



UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

OR: ENG

**TRIAL CHAMBER II**

**Before Judges:** Khalida Rachid Khan, Presiding  
Lee Gacuiga Muthoga  
Emile Francis Short

**Registrar:** Adama Dieng

**Date:** 16 April 2008

**THE PROSECUTOR**  
**v.**  
**CASIMIR BIZIMUNGU**  
**JUSTIN MUGENZI**  
**JÉRÔME-CLÉMENT BICAMUMPAKA**  
**PROSPER MUGIRANEZA**

**Case No. ICTR-99-50-T**

**ORAL RULING REGARDING OBJECTION TO USE OF CERTAIN MATERIAL BY  
THE PROSECUTION IN THE CROSS-EXAMINATION OF  
DEFENCE WITNESS AUGUSTIN KARAMAGE**

**Office of the Prosecutor:**

Mr. Paul Ng'arua  
Mr. Ibukunolu Babajide  
Mr. Justus Bwonwonga  
Mr. Elvis Bazawule  
Mr. Shyamlal Rajapaksa  
Mr. Olivier De Schutter

**Counsel for the Defence:**

Ms. Michelyne C. St. Laurent for **Casimir Bizimungu**  
Mr. Ben Gumpert and Mr. Jonathan Kirk for **Justin Mugenzi**  
Mr. Michel Croteau and Mr. Philippe Larochelle for **Jérôme-Clément Bicomumpaka**  
Mr. Tom Moran and Ms. Cynthia Cline for **Prosper Mugiraneza**

(Transcript of proceedings, 16 April 2008, pp. 32-35)

MADAM PRESIDENT:

Session resumes.

Here is the oral ruling regarding objection to use of certain material by the Prosecution in the cross-examination of Defence witness Augustin Karamage.

This oral ruling concerns the objections taken this morning by Mr. Tom Moran, lead counsel for Prosper Mugiraneza, to the use of three documents by the Prosecution in its cross-examination of Defence witness Augustin Karamage. These documents, all of which are written in French, can be described as follows:

A. Letter dated 12th of January 1992 from the Rwandan embassy in Beijing, China, addressed to the minister for foreign affairs, Kigali, and purportedly signed by one Augustin Karamage.

B. Letter dated 27th May 1998 from reflection group on the Rwandan refugee problem, addressed to Mr. Arnold Koller, Chief of Department of Justice and Police, Berne, purportedly signed by one Augustin Karamage.

C. Letter dated 10th of June 1994 from the Rwandan embassy in Berne, Switzerland, addressed to Mr. René Degni Segui, special rapporteur of the human rights commission, Geneva, purportedly signed by one Augustin Karamage.

None of these documents had been disclosed to the Defence until the Prosecution began its cross-examination of witness Augustin Karamage.

Prosecution Counsel Mr. De Schutter advises the Chamber that he seeks to use -- he would seek to use only certain proportions of these documents in his cross-examination of the witness which were read on to the record today.

Mr. Moran objects to the use of these portions of the said documents on two grounds: Firstly, and in relation only to the letters dated 12th of January 1992 and 27th May 1998 respectively, Counsel Moran objects on the ground of relevancy. Secondly, and with respect of all three

documents, Mr. Moran objects on the ground that the letters fall within the Prosecution's disclosure obligations under Rule 66(B) of the Rules of Procedure and Evidence. In particular, the Defence submits the letters are either material to the preparation of the Defence, or intended for use by the Prosecution as evidence at trial, or both.

Furthermore, Mr. Moran advocates that the Chamber should prohibit the Prosecution from using the materials as a remedy for its violation of its disclosure obligations under Rule 66(B). In support of his arguments, Mr. Moran relies in part upon a previous decision of this Trial Chamber, dated February 7, 2008, concerning the non-disclosure by the Prosecution of immigration records.

The Chamber recalls that, pursuant to Rule 89(C) of the Rules, the Chamber may admit any relevant evidence which it deems to have probative value.

Rule 66(B) of the rules requires the Prosecution to allow the Defence to inspect any materials in his custody or control which are material to the preparation of the Defence, or are intended for use by the Prosecutor as evidence at trial. The test for materiality is the relevance of the documents to the preparation of the Defence case.

The Chamber will now turn to each of the documents -- specifically, to those portions of the documents sought to be used -- and address their contents with respect to the aforementioned rules, the parties' submissions and any relevant jurisprudence in considering whether the Prosecution should be permitted to use them in the cross-examination of this witness.

The first one is a letter dated 12th January 1992.

The Prosecution seeks to use one paragraph of this document, being the second paragraph on page 2 of that document. The paragraph in question concerns a request by the Rwandan government for the acquisition of military material from the Chinese government, and the terms of agreement for such.

The Defence objects to the use of this paragraph on the grounds of both relevancy and the Prosecution's breach of its Rule 66(B) disclosure obligations.

Firstly, the Chamber considers this paragraph to be relevant to the case and notes that a number

of allegations in the indictment relate to the procurement and distribution of weapons in Rwanda in 1994 as well as in the lead-up to the genocide.

Secondly, the Chamber considers that this paragraph contains information which is material to the preparation of the Defence.

In the light of allegations in the indictment, the Chamber considers that the Defence should have had an opportunity to put this information to the witness prior to calling him to testify on Prosper Mugiraneza's behalf.

As such, the Chamber considers that the Prosecution is in breach of its Rule 66(B) obligation with respect to this material.

Letter dated 27th of May 1998.

The Prosecution seeks to use one paragraph of this document, being the third paragraph on page 2 of that document. The paragraph in question concerns the alleged presence, in Europe and in other regions of the world, of so-called "death squads" sent by the Kigali secret service to take care of Hutu persons in exile.

The Defence objects to the use of this paragraph on the grounds of both relevancy and the Prosecution's breach of its Rule 66(B) disclosure obligations.

The Prosecution sought to use this material when the witness advised his intention to have his protective measures lifted. The Chamber considers, firstly, that this paragraph may be relevant to the question of the witness's credibility with respect to his personal security issues, but considers that it is not a document which is material to the preparation of the Defence case.

The Chamber now turns to that part of the Defence argument which asserts that this material should have been disclosed, in the alternative, under that part of Rule 66(B) which requires the disclosure of material which is intended for use by the Prosecutor as evidence at trial.

The Chamber considers that this material should have been disclosed under this limb of Rule 66(B) as soon as the Chamber lifted the witness protective measures and the Prosecution decided to use the material.

However, due to the proximity between the lifting of the protective measures and the disclosure of the document, the Chamber finds that it cannot determine that the Prosecution, in fact, breached its obligations with respect to this particular document. The Chamber, therefore, rejects the Defence's objection to the Prosecution's use of this material.

Letter dated 10th June 1994.

The Prosecution seeks to use two paragraphs of this document, being the second and third paragraphs of that document. Those paragraphs relate to certain allegations about killings having been perpetrated by the Rwandan government forces in the diocese of Byumba, and the Rwandan government position in relation to this allegation.

The Defence objects to the use of this paragraph on the ground of the Prosecution's breach of Rule 66(B) disclosure obligations only.

In light of the allegations in the indictment, of the date of the letter, and of the highly pertinent nature of the contents of the paragraphs concerned, the Chamber considers that the Defence should have had an opportunity to put this information to its witness prior to calling him to testify on Prosper's behalf. As such, the Chamber considers that the Prosecution is in breach of its Rule 66(B) obligations with respect to this material.

Now, remedy.

With respect to the appropriate remedy for the Prosecution's violation of its disclosure obligations under Rule 66(B), the Chamber recalls that the exclusion of evidence is one remedy which is at the extreme end of a scale of measures available to it.

In the particular circumstances of this case, the Chamber considers exclusion of this material to be warranted, having particular regard to the stage of the witness's testimony.

Accordingly, the Chamber rules in favour of Defence objection with respect to the letters dated 12th January 1992 and 10th June 1994 respectively, and prohibits the Prosecution from using this material in its cross-examination of Witness Augustin Karamage.

With respect to the letter dated 27th of May 1998, the Chamber rejects the Defence objection and hereby permits the Prosecution use of that material.

Finally, the Chamber notes that, once again, the Prosecution has breached its disclosure obligations under Rule 66(B), and the Chamber would like to remind the Prosecution of the need to faithfully discharge its obligation -- disclosure obligations under Rule 66(B).