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ICTR-98-41-T

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Original: English

Before: Judge Lloyd George Williams, Q.C., Presiding
Judge Pavel Dolenc
Judge Andréia Vaz

Registrar: Mr. Adama Dieng

Date: 10 June 2002

THE PROSECUTOR
v.
THÉONESTE BAGOSORA
GRATIEN KABILIGI
ALOYS NTABAKUZE and
ANATOLE NSENGIYUMVA

Case No. ICTR-98-41-T

JUDICIAL RECORDS DIVISION
ICTR
RECORDED

2002 JUN 10 P 3:21

DECISION ON NTABAKUZE'S MOTION REGARDING ACCESS TO THE UNITED
NATIONS DETENTION FACILITY

The Office of the Prosecutor:

Mr. Chile Eboe-Osuji
Ms. Christine Graham
Mr. Segun Jegede
Mr. Drew White

Defence Counsel:

Mr. Clemente Monterosso
Mr. André Tremblay
Mr. Raphaël Constant
Mr. Jean Yaovi Degli
Mr. Kennedy Ogetto
Mr. Gershom Otachi Bw'Omanwa

The International Criminal Tribunal for Rwanda (the "Tribunal"), sitting today as Trial Chamber III composed of Judges Lloyd George Williams, Q.C., presiding, Pavel Dolenc, and Andréia Vaz (the "Chamber");

BEING SEISED OF the "Urgent Motion by Ntabakuze's Defence Seeking an Order for the Registrar to Lift Some of the Measures Restricting Access by Defence Investigators to the Detention Facility" filed on 9 May 2002 (the "Motion");

CONSIDERING the "Registrar's Representations Pursuant to Rule 33(B) of the Rules of Procedure and Evidence Regarding the Ntabakuze Defence Motion for the Lifting of Measures Restricting Defence Investigators' Access to the United Nations Detention Facilities" filed on 29 May 2002;


THE TRIBUNAL NOW DECIDES the matter on the basis of the written briefs pursuant to Rule 73(A):

1. In the Motion, the Defence challenges the Registry's administrative policy restricting access of Defence team's legal assistants and investigators to the United Nations Detention Facility (the "UNDF"). In particular, the Defence is concerned with the memorandum dated 26 March 2002 from the Chief of the Lawyers and Detention Facilities Management Section to all Defence Counsel, advising them that visits to the detainees outside of the presence of lead counsel or co-counsel by defence team members are considered "private" in nature pursuant to Rule 61 (i) of the of the Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal (the "Rules of the UNDF") and therefore are not accorded the privilege of confidentiality pursuant to Rule 65 of the Rules of the UNDF. In implementing this new policy, the Lawyers and Detention Facilities Management Section has applied various restrictive measures and other security controls to visits by unaccompanied investigators and legal assistants. The Defence argues that it is essential to the preparation of their case that the investigator and legal assistant have free access to the detention facility and to the Accused.
2. The Registrar responds that the Motion should be rejected as frivolous and that the Defence should be denied costs. The Registrar explains that investigators and legal assistants are not considered to be counsel and therefore cannot have the same privileged and confidential rights of communication with the Accused. However, the Registrar concedes that, in exceptional circumstances, it is possible that confidential visits may be permitted between the Accused and an unaccompanied investigator or legal assistant.
3. Rules 82 to 86 of the Rules of the UNDF set out the procedure for lodging complaints relating to the UNDF. Rule 82 specifies that a detainee must first complain to the Commanding Officer or his representative. If the Detainee is not satisfied with the response of the Commanding Officer, he may make a written complaint to the Registrar, who will forward it to the President pursuant to Rule 83. According to Rule 19 of the Rules of Procedure and Evidence, the President supervises the activities of the Registry.
4. This procedure is consistent with the International Criminal Tribunal for the Former Yugoslavia's Regulations for the Establishment of a Complaints Procedure for Detainees (IT/96) which similarly provides that the Registrar "shall examine the substance of the complaint and determine whether it should be dealt with by the Registrar, being a


complaint about an administrative matter or a matter of general concern, or whether it relates to an alleged breach of the rights of the individual detainee, in which case it shall be referred to the President for consideration.”

5. The Chamber observes that there are established procedures for dealing with the substance of the complaint raised in the Motion. These procedures have not been exhausted in the present case. In the circumstances, the Chamber will not intervene.
6. The Motion is therefore dismissed.

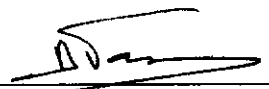
Arusha, 10 June 2002.



Lloyd G. Williams, Q.C.
Presiding Judge



Pavel Dolenc
Judge



Andréia Vaz
Judge

[Seal of the Tribunal]