

ICTR-2001-73-T  
25-1-2006  
(4316 - 4314)

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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

**Before Judges:** Inés Mónica Weinberg de Roca, Presiding  
Khalida Rachid Khan  
Lee Gacuga Muthoga

**Registrar:** Adama Dieng

**Date:** 25 January 2006

THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

*Case No. ICTR-2001-73-T*

25 JAN 2006 10:32

DECISION ON THE DEFENCE MOTION FOR DISCLOSURE OF EXCULPATORY  
EVIDENCE FROM *EPHREM SETAKO* AND *BAGOSORA ET AL.* CASES

*Rule 68 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**  
Wallace Kapaya  
Gina Butler  
Iskandar Ismail  
Jane Mukangira

**Defence Counsel:**  
John Philpot  
Peter Zaduk

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (“Tribunal”),  
**SITTING** as Trial Chamber III, composed of Judges Inés Mónica Weinberg de Roca,  
Presiding, Khalida Rachid Khan, and Lee Gacuiga Muthoga (“Chamber”);  
**BEING SEIZED** of the Defence “Requête pour la communication des éléments  
exculpatoires Re Dossier Prosecutor vs Ephrem Setako et le Procureur vs Théoneste  
Bagosora et al” filed on 7 December 2005 (“Motion”);  
**CONSIDERING** the Prosecutor’s Response filed on 12 December 2005; and the Defence  
Reply filed on 13 December 2005;  
**CONSIDERING** the Statute of the Tribunal (“Statute”) and the Rules of Procedure and  
Evidence (“Rules”) particularly Rule 68 of the Rules of Procedure and Evidence;  
**NOW DECIDES** the matters based solely on the written briefs of the Parties pursuant to  
Rule 73(A) of Rules.

1. The Defence requests the disclosure of statements, including either those statements disclosed as supporting material in an unredacted form, or the testimony proving that Ephrem Setako and Théoneste Bagosora were not at Nyundo in Gisenyi *préfecture* on 7 and 8 April 1994. The Defence further requests that such disclosure is made before 20 December 2005, and that it receive authorization to meet with all witnesses in the *Ephrem Setako* case before the hearing of Witness ATN.
2. The Defence argues that in accordance with Rule 68 of the Rules, it must provide *prima facie* evidence that the information requested is potentially exculpatory and that it is in the possession of the Prosecutor. The Defence asserts that it has met these two criteria.
3. The Defence submits that such statements or testimony are exculpatory because they contradict Prosecution Witness ATN’s statement that Ephrem Setako and Théoneste Bagosora were at Nyundo on 7 and 8 April 1994 attending a meeting at a football field in the presence of the Accused. According to the Defence, the Prosecutor alleged in the Indictment against Ephrem Setako that the Accused was at Ruhengeri on the same dates, while it is common knowledge that Théoneste Bagosora was in Kigali on 7 and 8 April 1994 because of the ongoing war. With regard to the *Ephrem Setako* case, the Defence adds that Defence counsel for Ephrem Setako has informed it that evidence supporting the allegation of Setako being at Ruhengeri on 7 and 8 April 1994 has been disclosed. Despite having since requested such evidence, the Defence has not yet heard from the Prosecutor.
4. The Prosecutor responds that Witness ATN does not remember the exact date in April 1994, and therefore that any evidence intended to prove that Ephrem Setako and Théoneste Bagosora were not or could not be at Nyundo on 7 and 8 April 1994 cannot be considered exculpatory. The Prosecutor submits that determining what was said can best be explored through cross-examination.
5. The Defence replies reiterating its original arguments.
6. The Chamber notes that Witness ATN expressly said that he could not remember the exact date of the meeting at the football field at Nyundo, Gisenyi *préfecture*. Since the fact that the meeting took place on 7 or 8 April 1994 is not accurately portrayed in the witness

statement, the information requested is not therefore exculpatory. Consequently, the Defence Motion shall be dismissed, and the Chamber need not to consider whether the criteria provided for in Rule 68 are met.

**FOR THE ABOVE REASONS, THE CHAMBER  
DENIES** the Motion for disclosure.

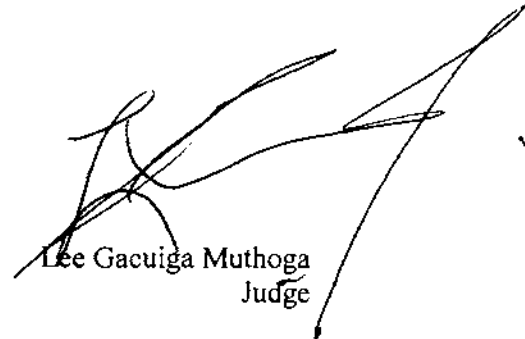
Arusha, 25 January 2006, done in English.



Inés Mónica Weinberg de Roca  
Presiding Judge



Khalida Rachid Khan  
Judge



Lee Gacuiiga Muthoga  
Judge

[Seal of the Tribunal]

