



INTERNATIONAL
CRIMINAL TRIBUNAL

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Case No. ICTR-98-44-T

ENGLISH
Original: FRENCH

Before: Judge Dennis C. M. Byron, presiding
Judge Gilbertus Gustave Kamukama
Judge Vagn Joensen

Registrar: Adama Dieng

Date: 17 April 2008

THE PROSECUTOR

**ÉDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA**

2008 APR 20 10:00 AM
V. K. JOENSEN

**DECISION ON JOSEPH NZIRORERA'S MAIN MOTION FOR INSPECTION OF
DEFENCE WITNESS INFORMATION WHICH ÉDOUARD KAREMERA JOINED**

Rule 55(B) of the Rules of Procedure and Evidence

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INTRODUCTION

1. The Defence for Édouard Karemera will start presentation of its evidence during the present trial session, which started on 7 April 2008, while the Defence for Joseph Nzirorera will begin subsequently.
2. On 19 March 2008, Joseph Nzirorera filed a motion for inspection of certain documents in the possession of the Prosecution relating to Édouard Karemera's witnesses, pursuant to Rule 66(B) of the Rules of Procedure and Evidence (the "Rules").¹
3. On 17 (*sic*) [27] March 2008, challenging the request by the Defence for Joseph Nzirorera, the Prosecutor argued that it would be more appropriate if Édouard Karemera made such a request. On 25 March 2008, Édouard Karemera joined Joseph Nzirorera's main motion, further requesting, in advance, that similar disclosures be made in respect of the witnesses who will be called by the co-Accused, so that it is not necessary in the future to request the Prosecutor to make such a disclosure each time a witness is called.
4. The Prosecutor also challenges the joint request filed by the Defence for Édouard Karemera,² and stresses the need for the Defence to demonstrate in support of its request that documents for which inspection is sought are material to the preparation of its case and to clearly and sufficiently identify the specific documents.

DELIBERATIONS

5. The Trial Chamber recalls that when a motion for inspection of documents and exculpatory evidence is filed under Rule 66(B) of the Rules, the Defence must clearly and sufficiently identify the materials that the Prosecutor has in his custody or control for which inspection is requested.³ In addition, the Defence must demonstrate that the documents for which inspection is sought are material to the preparation of its case.⁴
6. In the instant case, the Trial Chamber finds that the main request fulfils these two requirements.

¹ Joseph Nzirorera's Motion for Inspection of Defence Witness Information, filed on 19 March 2008.

² Prosecutor's Response to Nzirorera's Motion for Inspection of Defence Witness Information, filed on 27 March 2008.

³ The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatswe and Joseph Nzirorera, Case No. ICTR-98-44-T (*"Karamera et al."*), Decision on Motion for Inspection of Documents (TC), 24 February 2006, para. 5.

⁴ The Prosecutor v. André Rwamakuba et al., Case No. ICTR-98-44-T (*sic*) [Case No. ICTR-98-44-C-T], Decision on Defence Motion for Disclosure (TC), 15 January 2004, para. 11.

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7. First, in his motion, Joseph Nzirorera specifically seeks disclosure of the following clearly-identified materials:

- (a) Any statement or other information provided by Vincent Rutaganira that is in the possession of the Prosecutor, as well as any agreement Rutaganira has entered into with the Prosecutor;
- (b) All statements in the possession of the Prosecutor, as well as judicial and immigration documents for the 13 persons who are listed as witnesses for Édouard Karemera.⁵

Here, Joseph Nzirorera clearly and unequivocally identifies the specific documents sought for disclosure. Moreover, the Trial Chamber recalls that the immigration documents unquestionably constitute a specific and clearly-identified category.⁶

8. Furthermore, the Trial Chamber is satisfied that the Defence for Joseph Nzirorera has sufficiently demonstrated the relevance and materiality of the said documents to the preparation of his case. The Defence justified its request by arguing that the said documents would allow it to decide whether or not to persuade the Defence for Édouard Karemera not to call the witnesses, or otherwise to envisage filing motions or objections for their exclusion where, for instance, the testimonies of one of those witnesses incriminated Joseph Nzirorera. Thus, Joseph Nzirorera has duly demonstrated the relevance of these documents to the preparation of his case, making any elaboration by the Defence for Édouard Karemera unnecessary.

9. Regarding Édouard Karemera's supplementary request, the Trial Chamber recalls that it cannot grant a request relating to a problem of law that is a mere possibility. Since the legal difficulty that Édouard Karemera raises has not yet arisen, the Trial Chamber cannot consider it and, therefore, must deny the request. The Trial Chamber recalls, however, that this decision should guide the Prosecutor in the exercise of his discretion in the future with regard to any material in his custody relating to a Defence witness. Should the legal difficulty indeed arise, it would be open to the Defence to move the Trial Chamber to issue an order.

⁵ See confidential Annex (A) to Joseph Nzirorera's Defence Motion, filed on 19 March 2008, which clearly identifies the 13 persons concerned.

⁶ *The Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva*, Case No. ICTR-98-41-AR73 ("Bagosora et al."), Appeals Chamber Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66(B) of the Tribunal's Rules of Procedure and Evidence (AC), 25 September 2006.

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FOR THE FOREGOING REASONS, THE CHAMBER

- I- **GRANTS** the main motion by Joseph Nzirorera;
- II- **GRANTS IN PART** the joint motion by Édouard Karemera, to the extent that it addresses the same issue as the main motion;
- III- **ORDERS** the Prosecutor to disclose the documents described in paragraph 7 *supra* to the three Accused as soon as possible; and
- IV- **DENIES** Édouard Karemera's motion in all other respects.

Arusha, 17 April 2008

[Signed]

Dennis C. M. Hyon
Presiding Judge

[Signed]

Gberdao Gustave Kam
Judge

[Signed]

Vagn Joensen
Judge

[Seal of the Tribunal]