



ICTR-2001-61-1  
30-01-2004  
(1447-1443)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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**TRIAL CHAMBER I**

**Before:** Judge Erik Møse, Presiding  
Judge Jai Ram Reddy  
Judge Sergei Alekseevich Egorov

**Registrar:** Adama Dieng

**Date:** 30 January 2004

**THE PROSECUTOR**

v

**Jean-Baptiste GATETE**

*Case No. ICTR-2000-61-I*

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**DECISION ON DEFENCE'S EXTREMELY URGENT MOTION SEEKING LEAVE TO  
FILE PRELIMINARY MOTIONS, OUT OF TIME, UNDER RULE 72**

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**Office of the Prosecutor:**

Richard Karegyesa  
Holo Makwaia  
Andra Mobberley

**The Defence:**

Richard Dubé

R. H.

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (“the Tribunal”);

**SITTING** as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

**BEING SEIZED** of the Defence “Requête en extrême urgence de la défense afin d’obtenir la permission de soulever, hors délais, des exceptions préjudicielles en vertu de l’article 72 du RPP”, filed on 11 April 2003;

**CONSIDERING** the Prosecution “Response to the Extremely Urgent Defence Motion Seeking Leave to File a Rule 72 Preliminary Motion Out of Time”, filed on 14 April 2003; and the Defence “Réplique de la défense à la Prosecutor Response”, filed on 1 May 2003;

**HEREBY DECIDES** the motion on the parties’ briefs.

**INTRODUCTION**

1. Rule 66(A)(i) of the Rules of Procedure and Evidence (“the Rules”) requires the Prosecution to disclose to the Defence “[w]ithin 30 days of the initial appearance of the accused copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the accused”. Pursuant to Rule 72, preliminary motions, including objections based on defects in the form of the indictment, must be filed “within thirty days following disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66(A)(i)”.<sup>1</sup> Failure to do so constitutes a waiver of the right to file such motions. Under Rule 72(F), “[t]he Trial Chamber may, however, grant relief from the waiver upon showing good cause”.

2. The Accused made his initial appearance before the Tribunal on 20 September 2002, accompanied by his Duty Counsel, Mr. Francis Musei. The material used to support the confirmation of his Indictment (“Confirmation Material”) was disclosed to the Defence within thirty days of this appearance, as required by Rule 66(A)(i), on 18 October 2002. On 16 January 2003, Mr. Richard Dubé was assigned as Lead Counsel for the Accused, and first met his client during a visit to Arusha between 7 and 14 March 2003. Mr. Dubé avers that he requested the Confirmation Material during this visit, and that the Registry provided it to him by 12 March 2003.

3. The Defence filed the present motion on 9 April 2003, and on 14 April filed a motion entitled “Requête de la défense en exceptions préjudicielles en vertu de l’article 72 du RPP” which, in substance, objects to the form of various sections of the indictment.

<sup>1</sup> Rule 72 was amended during the Thirteenth Plenary meeting of the Tribunal, but not so as to affect the law applicable to the present motion. As the parties have based their arguments on Rule 72 as worded prior to these amendments, that version is used for the purposes of the present Decision.

**SUBMISSION BY THE PARTIES**

1445

4. The Defence requests the Chamber to grant a period of thirty days in which to file preliminary motions under Rule 72(A), seeking relief from the deemed waiver of the right to make such submissions upon expiry of the thirty-day time-limit. The Defence offers several justifications for its request. First, Lead Counsel, Mr. Dubé, was appointed on 16 January 2003, and was only given the Confirmation Material on 12 March 2003. Second, a request for a legal assistant was made on 24 March 2003, but had still not been approved as of the date of the Defence motion, 8 April 2003. Third, Lead Counsel's prior professional obligations made it impossible to act earlier. Fourth, the Indictment displays a lack of precision that prejudices the Accused's right to a fair trial, which in itself made it impossible for the Defence to lodge its preliminary motions in a timely fashion. Fifth, the volume of the disclosure and other materials has made it impossible for the Defence to act within the thirty-day time-limit. Finally, as no date has yet been set for commencement of the trial, submission of preliminary motions will neither cause delay nor prejudice the Prosecution; on the contrary, such motions could speed up the trial. Refusing such motions would deprive the Accused of his fundamental right to raise preliminary motions with the requisite legal assistance. The Defence submits that it is in the interests of justice to permit submission of preliminary motions.

5. In response to the Prosecution's submissions, the Defence's Reply argues that the thirty-day time period should only run from the date on which Lead Counsel, rather than Duty Counsel, receives the Confirmation Material. Citing the very limited role accorded to Duty Counsel under the Rules, the Defence submits that it is unrealistic to expect Duty Counsel to raise preliminary objections, as that would violate the rights of the Accused.

6. The Prosecution argues that the Defence missed the deadline prescribed by Rule 72(A). Disclosure was made to Duty Counsel on 18 October 2002 and the thirty-day time-limit for filing preliminary motions runs from this date, and expired on 17 November 2002. Moreover, any motion to extend the time-limit should have been filed by that date. The fact that the Confirmation Material was disclosed to Duty Counsel rather than Lead Counsel does not constitute good cause justifying relief from the waiver of the right to file preliminary motions.

**DELIBERATIONS**

7. The present motion raises two issues: first, the effective date of disclosure of the Confirmation Material, and whether the thirty-day period commencing therefrom had expired; if so, whether good cause has been shown to grant relief by extending that time-period.

(i) Effective Date of Disclosure

8. Disclosure of the Confirmation Material to Duty Counsel does not trigger the time-limit prescribed by Rule 72. The mandate assigned to Duty Counsel under Rule 44 *bis* does not include the potentially substantial task of preparing and filing preliminary motions, which includes motions challenging jurisdiction and applications for severance of charges, as well as objections to the form of the Indictment. Duty Counsel are charged with "providing initial legal advice and assistance to a suspect transferred under Rule 40 *bis*", and "shall advise the suspect of

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1444

his or her rights including the rights referred to in Rule 55(A)". Counsel assigned under Rule 45, in contrast, is expected "to conduct the case to finality". The mandate of Duty Counsel is temporary and limited, pending assignment of the case to lead counsel, whose responsibility is comprehensive and indefinite. This is not to suggest that submission of preliminary motions is beyond the authority of Duty Counsel; that question is not before the Chamber. But it would be unrealistic to so construe the Rules as to require preliminary motions to be filed by Duty Counsel, failing which the right to do so is deemed waived. This construction is supported by the difference in terminology between Rule 72, which refers to "disclosure to the Defence", as compared with the references to "duty counsel" in Rule 44 *bis*.

9. While it would be expected that Duty Counsel should hand over all materials to the Lead Counsel once assigned, it is noteworthy that Rule 72 specifically refers to "disclosure by the Prosecutor to the Defence." This being the case, and in the absence of contradiction by the Prosecution, the Chamber accepts the Defence assertion that it received the Confirmation Material on 12 March 2003. Taking this as the effective date of disclosure, the thirty-day period for filing of preliminary motions expired on 11 April 2003.

10. Whether an application for relief from the waiver of the right to file a preliminary motion is filed before or after the expiry of the thirty days is not material under Rule 72. The Defence filed the present motion before the expiry of the thirty days, but Rule 72 requires that the preliminary motion itself be filed within that time period. The Defence asserts that it filed its motion on 12 April, whereas the Registry stamp indicates that it was filed on 14 April. In either event, the preliminary motion was filed out of time.

(ii) Application for Extension

11. Conversely, Rule 72 does not require that requests for relief from expiry of the time limit be filed before its expiry, although the timeliness of a request may minimize prejudice to the other party or any delay in the proceedings, which may be factors in assessing whether there is good cause.

12. The Defence cites Lead Counsel's competing professional obligations, the significant amount of evidence submitted by the Prosecution over a short period of time, and the absence of a research assistant as sufficient showing of good cause to warrant relief from the waiver of Rule 72 (F). These reasons were accepted as germane in *Prosecutor v. Casmir Bizimungu* where relief was granted.<sup>2</sup> The Chamber further notes that the Defence here filed its request for an extension before the expiry of the thirty-day time-limit; that it submitted its preliminary motion shortly thereafter, thus minimizing any potential delay; and that no trial date has yet been set. The Chamber believes that in the present circumstances, the Defence has shown good cause for extension of the time-period for filing preliminary objections and that it is in the interests of justice so to do.

13. As the Defence filed its preliminary motion on 14 April 2003, there is no need to grant relief other than to accept this motion as properly before the Trial Chamber.

<sup>2</sup> *Prosecutor v Casmir Bizimungu*, Decision on the Defence Extremely Urgent Motion for Extension of Time for Filing Preliminary Motions, 13 February 2001, p. 2.

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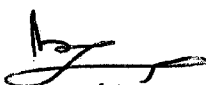
**FOR THE ABOVE REASONS, THE CHAMBER**

**DECLARES** the Defence “Requête de la défense en exceptions préjudicielles en vertu de l’article 72 du RPP”, filed on 14 April 2003, to be properly before the Chamber.

Arusha, 30 January 2004



Erik Møse  
Presiding Judge



Jai Ram Reddy  
Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]

