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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Original: English

Before: Judge Lloyd G. Williams, Q.C., presiding
Judge Pavel Dolenc
Judge Andréia Vaz

Registrar: Mr. Adama Dieng

Date: 8 April 2003

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

CASE NO. ICTR-98-41-T

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ORDER FOR REDUCTION OF PROSECUTOR'S WITNESS LIST

The Office of the Prosecutor:

Barbara Mulvaney
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Christine Graham
Rashid Rashid
Segun Jegede

Defence Counsel:

Jean Yaovi Degli
Sylvia Olympio
Raphaël Constant
André Tremblay
Gershom Otachi Bw'Omanwa
Kennedy Ogetto

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“Tribunal”)

SITTING as Trial Chamber III composed of Judges Lloyd George Williams, Q.C., Presiding, Pavel Dolenc, and Andrézia Vaz (“Chamber”);

PROPRIO MOTU pursuant to Rule 73bis(D) considers the Prosecutor’s witness list and makes the following order;

1. The Chamber recalls that pursuant to the “Scheduling Order on the Pre-Trial Conference Pursuant to Rule 73 bis” of 5 December 2001, the Prosecutor filed her Rule 73bis(B) witness list as part of the Prosecutor’s Pre-Trial Brief on 21 January 2002. Further amendments to this list were submitted on 7 March, 28 March, and 31 March 2002. As of the commencement of trial on 2 April 2002, the list contained 235 witnesses.
2. The Chamber has repeatedly instructed the Prosecutor that this list is much too long. Notably, during the status conference of 3 April 2002, the Presiding Judge stated that the list “must be cut down considerably”.¹ In the Status Conference of 28 June 2002, the Presiding Judge reiterated that the Chamber would not permit such an excessive number of witnesses and that the Prosecution would have to “rethink” its list.² During the Status Conference of 3 September 2002 the Presiding Judge again stated that there was a “serious problem” with the length of the list and requested the Prosecutor to provide the Chamber with a witness list that was “clarified and reduced”.³
3. By its Decision of 4 November 2002,⁴ the Chamber ordered the Prosecutor to file a revised list of witnesses. This revised list, dated 12 November 2002 and filed 14 November 2002, contained 182 “active” witnesses and 82 “inactive” witnesses. In the correspondence accompanying this list and during the subsequent Status Conference of 15 November 2002, the Prosecutor explained that “active” witnesses are those whom the Prosecutor intends to call to testify. The “inactive” witnesses are those witnesses that the Prosecutor does not have the present intention to call, subject to developments relating to the active witnesses.⁵ The Prosecutor also indicated that at the time they still had not interviewed most of the active witnesses and that therefore they could not confirm whether they would be calling them. The Prosecutor further stated that 25 percent of the witnesses were dead or missing.
4. By correspondence through the Court Management Section dated 25 February 2003, 12 March 2003, and 20 March 2003, the Prosecutor was requested by the Chamber to file a final list of witnesses. The Prosecutor confirmed by correspondence dated 24 March 2003 that the list dated 12 November 2002 was the “final list”.
5. The Chamber considers that the 12 November 2002 list, which still contains “inactive” witnesses, cannot be considered to be final. Rule 73bis(B)(iv) provides that Prosecutor may be ordered to file a “list of witnesses the Prosecutor intends to call”. The Prosecutor therefore cannot include in the witness list those “inactive” witnesses whom she does not intend to call,

¹ T. 3 April 2002, p. 67.

² T. 28 June 2002, pp. 69, 73.

³ T. 3 September 2002, pp. 36, 37.

⁴ Decision (Motion by Aloys Ntabakuze’s Defence for Execution of the Trial Chamber’s Decision of 23 May 2002 on the Prosecutor’s Pre-Trial Brief, dated 21 January 2002, and Another Motion on a Related Matter), 4 November 2002.

⁵ T. 15 November 2002, p. 23.

presumably to reserve the ability of the Prosecutor to shift witnesses from one category to another without leave of the Chamber. For purposes of clarity, the Chamber therefore finds that the Prosecutor's 12 November 2002 list does not include those witnesses listed as "inactive". If the Prosecutor wishes at any time to add any "inactive" witnesses to its "active" list, then she must request leave of the Chamber pursuant to Rule 73bis(E) to vary the list.

6. Moreover, even considering only those witnesses listed as "active", the Chamber finds, pursuant to Rule 73bis(D) that the Prosecutor is seeking to call an excessive number of witnesses to prove the same facts. In particular the Chamber notes that the "Prosecutor's Pre-Trial Brief Revision", filed 7 June 2002, indicates that 12 witnesses are being called to testify about all points of all three Indictments. The Brief also states that it plans to call "all" 182 witnesses to testify about certain paragraphs of the Indictments. A cursory analysis of the Prosecutor's Pre-Trial Brief Revision further reveals that certain witnesses, such as Witnesses ABW, AEE, and AHJ, are being called to testify about only 1 or 2 paragraphs of the Indictments, which paragraphs are also the subject of the testimony of more than 50 other witnesses.

7. The Chamber finds that the Prosecutor must therefore reduce the number of witnesses pursuant to Rule 73bis(D). The Chamber is of the opinion that the new list should contain only those witnesses whom the Prosecutor has a genuine intention to call to testify. In the view of the Chamber, this list ought not to exceed one hundred witnesses.

8. The Chamber recognises that the Prosecutor has accepted that its list is too long and has repeatedly expressed the laudable intention to reduce the number of witnesses to a minimum as the trial progresses. However, the unmanageable size and contingent nature of the current list creates an unnecessary burden for the Chamber and for the defence teams. It wastes the limited resources of the Tribunal to prepare for large numbers of witnesses who will not be called to testify.

9. After the filing of this revised list the Prosecutor may, in accordance with the normal procedure, apply pursuant to Rule 73bis(E) to vary her decision as to which witnesses are to be called.

10. The Chamber therefore **ORDERS** the Prosecutor, pursuant to Rule 73bis(D), to file a revised and final list, not exceeding one hundred witnesses whom she intends to call. This list shall be filed no later than 30 April 2003.

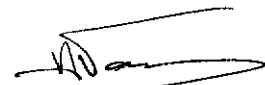
Arusha, 8 April 2003.



Lloyd G. Williams, Q.C.,
Presiding Judge



Pavel Dolenc
Judge



Andréia Vaz
Judge

[Seal of the Tribunal]