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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Original: English

TRIAL CHAMBER III

Before: Judge Andréia Vaz, Presiding
Judge Flavia Lattanzi
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 5 February 2004

The PROSECUTOR

v.

Édouard KAREMERA,
Mathieu NGIRUMPATSE,
Joseph NZIRORERA and
André RWAMAKUBA

Case No. ICTR-98-44-T

NO
JUDICIAL DEPARTMENT
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DECISION ON ACCUSED NZIRORERA'S MOTION
FOR INSPECTION OF MATERIALS

Rules 54, 66, 68, 70 and 73 of the Rules of Procedure and Evidence

Counsel for the Accused:

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Ayo Fadugba

Sunkarie Ballah-Conteh

[Signature]

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal");

SITTING as Trial Chamber III, composed of Judges Andrésia Vaz, Presiding, Flavia Lattanzi and Florence Rita Arrey;

BEING SEISED of the "Second motion for Inspection of Items Material to the Defence," filed on 6 October 2003 by the Defence for Accused Joseph Nzirorera (respectively, "Defence" and "Accused"), and the "Motion for Disclosure of Videotape", filed by the Defence on 3 November 2003, which pertains to an item whose disclosure was first requested in the Second motion previously referred-to ("the Motion");

CONSIDERING the Prosecution Response filed on 10 October 2003 ("Response") and the Defence Reply to the Response, filed on 15 October 2003 ("Reply");

CONSIDERING the Statute of the Tribunal ("Statute") and the Rules of Procedure and Evidence ("Rules"), particularly Rules 66 and 68 of the Rules;

NOW DECIDES solely on the basis of the written briefs filed by the parties, pursuant to Rule 73(A) of the Rules.

Submissions of the Parties

Motion

1. Relying on Rules 66(A)(ii), 66(B) and 68 of the Rules, the Defence seeks an order compelling the Prosecutor to consent to an inspection by the Defence of the following materials:

- (a) Items related to prosecution witnesses in the present Case:
 - (i) The videotapes or audiotapes of interviews with Omar Serushago;
 - (ii) The notes, handwritten statements or letters authored by Omar Serushago in possession of the Prosecution;
 - (iii) The diaries and other writings authored or collected by Jean Kambanda;
 - (iv) The statements made by ZF to authorities of a foreign government in the context of a rogatory commission.
 - (v) A videotape featuring prosecution witnesses filmed in Ruhengeri ordered to be disclosed to the Defence in the *Kajelijeli* Case;¹
 - (vi) The statements made by any prosecution witness in the present case to authorities in Rwanda;
 - (vii) The cassettes, recordings or documents reflecting public statements made by Georges Ruggiu on *Radio Télévision Libre des Mille Collines* ("RTL") between 1 January 1994 and 17 July 1994;
 - (viii) All reports of the United Nations Assistance Mission for Rwanda ("UNAMIR") concerning information provided by Jean-Pierre Turatsinze, an hearsay declarant in the present trial, and efforts to corroborate Mr. Turatsinze's information on the preparation of massacres in Rwanda as early as January 1994;

¹ Referring to *Prosecutor v. Kajelijeli*, ICTR-98-44A-T, Decision on the Motions of the Parties Concerning the Inspection and Disclosure of a Videotape, 28 April 2000.

- (ix) GJA's first prior statement;
- (b) Items relating to the *Mouvement républicain national pour la démocratie et le développement* ("MRND"), as follows:
- (i) Reports or correspondence of UNAMIR and any of its contingents or the Office of the United Nations Special Representative for Rwanda, concerning meetings with Mr. Nzirorera, Mr. Ndirumpatse or Mr. Karemera between 1 November 1993 and 17 July 1994;
- (ii) Reports and correspondence of UNAMIR and any of its contingents concerning its observations or surveillance of MRND meetings or headquarters from 1 January until 12 April 1994;
- (iii) Written or tape recorded communiqués issued by the national MRND party between 6 April 1994 and 17 July 1994;
- (iv) Minutes or recordings of MRND national meetings or rallies held between 1 November 1992 and 6 April 1994, such as one held in Ruhengeri in November 1992;
- (c) Items relating to the assassination of President Habyarimana, as follows:
- (i) The report prepared by French Investigating Magistrate Jean-Louis Bruguière and all attachments or annexes thereto, relating to the investigation led by Judge Bruguière into President Habyarimana's assassination;
- (ii) Statements or reports of interviews with three former RPF members who allegedly provided sensitive information about the assassination of President Habyarimana to the Prosecution;²
- (iii) Statements, reports of interviews with witnesses who overheard RPF radio broadcasts on 6 April 1994 to the effect that "the target had been hit."
- (d) All videotapes featuring prosecution witnesses in the present case such as that referred to at Paragraph 1(a)(v) above, to be disclosed by the Prosecutor within the time of the normal disclosure regime, rather than on the eve of the witness' testimony.

Response

2. Generally, the Prosecutor responds that he is aware of his disclosure obligations and that he has disclosed, and will continue to disclose, all required materials subject to the reservations of Rules 66(C) and 70.
3. The Prosecutor responds more specifically as follows:
- (a) He allows the Defence to inspect the video-taped and audio-taped interviews of Witness Serushago;
- (b) Although the request for "all notes, handwritten statements or letters authored by Witness Serushago in possession of the Prosecution" lacks specificity, he will provide matters of substance that are subject to disclosure to the Defence;
- (c) He has already agreed to an inspection of Witness Jean Kambanda's diaries by the Defence and has even provided the Defence with copies of these items, but he opposes inspection of "all other writings" as lacking specificity;

² The Defence refers in this regard to a statement by Mr. James Lyon, former Commander of Investigations of the Office of the Prosecutor, before a committee of the United States Congress on 6 April 2001.

(d) He agrees to disclose Witness ZF's statement taken in the context of a rogatory commission;

(e) He opposes inspection of the Ruhengeri videotape, which is subject to a Trial Chamber II protective order;

(f) He agrees to an inspection by the Defence of confessions made by detained witnesses who have pleaded guilty in Rwanda, to the extent that he is in possession of such statements;

(g) The request for inspection of public statements by Witness Ruggiu on RTLM lacks specificity;

(h) He agrees to an inspection by the Defence of all statements by Witness Frank Claeys in regard to his meeting with Jean-Pierre Turatsinze and will try to locate relevant information concerning UNAMIR documents relating to Jean-Pierre Turatsinze;

(i) He denies that a statement, other than that disclosed to the Defence, exists in respect of Witness GJA;

(j) Items related to the MRND party:

(i) The request for inspection of UNAMIR memoranda concerning the Accused lacks specificity;

(ii) He agrees to an inspection by the Defence of the two UNAMIR documents which, to the Prosecutor's knowledge, concern surveillance of MRND meetings;

(iii) He agrees to an inspection by the Defence of *communiqués* issued by the MRND party at the national level;

(iv) A search for the minutes and recordings of the MRND national meetings extracted from a database of Radio Rwanda and RTLM broadcasts is ongoing. Once the search is completed, the Defence will be afforded an inspection of the relevant materials;

(v) The Defence has not shown the materiality of the items related to the assassination of former Rwandan President Juvénal Habyarimana. In this regard, the Prosecutor refers to a supplemental response he previously filed with regard to previous motions filed by the Accused and relating to the same issue.³

Reply

4. The Defence replies:

(a) That the Prosecution offers no justification as to why the videotape made in Ruhengeri, featuring prosecution witnesses showing various sites and commenting on the events related to these sites should not be disclosed;

(b) That the documents reflecting Witness Ruggiu's public statements are highly relevant and material for the Accused in order to challenge the credibility of this witness;

(c) That all materials concerning meetings between the UNAMIR and MRND leaders such as the Accused are relevant for the Defence and should be disclosed;

³ Referring to the "Prosecutor's Consolidated Supplemental Response to (i) the Defense Motion for Inspection of Items 'Material to the Preparation of the Defence'; (ii) The Defense Motion for Disclosure of Exculpatory Material; (iii) The Defense Motion for Requests for Cooperation to the Governments of United States, Belgium, France and Germany" filed on 18 August 2003. These submissions were summarized in the Decision on the Defence Motion for Disclosure of Items Deemed Material to the Defence of the Accused rendered in the present Case on 29 September 2003, at para. 6.

(d) That the items related to the assassination of President Habyarimana are relevant and that inspection of these documents is "a first step in a process of discovering, investigating, and ultimately presenting evidence to the Defence," and that the Accused's right to a fair trial would be jeopardized should disclosure of these items not occur.

Deliberations

5. The Defence relies on Rules 66(A)(ii), 66(B) and 68 of the Rules as a basis for all its requests for an order compelling disclosure. The Chamber recalls that the moving parties are expected to specify the legal basis for each and every one of their requests. Nevertheless, the Chamber will exceptionally consider these requests, where necessary in specifying the applicable legal basis.

Requests falling under Rule 66(A)(ii)

6. The following requests for an order compelling disclosure relate to prior statements of witnesses to appear at trial against the Accused, within the meaning of Rule 66(A)(ii):

(a) Statement collected by authorities of a foreign government from Prosecution Witness ZF: the Chamber notes that the Prosecutor has agreed to disclose this document to the Defence and acknowledges it;

(b) Undisclosed statement by Prosecution Witness GJA: the Chamber notes the Prosecutor's statement that he does not have in his control or custody a prior statement by Witness GJA other than that already disclosed to the Defence. In the absence of reasons submitted by the Defence to question the Prosecutor's averment, this request fails;

(c) Videotapes or audiotapes of Witness Omar Serushago's interview(s): The Chamber ordered the Prosecutor to disclose these materials to the Defence pursuant to Rule 66(A)(ii) of the Rules in the Decision on the Defence Notification of Failure to Comply with Trial Chamber Order and Motion for Remedial Measures of 20 October 2003 ("the Decision of 20 October 2003"). The Chamber reiterates this Order, in the event where the disclosure has not yet taken place. The Chamber however recalls that it held, in that Decision, that the Prosecutor had substantially complied with Rule 66(A)(ii) in so far as the transcripts of Witness Serushago's interviews had been provided to the Defence;

(d) Statements made by any prosecution witness in the present case and collected by judicial authorities in Rwanda: the Chamber notes the Prosecutor's statement that he agrees to an inspection by the Defence of confessions made by detained witnesses who have pleaded guilty in Rwanda, to the extent that he is in possession of such statements. The Chamber further reminds the Prosecutor that it ordered him to seek to obtain all such statements from the Rwandan Authorities or from the concerned witnesses themselves, prior to their appearance, and to disclose such statements, when received, to the Defence.⁴

7. An order compelling disclosure to the Defence of the diaries of Prosecution Witness Jean Kambanda is not requested, in view of the Prosecutor's agreement to let the

⁴ See Order I of the *Décision relative à la requête de la Défense aux fins de la délivrance d'une ordonnance enjoignant aux témoins à charge de produire, lors de leur comparution, leurs agendas ou autres écrits datant de 1992 à 1994 et leurs déclarations faites devant des autorités judiciaires rwandaises* of 24 November, which reads : « DEMANDE au Procureur de faire tous les efforts pour obtenir des autorités rwandaises, ou des témoins à charge eux-mêmes, le plus tôt possible avant leur comparution devant le Tribunal, copie des déclarations des témoins à charge qui auraient été recueillies par les autorités rwandaises dans le cadre de procédures judiciaires à leur rencontre et DEMANDE au Procureur d'en divulguer copie à la Défense des Accusés dès réception de ces éléments. »

Defence inspect these diaries. The Chamber further notes that the Prosecutor declares that he has disclosed copies of these diaries to the Defence.

8. The requests for an order compelling disclosure of the following materials fall under Rule 66(B) for lack of specificity and/or, for being too broad:

(a) The notes, handwritten statements or letters authored by Witness Serushago in the possession or control of the Prosecution. The Chamber however notes in this regard the Prosecutor's agreement to provide the Defence with materials falling into this category which are both of substance and subject to disclosure;

(b) All writings authored or collected by Jean Kambanda other than his diaries which were seized at the time of his arrest;

(c) The cassettes, recordings or documents reflecting public statements made by Prosecution Witness Georges Ruggiu on RTLM between 1 January 1994 and 17 July 1994;

(d) The UNAMIR reports concerning information provided by one Jean-Pierre Turatsinze, and concerning efforts to corroborate Mr. Turatsinze's information. The Chamber however notes, in regard to this broad request, the Prosecutor's agreement to an inspection by the Defence of all statements by Frank Claeys in regard to a meeting with Jean-Pierre Turatsinze. The Chamber further acknowledges the Prosecutor's statement that he will try to locate relevant information concerning UNAMIR documents relating to Jean-Pierre Turatsinze;

(e) The UNAMIR reports and correspondence relating to observation or surveillance of MRND meetings or headquarters from 1 January until 12 April 1994. The Chamber however notes in regard to this broad request the Prosecutor's agreement to an inspection by the Defence of two UNAMIR documents relating to surveillance of MRND meetings;

(f) The minutes or recordings of MRND national meetings or rallies held between 1 November 1992 and 6 April 1994. The Chamber however notes in this regard the Prosecutor's statement that a search is being carried out to locate any such recordings from a database of Radio Rwanda and RTLM broadcasts and that the Defence will be afforded an inspection of the relevant materials when the search is completed.

9. The request for an inspection of the recordings or minutes of a meeting held by the MRND in Ruhengeri in November 1992, which was included in the request dealt with at Paragraph 8(f) above, is sufficiently specific. The Defence has further shown, on a *prima facie* basis, that these elements would be material to its preparation, considering the prosecution evidence anticipated in relation to this meeting. Accordingly, pursuant to Rule 66(B), the Prosecutor shall ascertain whether any such materials are in his custody or control and, if so, he shall afford the Defence an opportunity to inspect these materials in sufficient time prior to the appearance of the witnesses whose anticipated evidence relates to this meeting.

10. The Chamber considers that the request summarized at Paragraph 1(d) above is too broad and that the Defence does not demonstrate that these videotapes are necessary for the defence of the Accused.

11. Neither has the Defence shown the materiality of the items requested as pertaining to the assassination of President Habyarimana and others on 6 April 1994.

12. Inspection of the videotape ordered to be disclosed to the Defence in the *Kajelijeli* Case was ordered in the *Décision relative à la requête de la Défense aux fins de la divulgation*

d'une vidéocassette relative à des témoins à charge of 1 December 2003. The request summarized at Paragraph 1(a)(v) above has therefore become moot.

13. The Chamber notes that, pursuant to Rule 66(B), the Prosecutor remains bound to allow the Defence to inspect any books, documents, photographs and tangible objects in his custody or control, if he intends to use them as evidence at trial.

Requests falling under Rule 68

14. The requests falling under Rule 68 for an order compelling disclosure of all written or tape recorded *communiqués* issued by the MRND party at the national level between 6 April 1994 and 17 July 1994 is too broad. The Chamber however notes the Prosecutor's agreement to an inspection by the Defence of *communiqués* issued by the MRND party at the national level in his control or custody.

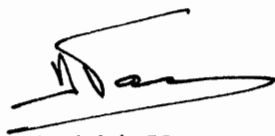
15. The request made under Rule 68 for an order compelling disclosure of all reports or correspondence of UNAMIR and any of its contingents or of the Office of the United Nations Special Representative for Rwanda, concerning meetings with Mr. Nzirorera, Mr. Ndirumpatse or Mr. Karemera between 1 November 1993 and 17 July 1994 is too broad. Neither has the Defence satisfied the Chamber of the potential exculpatory nature of the documents requested.

FOR THE ABOVE REASONS,

THE CHAMBER,

- I. **ORDERS** the Prosecutor, pursuant to Rules 54 and 66(B) of the Rules, to ascertain whether the recordings or minutes of a meeting held by the MRND in Ruhengeri in November 1992 are in his custody or control and, if so, to afford the Defence an opportunity to inspect these materials at least 15 days prior to the appearance of the witnesses whose anticipated evidence relates to this meeting;
- II. **REMINDS** the Prosecutor of his obligation, pursuant to Rule 66(B), to permit the Defence to inspect all books, documents, photographs and tangible objects in his custody or control, which he intends to use as evidence at trial;
- III. **ORDERS** the Prosecutor, pursuant to Rule 66(A)(ii), to comply with Order II of the Decision of 20 October 2003, in disclosing the videotapes or audiotapes of Witness Serushago's interviews, if he has not done so yet;
- IV. **DISMISSES** the Motion in all other respects.

Arusha, 5 February 2004



Andréia Vaz
Judge
Presiding



Flavia Lattanzi
Judge



Florence Rita Arrey
Judge

