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28-5-2007
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

Office of the President
Cabinet du Président

Before: Judge Erik Møse, President

Original: English

Registrar: Mr. Adama Dieng

Date: 28 May 2007

ÉDOUARD KAREMERA

v.

THE PROSECUTOR

Case No.: ICTR-98-44

Justice
11/05/2007

2007 MAY 28 P 6:39

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DECISION ON COMPLAINT BY ÉDOUARD KAREMERA

Office of the Prosecutor:

Don Webster
Alayne Frankson-Wallace
Iain Morley
Saidou N'Dow
Gerda Visser
Sunkarie Ballah-Conteh
Taher Sendze

Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

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THE PRESIDENT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SEIZED of a complaint from Édouard Karemera regarding alleged violations of Rule 65 of the Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal ("Rules of Detention"), dated 3 January 2007;

CONSIDERING documents and submissions provided, pursuant to Rule 83 of the Rules of Detention, by the Registrar on 7 March 2007;

HEREBY DECIDES THE COMPLAINT.

INTRODUCTION

1. Édouard Karemera alleges that in censoring communications allegedly intended for his Counsel, the Commanding Officer of the United Nations Detention Facility ("UNDF") violated Mr. Karemera's right to communicate fully and without restraint with his Defence Counsel, as guaranteed by Rule 65 of the Rules of Detention.

SUBMISSIONS

3. Mr. Karemera alleges that the UNDF Commanding Officer improperly censored privileged communications between Mr. Karemera and his Counsel. He further alleges that the Commanding Officer confiscated two picture frames containing photos and a packet of greeting cards.

4. In response, the Commanding Officer of the UNDF submits that any correspondence actually addressed to Mr. Karemera's counsel was, contrary to Mr. Karemera's allegations, in fact delivered to his counsel. It was only documents that were not so addressed, and which came into the Commanding Officer's possession without an envelope, which were censored. This was on the grounds that the material in question was defamatory of named Tribunal and associated personnel. Private photos were prevented from leaving the UNDF because they were stamped with the logo of the Tribunal. The UNDF Commander offered to return the photo frames but this was refused by Mr. Karemera.

DELIBERATIONS

5. Rule 65 of the Rules of Detention provides that each detainee shall be entitled to communicate fully and without restraint with his Defence Counsel, and that all such correspondence and communications shall be privileged. According to Rule 82, detainees are entitled to complain to the Commanding Officer of the UNDF at any time. If not satisfied with the response from the Commanding Officer, they may make a written complaint, without censorship, to the Registrar who shall forward it to the President.

6. As the Registry enjoys a margin of discretion in conducting the day to day administration of the Tribunal without undue interference by review by the President, a threshold condition must be satisfied before an administrative decision may be impugned by supervisory review. The Tribunal case law has established that an application for review by the President of a Registry decision on the basis that it is unfair procedurally or substantively is admissible if the Applicant

has a protectable right or interest, or if it is otherwise in the interests of justice. In this regard, the decision sought to be challenged must involve a substantive right that should be protected as a matter of human rights jurisprudence or public policy.¹

7. It is noted that the correspondence communicated to the Commanding Officer by Mr. Karemera was not in an envelope, and, rather than being addressed to Counsel, was instead directed to a weekly journal, *Jeune Afrique*. Such correspondence cannot be considered as privileged communication between a detainee and his counsel within the meaning of Rule 65.²

8. There is also no authority before the *ad hoc* Tribunals or in the relevant international jurisprudence to oblige the UNDF Commander to send such correspondence to the press.³ One copy of this same correspondence destined for *Jeune Afrique*, which had instead been addressed by Mr. Karemera to his counsel, appears to have been delivered without having been subject to any censorship. It is accordingly difficult to identify any violation of any alleged right to freedom of expression in this case.

9. Pursuant to Rule 3 of the Rules of Detention, the Commanding Officer of the UNDF has primary responsibility for all aspects of the daily management of the Detention Unit, including communications and visitations.⁴ In this case, the Commanding Officer of the UNDF declined to personally transmit this correspondence to *Jeune Afrique* on grounds that it contained information which he considered to be defamatory against certain named persons.⁵ The decision taken was taken by the Commanding Officer in the exercise of his discretion, in the management of the UNDF.

10. Regarding Mr. Karemera's allegations regarding the confiscation of certain personal items, it is unclear from the complaint as to who the intended recipient of these items was. It is thus also difficult to consider this material as privileged communication pursuant to Rule 65. The UNDF Commander's subsequent willingness to restore these items to Mr. Karemera would also appear to render the latter's submissions in this regard moot.

¹ See *inter alia* *Hassan Ngeze v. Prosecutor*, Decision on Hassan Ngeze's Application for Review of the Registrar's Decision of 12 January 2005 (The President), 14 September 2005, paras. 4-5; *Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, The President's Decision on the Application by Arsène Shalom Ntahobali for Review of the Registrar's Decisions pertaining to the Assignment of an Investigator (The President), 13 November 2002, para. 5; *Prosecutor v. Joseph Nzirorera*, "The President's Decision on review of the decision of the Registrar withdrawing Mr. Andrew McCartan as lead counsel of the accused Joseph Nzirorera" (The President), 13 May 2002, p. 3.

² See also, before the European Court of Human Rights, *Campbell v. UK*, A 233, para. 32 (1992) (discussing, in the context of Article 8 of the European Convention on Human Rights (ECHR), whether an applicant prisoner has substantiated his claim that his right to respect for his correspondence had been interfered with where he could not show that any particular letter had been opened).

³ In general terms, the European Commission has taken the view that certain restrictions on the freedom to receive and impart information and ideas are inherent in detention and consequently are not contrary to the right to freedom of expression guaranteed by Article 10 of the ECHR. Alternatively, restrictions have been considered justified on the basis of the need to prevent (prison) disorder (P. van Dijk and G.J.H van Hoof *et al.*, *Theory and Practice of the European Convention on Human Rights* (3rd edn., 1998), p. 579 (references omitted)).

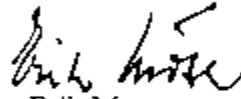
⁴ *Nahimana et al. v. The Prosecutor*, Decision on Jean-Bosco Barayagwiza's Urgent Motion Requesting Privileged Access to the Appellant without Attendance of Lead Counsel" (AC), 17 August 2006, page 3.

⁵ This communication in question alleged, for instance, that one such named person "s'est livré ... à une campagne de désinformation pour couvrir ces derniers [les hauts responsables du FPR] et soutenir le régime de Kigali" (Complaint, Annex I).

FOR THESE REASONS, the President

REJECTS the complaint.

Arusha, 23 May 2007.



Erik Mose
President

(Seal of the Tribunal)

