



ICTR-2001-64-T  
10-9-2003  
(901-898)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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**TRIAL CHAMBER III**

Before: Judge Andréia Vaz, presiding  
Judge Ram Reddy  
Judge A. Egorov

Registrar: Adama Dieng

Date: 1 August 2003

**THE PROSECUTOR**

v.

**SYLVESTRE GACUMBITSI**

Case No. ICTR-2001-64-T

JUDICIAL RECORDS/MANAGES  
RECEIVED  
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2003 SEP 10 P 4: 42  
[Signature]

**DECISION ON MOTION TO DISCLOSE TO THE DEFENCE ALL THE FACTS  
AND AUTHORITIES THAT LED TO THE ARREST, DETENTION AND  
PROVISIONAL RELEASE OF PROSECUTION WITNESSES TBG,  
TBH, TBI, TBJ AND TBK  
(Rule 66 of the Rules)**

Office of the Prosecutor:

Richard Karegyesa  
Khaled Ramadan

Counsel for the Defence:

Kouengoua, Lead Counsel  
Anne Ngantio Mbatang

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (The Tribunal)

**SITTING** in the person of Judge Andréia Vaz, designated by Trial Chamber III (the Chamber) pursuant to Rule 73(A) of the Rules of Procedure and Evidence (the Rules);

**BEING SIESED** of the following Defence Motion and of the written submissions of the parties:

(i) "Motion to disclose to the defence all the facts and authorities that led to the arrest, detention and provisional release of prosecution witnesses TBG, TBH, TBI, TBJ AND TBK. (Rule 66 of the Rules)", filed on 14 July 2003 (the motion);

(ii) "Prosecutor's brief in reply to defence motion for disclosure pursuant to Rule 66, filed on 16 July 2003 (the brief);

(iii) "Defence's reply to "Prosecutor's brief in reply to a defence motion for disclosure" of certain information relating to prosecution witnesses TBG, TBH, TBI, TBJ AND TBK" (the Reply);

**DECIDING** solely on the of basis of the written submission of the parties, pursuant to Rule 73 of the Rules;

**DELIBERATES** as follows:

**Submissions of the parties**

1. The Defence submits that the Prosecution should be ordered to disclose to it, pursuant to Rule 66 of the Rules, and before the testimony of the witnesses, the procedural documents that led to the prosecution, arrest, detention and provisional release of Prosecution Witnesses in Rwanda, namely Witnesses TBG, TBH, TBI, TBJ and TBK (the "witnesses"). The Defence recalls that, pursuant to Rule 90 *bis*, a transfer order was submitted to the Rwandan authorities, for the appearance of the said witnesses on 14 July 2003<sup>1</sup>. The Defence submits these materials are "necessary, indeed indispensable" for its preparation of the cross-examination of these witnesses, whose credibility seems particularly affected by the fact that they are being prosecuted, or have been prosecuted, for crimes in Rwanda.

2. The Prosecution replies that its services had disclosed all materials in its possession or under its control concerning the witnesses, pursuant to Rule 66 of the Rules. The Prosecution particularly refers to the prior statements of Witnesses TBI, TBJ and TBK, in their redacted and non-redacted versions. The Prosecution underlines that the Defence did not produce materials that would question the fact that its services are neither in possession of nor exercising control over the materials in respect of which the Defence is requesting disclosure.

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<sup>1</sup> See the *Decision Concerning the Prosecutor's Motion for the Transfer of Witnesses Detained in Rwanda*, rendered by the Chamber on 11 July 2003 (Case No. ICTR-2001-64-I).

3. However, the Prosecution undertakes to permit the Defence to inspect any material requested by the latter pursuant to Rule 66(B) of the Rules, if it obtains such materials. Moreover, the Prosecution discloses some general information in its possession regarding the proceedings against these witnesses. The information is attached herewith as Annex A to this Motion (hereafter "Annex A"); the Prosecution submits that the information should be put under seal.

#### Rejoinder

4. The Defence submits that considering the information contained in Annex A, there are grounds to believe the Prosecution has in its possession or under its control materials relating to the proceedings commenced by the Rwandan authorities against the witnesses. Therefore the Defence sticks to its Motion.

#### Deliberations

5. The materials in respect of which the Defence requests disclosure are relevant to its preparation of the cross-examination of the witnesses cited in the motion, pursuant to Rule 66(B) of the Rules. However, pursuant to Rule 66(B) of the Rules, the Prosecution should permit the Defence to inspect such materials only if they are in its possession or under its control. The Prosecution submits that none of the materials in question is in its possession or under its control.

6. In any case, the Chamber takes note of the Prosecution's commitment contained in paragraph 3 above.

7. The Chamber notes that in Annex A the Prosecution disclosed information relating to the criminal proceedings commenced by the Rwandan authorities against the witnesses cited in the Motion. If the Prosecution's information is based on specific materials, then it must permit the Defence to inspect them within 48 hours with effect from the date this Decision is rendered, except with justification before the Chamber for relief from the obligation to disclose pursuant to Rule 66(B) of the Rules.

8. Lastly, the Chamber notes that the information contained in Annex A is likely to allow identification of the witnesses whose respective identities are protected<sup>2</sup>. Therefore, there is need to place Annex A under seal.

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<sup>2</sup> See Decision on Prosecution motion for protective measures for victims and witnesses, rendered by the Chamber (composed of Judge Lloyd G. Williams, presiding, Judge Yakov Ostrovsky and Pavel Dolenc) on 20 May 2003 (Case No. ICTR-2001-64-I).

**FOR THESE REASONS,**

**THE TRIBUNAL**

I. **ORDERS** the Prosecution, if the information contained in Annex A is based on specific materials, to allow the Defence to inspect such materials within 48 hours with effect from the rendering of this decision, except with justification before the Chamber, before the expiration of the time limit, for relief from the obligation to disclose pursuant to Rule 66(B) of the Rules.

II. **ORDERS** the Registrar to place the Prosecutor's Response under seal.

Done at Arusha, on 1 August 2003.

(Signed)  
Judge Andréia Vaz  
Presiding Judge of the Chamber

