor indicates that comprehensive disclosure is being completed.

**DELIBERATIONS**

**(a) Seizure**

4. Rule 41(B) provides:

The Prosecutor shall draw up an inventory of all materials seized from the accused, including documents, books, papers, and other objects, and shall serve a copy thereof on the accused. Materials that are of no evidentiary value shall be returned without delay to the accused.

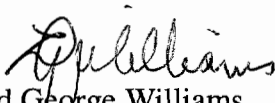
5. The Chamber notes that this Rule only applies to materials that have been seized *from the accused*. However, it is not clear from the Motion whether or not the materials formerly in the possession of the Investigating Judge were originally seized from the Accused or from other sources.

6. Pursuant to the Rules, the Prosecutor shall draw up an inventory of all materials seized from the accused and shall serve a copy thereof on the accused. To the extent that the Prosecution is in possession of materials seized from the accused, the Prosecutor is under an immediate obligation to return those materials of no evidentiary value.

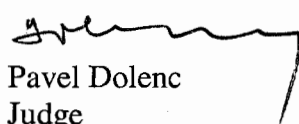
**(b) Disclosure**

7. Pursuant to Rule 66(A)(ii) the Prosecutor is obliged to disclose the statements of all witnesses whom the Prosecutor intends to call no later than 60 days before trial. The trial date has not yet been determined and therefore the Prosecutor is not in breach of Rule 66(A)(ii).
8. The Prosecutor's obligation to disclose the existence of exculpatory evidence known to the Prosecutor pursuant to Rule 68 arises "as soon as practicable". However, the Defence has not shown that the Prosecutor has knowledge of any exculpatory evidence and therefore there is no basis upon which to find that the Prosecutor has breached Rule 68.
9. For the foregoing reasons, the Chamber:
- (a) **ORDERS** the Prosecutor to immediately return any materials seized from the accused, which are of no evidentiary value;
  - (b) **DISMISSES** the motion in all other respects.

Arusha, 24 September 2001.

  
Lloyd George Williams  
Judge, Presiding

  
Yakov Ostrovsky  
Judge

  
Pavel Dolenc  
Judge

(Seal of the Tribunal)