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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr Adama Dieng

Date: 30 April 2007

The PROSECUTOR v. Sylvain NSABIMANA & Alphonse NTEZIRYAYO
(Case No. ICTR-97-29-T)

Joint Case No. ICTR-98-42-T

JUDICIAL RECORDS/ARCHIVES
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OR: ENG

**DECISION ON ALPHONSE NTEZIRYAYO'S MOTION FOR INSPECTION OF
IMMIGRATION FILES AND PRIOR STATEMENTS OF WITNESSES AND-38,
AND-36, AND-50, AND-59, AND-75 AND AND-23**

Office of the Prosecutor

Ms. Silvana Arbia
Ms. Adelaide Whest
Ms. Holo Makwaia
Ms. Althea Alexis Windsor
Ms. Madeleine Schwarz
Ms. Tolulope Olowoye

Defence Counsel for Nteziryayo

Mr. Titinga Frédéric Pacere
Mr. Guy LaRue

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

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramaroson and Solomy B. Bossa (the "Chamber");

BEING SEIZED of the "*Requête en extrême urgence de la Défense de l'Accusé Alphonse Nteziryayo aux fins de divulgation par le procureur de tous les dossiers d'immigration des témoins AND-38, AND-36, AND-50, AND-59, AND-75 et AND-23*", filed on 19 April 2007 (Nteziryayo's Urgent Motion for Disclosure);

CONSIDERING the "Prosecutor's Response to the "*Requête en extrême urgence de la Défense de l'Accusé Alphonse Nteziryayo aux fins de divulgation par le procureur de tous les dossiers d'immigration des témoins AND-38, AND-50, AND-59, AND-75 et AND-23*", filed on 24 April 2007 ;

CONSIDERING the "*Réplique de la défense de l'accusé Alphonse Nteziryayo à la réponse du procureur à la 'Requête en extrême urgence de la Défense de l'Accusé Alphonse Nteziryayo aux fins de divulgation par le procureur de tous les dossiers d'immigration des témoins AND-38, AND-50, AND-59, AND-75 et AND-23*", filed on 26 April 2007 ;

NOW DECIDES the Motion, pursuant to Rule 73 (A) of the Rules of Procedure and Evidence (the "Rules"), on the basis of the written submissions of the Parties.

INTRODUCTION

1. On 19 April 2007, the Defence for Nteziryayo filed an extremely urgent motion under Rule 66(B), requesting the Prosecution to allow it to inspect immigration files and prior statements of Witnesses AND-38, AND-36, AND-50, AND-59, AND-75 and AND-23 that the Prosecution intends to use during the cross-examination of these Witnesses. The Defence submits that these documents will assist, among other things, in the process of selecting witnesses it intends to call.¹ The Defence request later excluded Witness AND-38, in view of the developments in the trial.²
2. The Prosecution asserts that it does not have any immigration files for Witnesses AND-36, AND-59, AND-75 and AND-23. It concedes that it possesses the immigration files of Witnesses AND-38, who has completed her testimony, and AND-50 who has not testified yet.³ It however posits that since it does not intend to use such documents when cross-examining AND-50, no disclosure obligation arises.⁴

¹ The Defence for Nteziryayo relies on the AC decision in *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-AR73, Decision on the Interlocutory Appeal Relating to Disclosure Under Rule 66(B) of the Tribunal's Rules of Procedure and Evidence (AC), 25 September 2006.

² In Paragraph 21 of Nteziryayo's Reply of 26 April 2007, the Defence acknowledges that Witness AND-38 has already completed her testimony. It therefore seeks inspection of the documents pertaining to AND-50 only.

³ Prosecutor's Response, para 11.

⁴ See Appeals Chamber *Bagosora's* decision cited in *supra* 1, para. 12.

DELIBERATIONS

3. The Chamber recalls that Rule 66(B) provides a system of inspection by the Defence of certain materials in the Prosecution's custody, upon the Defence request. The proper procedure would therefore have been for the Defence to direct its request first to the Prosecution, and seek the Chamber's intervention only if the Prosecution had failed to authorize the inspection. Had the Defence followed that procedure, it would not have made the request in respect of Witnesses AND-36, AND-59, AND-75 and AND-23.
4. That said, the Chamber notes that the Prosecution admits being in possession of Witnesses AND-50's immigration files, the inspection of which is being sought by the Defence. The Chamber recalls that Rule 66(B) includes for the purpose of inspection, any document material to the preparation of the Defence, irrespective of the intention of the Prosecution as to the future use of such documents. The Chamber finds that the immigration files for Witness AND-50 in the possession of Prosecution may be material to the preparation of the Defence for Nteziryayo which is currently being presented. The Chamber therefore grants the inspection request for the files of Witness AND-50.

FOR THE ABOVE REASONS, THE CHAMBER

ORDERS the Prosecution to permit the Defence for Nteziryayo to immediately inspect the immigration file of Witness AND-50.

DENIES the motion in all other respects.

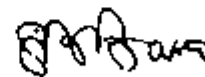
Arusha, 30 April 2007



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



Solomy Balungi Bossa
Judge

[Seal of the Tribunal]