

ICTR-98-44-T  
13-11-2007  
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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:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 13 November 2007

**THE PROSECUTOR**

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA

Case No. ICTR-98-44-T

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**DECISION ON JOSEPH NZIRORERA'S SECOND MOTION TO EXCLUDE THE  
TESTIMONY OF PROSECUTION WITNESS UPENDRA BAGHEL**

*Rule 66(A)(ii) of the Rules of Procedure and Evidence*

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## INTRODUCTION

1. During the presentation of its case, the Prosecution intends to call Prosecution Investigator Upendra Baghel as an expert witness. On 17 October 2007, Joseph Nzirorera moved the Chamber to exclude the testimony of Upendra Baghel, pursuant to Rules 54 and 73 of the Rules of Procedure and Evidence ("Rules"), on the grounds that the Prosecution had violated Rule 66(B) by failing to make certain material available for inspection to the Defence.<sup>1</sup> The Prosecution opposed the Motion, submitting that the Defence failed to make an adequate request for inspection under Rule 66(B).<sup>2</sup>
2. On 30 October 2007, the Chamber denied the motion, but ordered the Prosecution to file a will-say statement of Witness Upendra Baghel and the list of exhibits it intends to tender during his testimony. The Chamber further ordered the Prosecution to make the receipt and records, showing the transfer from third parties to Office of the Prosecutor of material which will be tendered into evidence, available for inspection.<sup>3</sup> Consistent with this decision, the Prosecution filed a Rule 67(D) notice containing the will-say statement and list of exhibits that will be offered in evidence for Upendra Baghel.<sup>4</sup>
3. On 5 November 2007, Joseph Nzirorera opposed the notice and moved the Chamber to exclude the testimony of Upendra Baghel on the ground that the Prosecution has failed to comply with Rule 66(A)(ii).<sup>5</sup> Alternatively, he requests that the Chamber orders the Prosecution to disclose all statements of Upendra Baghel which are in the Prosecution's possession.<sup>6</sup> The Prosecution opposes the Motion in its entirety.<sup>7</sup>

## DELIBERATION

4. Joseph Nzirorera asserts that the testimony of Upendra Baghel should be excluded because the possible alibis of the accused and various routes of travel which Upendra Baghel

<sup>1</sup> Joseph Nzirorera's Motion to Exclude the Testimony of Witness Upendra Baghel, filed on 17 October 2007.

<sup>2</sup> Prosecutor's Response to Nzirorera's Motion to Exclude the Testimony of Witness Upendra Baghel, filed on 22 October 2007.

<sup>3</sup> *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera* ("Karemera et al."), Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Exclude the Testimony of Prosecution Witness Upendra Baghel, 30 October 2007.

<sup>4</sup> Notice of Additional Evidence pursuant to Rule 67 (D) – OTP Investigator Upendra Baghel, filed on 2 November 2007 ("Prosecution Notice").

<sup>5</sup> Second Motion to Exclude Testimony of Upendra Baghel, filed on 5 November 2007 ("Nzirorera's Second Motion"), para. 4.

<sup>6</sup> Nzirorera's Second Motion, para. 12.

<sup>7</sup> Prosecutor's Response to Nzirorera's Second Motion to Exclude the Testimony of Upendra Baghel, filed on 9 November 2007 ("Prosecutor's Reponse").

is expected to testify about have not been disclosed to him, in violation of Rule 66(A)(ii) of the Rules.<sup>8</sup>


5. Pursuant to Rule 66(A)(ii), the Prosecutor shall disclose to the Defence "no later than 60 days before the date set for trial, copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial...".

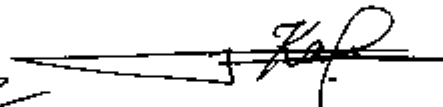
6. The Chamber notes that in its response the Prosecution has decided, in light of the Decision of 2 November 2007 excluding interviews of the Accused, not to lead the evidence on the alibis or routes described in the will-say statement of Upendra Baghel.<sup>9</sup> Considering that Upendra Baghel is no longer expected to testify on this subject-matter, the Chamber is of the view that the relief sought by the Defence is no longer applicable and that the matter is moot.


#### FOR THOSE REASONS, THE CHAMBER

- I. **DENIES** the Joseph Nzirorera's Second Motion to Exclude the Testimony of Upendra Baghel in its entirety.

Arusha, 13 November 2007, done in English.

  
Dennis C. M. Byron  
Presiding Judge

  
Gberdao Gustave Kam  
Judge

  
Vaght Joensen  
Judge

[Seal of the Tribunal]



<sup>8</sup> Nzirorera's Second Motion, paras. 3, 7-8.

<sup>9</sup> Prosecutor's Response, para. 5; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Prosecution Motion for Admission Into Evidence of Post-Arrest Interviews with Joseph Nzirorera and Mathieu Ndirumutse, 2 November 2007.