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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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TRIAL CHAMBER III

ENGLISH
Original: FRENCH

Before: Judge Andréia Vaz, presiding
Judge Flavia Lattanzi
Judge Florence Rita Arrey
Registrar: Adama Dieng
Date: 24 November 2003

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[Signature]

THE PROSECUTOR

v.

EDOUARD KAREMERA *et al.*

Case No.: ICTR-98-44-I

DECISION ON MOTION BY THE DEFENCE FOR NGIRUMPATSE FOR DISMISSAL OF PROSECUTOR'S PRE-TRIAL BRIEF

Rule 73bis(B)(i) of the Rules of Procedure and Evidence

Counsel for the Defence:
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Translation certified by LSS, ICTR

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the Tribunal),

SITTING as Trial Chamber III, composed of Judge Andréia Vaz, presiding and Judges Flavia Lattanzi and Florence Rita Arrey ("the Chamber"),

BEING SEIZED of *Motion for Dismissal of Prosecutor's Pre-Trial Brief* ("the Motion"), filed by the Defence for Mathieu Ngirumpatse on 4 November 2003,

CONSIDERING the Prosecutor's Response, filed on 13 November 2003 ("the Response"),

RULING solely on the basis of briefs filed by the parties, pursuant to Rule 73(A) of the Rules of Procedure and Evidence (the Rules),

CONSIDERS THE MOTION.

Submissions of the parties

The Defence

1. The Defence for Matthieu Ngirumpatse notes that the pre-trial brief filed by the Prosecutor on 16 October 2002 does not fit the definition provided for under Rule 73bis(B)(i) of the Rules and does not supplement the pre-trial brief filed on 15 March 2002.
2. Furthermore, the Defence considers that the Chamber did not ask for the brief and that it does not address the factual and legal issues brought before the Chamber in the Indictment, but repeats and discusses the factual and legal issues contained in the draft amended Indictment rejected by the Chamber on 8 October 2003.
3. The Defence considers, further, that the brief was filed after the deadline and that admitting it would be an abuse of process, as the Prosecutor would be introducing in the form of a pre-trial brief what has been rejected in the form of an Indictment.
4. The Defence submits that retaining such a document in the trial record, beyond what is contained in the Indictment, affects the rights of the Defence and prolongs the proceedings at the expense of judicial economy.
5. Therefore, the Defence requests the Chamber to note that the Prosecutor's pre-trial brief is not a brief within the meaning of Rule 73bis(B)(i), and much less a supplement to the pre-trial brief filed on 15 March 2002. The Defence accordingly requests the Chamber to dismiss it.

The Prosecutor

6. The Prosecutor submits that although the Chamber had not asked for the pre-trial brief filed on 16 October 2003 as a supplement to the brief filed on 15 March 2002, nothing in the Rules prevents the Prosecutor from filing a brief without being invited to do so. The Prosecutor asserts that the brief is supplementary to the first brief

and that it facilitates the task of the parties and the Chamber by providing ample information on the factual and legal issues that the Prosecutor intends to address in detail during the trial.

7. The Prosecutor acknowledges that many paragraphs in the draft amended Indictment of 28 July 2003 were included in the pre-trial brief of 13 October 2003. He submits, nonetheless, that the brief is different from the amended Indictment in several respects, in terms of the explanation of the principle of joint criminal enterprise and clarification of the charges against Ngirumaptse.

8. The Prosecutor argues that the supplementary pre-trial brief addresses the factual and legal issues relating to the original Indictment.

9. The Prosecutor refers to the position taken by Trial Chamber I in its Judgement in the case of Elizaphan and Gérard Ntakirutimana in which the Chamber relied particularly on the Prosecutor's brief in order to determine whether the Defence had been adequately informed of the facts and evidence that was going to be adduced in the trial. The Prosecutor also refers to the Judgement of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia in *Prosecutor v. Zoran Kupreskic*, which was the basis of the Chamber's reasoning in the *Ntakirutimana* case. The Prosecutor submits, consequently, that the fact that the supplementary pre-trial brief is for the most part extracted from the dismissed Indictment should not taint the Prosecutor's effort made in good faith to warn the Defence of what it would be confronted with during the trial.

10. The Prosecutor argues that the filing of the brief is not intended to circumvent the Chamber's decision. He concedes that the most appropriate means to notify the parties is the Indictment. However, given that he had been denied that option, with the denial of his request for leave to amend the Indictment, he took the initiative to use the best means available, namely the pre-trial brief.

11. The Prosecutor, in fact, requests the Chamber to deny all aspects of the Defence motion.

Deliberations

12. The Defence for Ngirumaptse requests that the pre-trial brief, described by the Prosecutor as a supplement and filed on 10 October 2003 be dismissed, in the sense that it is not a pre-trial brief, that it was not requested of him by the Chamber, in accordance with Rule 73bis(B)(i) of the Rules, and that it reproduces the Indictment dismissed by the Chamber on 8 October 2003, and as such does not supplement the initial brief filed on 15 March 2002.

13. Rule 73bis(B)(i) provides that: "At the Pre-trial Conference the Trial Chamber or a Judge designated from among its members, *may order* the Prosecutor, within a time limit set by the Trial Chamber or the said Judge, and before the date set for trial [...]:

- (i) A pre-trial brief addressing the factual and legal issues; (...) (emphasis added)

14. The Chamber finds that a pre-trial brief is the written version of the case that the Prosecutor will present at trial and, as such, represents notification and a convenient means for the parties to clarify their strategies before the trial. This interpretation of the nature of the pre-trial brief emerges from a decision rendered by Trial Chamber II in the context of *The Prosecutor v. Kajelijeli*, in which the Chamber specified that: "[...] the purpose of Rule 73bis of the Rules is to notify the Defence and the Trial Chamber of the issues that the Prosecutor will address at trial and the manner in which they will address them. [...]"¹

15. The Chamber notes that the impugned brief sets out the factual and legal issues that will be addressed at trial, with a view to assisting the Chamber and the Defence, and in that sense constitutes a pre-trial brief.

16. The Chamber is of the view, further, that since the impugned brief supplements an initial brief, it cannot be considered as a new brief and as having been filed by the Prosecutor *proprio motu*.

17. However, the Chamber takes due note of the Prosecutor's admission that the supplementary brief largely reproduces certain paragraphs of the dismissed Indictment.

18. The Chamber echoes the reasoning followed by the Judges of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia in the *Prosecutor v. Kupreskic* Judgement wherein the Appeals Chamber while classifying the pre-trial brief among the accusatory instruments, clearly brings out the intrinsic hierarchy of these instruments, with the Indictment, being the "principal accusatory instrument" at the top of the hierarchy.² Therefore, it is the Chamber's opinion that the pre-trial brief is not considered as such as it does not depart from the Indictment. The Chamber reserves the right to rule at a later stage on the content of the notion of joint criminal enterprise that touches on the merits of the case.

¹ *The Prosecutor v. Kajelijeli*, Case No. ICTR 98-44-I, Decision on Juvenal Kajelijeli's Motion in Objection to the Pre-Trial Brief, 11 April 2001, para. 8.

² *Prosecutor v. Zoran Kupreskic*, Case no. IT-95-16-A, Trial Judgement of 23 October 2001, para. 114.

FOR THE FOREGOING REASONS,

THE CHAMBER

DENIES the Defence Motion

Arusha, 24 November 2003

[Signed]
Andrésia
Presiding Judge

[Signed]
Flavia Lattanzi
Judge

[Signed]
Florence Rita Arrey
Judge

[Seal of the Tribunal]

