

ICTR-98-44-T  
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(28472-28469)

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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Case No.: ICTR-98-44-T

ENGLISH  
Original: FRENCH

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

Registrar: Adama Dieng

Date: 2 April 2004

THE PROSECUTOR

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA and  
André RWAMAKUBA

JUDICIAL RECORDS/ARCHIVES  
2007 MAR 11 A 10: 34  
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DECISION ON THE MOTION BY ACCUSED NZIRORERA FOR  
DISCLOSURE OF A COPY OF EACH OF THE PROSECUTION EXHIBITS

*Rules 73 and 73 bis (B) of the Rules of Procedure and Evidence*

Defence of Accused Nzirorera  
Peter Robinson

Defence of the Co-Accused:  
Dior Diagne and Félix Sow for Accused Karemera  
Charles Hoach and Frédéric Weyl for Accused Ngirumpatse  
David Hooper and Andreas O'Shea for Accused Rwamakuba

Office of the Prosecutor  
Don Webster  
Holo Makwaia  
Dior Sow Fall  
Gregory Lombardi  
Bongani Dyani  
Sunkarie Ballah-Conteh  
Ayodeji Fadugba

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal"),

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

**BEING SEIZED OF** the Motion entitled "Motion for Order Requiring Production of Copies of Exhibits", filed by the Defence of the Accused Nzirorera on 11 March 2004 (the "Motion"),

**CONSIDERING** the Response by the Prosecutor to the Motion, filed on 18 March 2004 (the "response"), and the Defence Reply to the Response, filed on 22 March 2004,

**CONSIDERING** the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence of the Tribunal (the "Rules"),

**RULES** as follows, based solely on the written submissions by the parties, pursuant to Rule 73(A) of the Rules.

### Submissions by the parties

#### *Motion*

1. The Defence submits that the Prosecutor declines to furnish it with copies of the exhibits listed in his supplementary Pre-Trial Brief of 27 October 2003. The Defence is of the opinion that it has the right to such disclosure pursuant to Rule 73 *bis* (B)(v) of the Rules.<sup>1</sup> The Defence further notes that a provision of the Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia (the "ICTY Rules"), Rule 65 *ter* (E) (iii), is identical to Rule 73 *bis* (B)(v) of the Rules, and that it was interpreted by the ICTY Trial Chamber seized of the *Krajišnik* case as requiring the Prosecution to disclose a copy of each of its exhibits before the date set for trial. It contends that the ICTY Trial Chamber in question ruled that failing such disclosure, the Defence would be deprived of the means to prepare properly, a fact which was likely to lead to a violation of the principle of equality of arms.<sup>2</sup> The Defence further submits that, following that decision, Rule 65 *ter* (E) (iii) of the ICTY Rules was amended and since then requires disclosure of a copy of the exhibits offered by the Prosecution.

#### *Response*

2. The Prosecution responds:

- (i) That Rule 73 *bis* (B) (v) does not provide for disclosure of copies of exhibits listed in compliance with this same provision;

<sup>1</sup> Rule 73 *bis* (B)(v) of Rules provides that: "At the Pre-Trial Conference the Trial Chamber or a Judge, designated from among its members, may order the Prosecutor ... to file ... a list of witnesses the Prosecutor intends to call with ... a list of exhibits the Prosecutor intends to offer ...".

<sup>2</sup> In reference to: *Prosecutor v. Krajišnik & Plavšić*, Case no. IT-00-39-PT, Decision on Prosecution Motion for Clarification in Respect of Application of Rules 65ter, 66(B) and 67(C), 1 August 2001, paras. 7 and 8.

- (i) That it has met its disclosure obligations pursuant to Rule 66(B) of the Rules by disclosing a number of documents to the Defence;
- (ii) That it intends to file an amended list of exhibits;
- (iv) That it does not intend to provide the Defence with a copy of each of the exhibits mentioned in that list, in that it does not intend to rely on all the exhibits at trial.

3. Relying on Rule 73(F) of the Rules, the Prosecution requests the Chamber to instruct the Registrar not to pay the costs associated with the Motion, which it deems to be an abuse of process. The Prosecution further states that this matter was raised during informal meetings between the parties, under the chairmanship of the Chamber's Senior Legal Officer, and that it should have not been the subject of a Motion.<sup>3</sup>

#### *Reply*

4. The Defence replies:

- (i) That the Prosecution has failed to cite any case law that goes against the *Krajišnic* Decision, whose force as precedent must consequently prevail;
- (i) That the Defence has not yet received copies of numerous Prosecution exhibits, including some that were to be submitted at the trial session scheduled to commence on 29 March 2004;
- (i i) That this breach of the Prosecutor's disclosure obligations prevents it from carrying out the necessary investigations related to the exhibits in question;
- (i v) That, since the Prosecutor declined at the information meeting of 27 February 2004 to disclose copies of his exhibits to the Defence, the Defence Motion is founded, as was reiterated by the Chamber's Senior Legal Officer himself during that meeting, and that accordingly, cannot be an abuse of process.

#### **Deliberation**

5. The Chamber finds that the terms of Rule 73 *bis* (B) (v) are without any ambiguity and do not allow the interpretation suggested by the Defence. By virtue of this provision, the Prosecutor is required to disclose only the list of exhibits upon which he intends to rely at trial, if the Chamber so requests. Otherwise, Rule 66(B) requires that the Prosecutor permit the Defence to inspect any exhibits in his custody.

6. The Chamber notes, however, that in the present trial four Accused are jointly charged, and that each of the Accused must be able to inspect the exhibits appearing on the

<sup>3</sup> Rule 73(F) of the Rules provides that: "In addition to the sanctions envisaged by Rule 46, a Chamber may impose sanctions against Counsel if Counsel brings a motion, including a preliminary motion, that, in the opinion of the Chamber is frivolous or is an abuse of process. Such sanctions may include non-payment, in whole or in part, of fees associated with the motion and/or costs thereof."

Prosecutor's list, of which there are a considerable number.<sup>4</sup> Hence the inspection could prove to be a long and complicated procedure. For the proper administration of justice, it therefore appears necessary to request the Prosecutor to disclose to the Defence as soon as possible a copy of each of his exhibits. The copies may be transmitted electronically.

7. Furthermore, the Prosecutor must file his new list of exhibits as soon as possible, since he has indicated that he intends to amend the existing list.

**FOR THESE REASONS,**

**THE CHAMBER**

- I. **ORDERS** the Prosecutor to file his new list of exhibits as soon as possible;
- II. **REQUESTS** the Prosecutor, pursuant to Rule 54 of the Rules, to disclose a copy of each of his exhibits as soon as possible.

Arusha, 1 April 2004.

[Signed]  
Andrésia Vaz  
Presiding Judge

[Signed]  
Flavia Lattanzi  
Judge

[Signed]  
Florence Rita Arrey  
Judge

[Seal of the Tribunal]



<sup>4</sup> The Prosecutor's list of exhibits extends from p. 7064 to p. 7050 (Registry numbering) of his Pre-Trial Brief. It is divided into 12 categories of various documents.