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UNITED NATIONS  
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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

ENGLISH  
Original: FRENCH

Before: Andrésia Vaz, presiding  
Karin Hökberg  
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 7 April 2006

JUDICIAL RECORDS ARCHIVES  
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THE PROSECUTOR

v.

ATHANASE SEROMBA

Case No. ICTR-2001-66-T

DECISION ON THE DEFENCE MOTION FOR DISCLOSURE OF  
SIGNED WITNESS STATEMENTS  
Rule 73 *ter* (B) of the Rules of Procedure and Evidence

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CIII06-0047 (E)

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## THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

**SITTING** as Trial Chamber III (the “Chamber”) composed of Judges Andréia Vaz, presiding, Karin Hökberg and Gberdao Gustave Kam;

**BEING SEIZED** of the “Prosecutor’s Motion for Disclosure of Signed Witness Statements”, filed with the Registry on 10 March 2006;

**NOTING** the Defence response entitled “*Mémoire en réponse à la requête du Procureur tendant à voir ordonner la communication des déclarations signées des témoins de la Défense*”, filed at the Registry on 15 March 2006;

**HEREBY** decides the Motion pursuant to Rule 73(A) of the Rules of Procedure and Evidence (the “Rules”).

### SUBMISSIONS OF THE PARTIES

1. The Prosecutor submits that the witness statements disclosed to him by the Defence do not constitute “written statements” as defined by Rule 73 ter(B) in that they do not bear the signatures of the witnesses. He alleges that the original statements are available and that, by failing to disclose them, the Defence is in breach of the Decision of 13 April 2005.<sup>1</sup>

2. The Prosecutor further argues that in the absence of the originals, the Trial Chamber is not in a position to assess the authenticity of the statements. He also emphasizes that, for his part, he disclosed the signed statements of his witnesses to the Defence and that failure to disclose the signed statement of Defence witnesses is a breach of the principle of equality of arms. He therefore prays the Trial Chamber to order the Defence to disclose the signed witness statements.

3. The Defence argues that the Prosecutor’s request is unfounded, pointing out inter alia that Rule 73 ter (B) of the Rules does not require statements disclosed to the Prosecutor to bear the witnesses’ signatures. The Defence further states that in *Nahimana*, the Judge recalled the Defence’s obligation of disclosure without specifying that the copies of statements disclosed to the Prosecutor, be signed by the Defence witnesses.<sup>2</sup> Consequently, the Defence prays the Chamber to dismiss the Prosecutor’s motion.

### DELIBERATIONS

4. Under Rule 73 ter in fine, The Trial Chamber may order the Defence to provide the Prosecutor with copies of the statements of each witness whom the Defence intends to call to testify.

<sup>1</sup> *The Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-T, “*Décision relative à la requête du Procureur aux fins de communication des déclarations des témoins de la Défense*”, 13 April 2005.

<sup>2</sup> *The Prosecutor v. Ferdinand Nahimana*, Case no. ICTR-99-52-I, Decision on the Prosecutor’s Motion to Compel the Defence’s Compliance with Rules 73 ter, 67(C) and 69(C), 3 October 2002.

5. The Chamber recalls its Decision of 13 April 2005 ordering the Defence to disclose unredacted Defence witness statements to the Prosecutor prior to the commencement of its case.<sup>3</sup>

6. The Trial Chamber notes that in *Niyitegeka*, the Appeals Chamber held that the most appropriate format of a witness statement is that which bears the signature of the witness. In the same ruling, the Appeals Chamber further asserted that the signature is the act whereby the witness acknowledges that the statements attributed to him are correct.<sup>4</sup>

7. The Trial Chamber finds that in the instant case the Defence has disclosed to the Prosecutor only unsigned witness statements. It notes also that the Defence does not deny the existence of written statements signed by its witnesses. Accordingly, it considers the disclosure by the Defence to the Prosecutor to be incomplete. The Chamber is therefore of the view that there is reason to declare the Prosecutor's Motion for disclosure of signed Defence witness statements well-founded. Consequently, it believes that it is for the Defence to cure that defect by disclosing the signed Defence witness statements to the Prosecutor.

#### FOR THESE REASONS, THE TRIAL CHAMBER

- **GRANTS** the Prosecutor's Motion;
- **ORDERS** the Defence to disclose the signed witness statements to the Prosecutor.

Done in Arusha on 7 April 2006

[Signed]

Andrésia Vaz  
President

[Signed]

Karin Hokborg  
Judge

[Signed]

Gberdao Gustave Kam  
Judge

[Seal of the Tribunal]



<sup>3</sup> See above, footnote 1.

<sup>4</sup> *The Prosecutor v. Eliezer Niyitegeka*, Case no. ICTR-96-14-A, Appeal Judgement, paras. 31 and 32.