

ICTR-98-44-T
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(50953-50951)

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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: 26 April 2010

THE PROSECUTION

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

JUDICIAL RECORDS/ARCHIVES
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**DECISION ON JOSEPH NZIRORERA'S MOTION TO PERMIT CONTACT
BETWEEN THE ACCUSED AND HIS COUNSEL DURING TESTIMONY**

*Articles 20(4)(b) and (d) of the Statute of the Tribunal
Rules 54, 85(C), 90(F) of the Rules of Procedure and Evidence*

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Defence Counsel for Matthieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika Ngimbi

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INTRODUCTION

1. Joseph Nzirorera has moved the Chamber for an order allowing him to have contact with his counsel during the period after he has commenced his testimony.¹ The Prosecution objects to the Motion in its entirety.²

DELIBERATION

2. Rule 85(C) provides that if the accused so desires, the accused may appear as a witness in his or her own defence. According to the Appeals Chamber, the use of the word "witness" does not imply that an accused who chooses to testify in his or her own defence is systematically subject to the same rules as any other witness before the Tribunal.³ Indeed, the Appeals Chamber has held that there is a fundamental difference between an accused testifying on his or her own behalf and any other witness; in sum, the Tribunal does not reflexively apply rules governing any other witness to an accused who decides to testify in his own case.⁴

3. Moreover, Article 20(4)(d) of the Statute provides for the right to legal assistance. This norm must be read together with Article 20(4)(b) of the Statute, which specifies that an accused has the right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

4. Thus, the Appeals Chamber has stated that it is a fundamental right of an accused to have access to counsel at any stage of the proceedings, including when he or she is testifying as a witness.⁵ However, a decision on the extent of contact between an accused who chooses to testify and his or her counsel is vested in the Trial Chamber and is therefore discretionary.⁶ Pursuant to Rule 90(F), the Trial Chamber controls the mode and order of interrogating witnesses in order to make the interrogation effective for the ascertainment of truth.

5. Moreover, the Chamber notes that the reliability of an accused's testimony is not exclusively safeguarded by prohibiting contact between counsel and the accused during the

¹ Joseph Nzirorera's Motion to Permit Contact Between Accused and his Counsel During Testimony, filed on 13 April 2010 ("Motion").

² Prosecutor's Response to Joseph Nzirorera's Motion to Permit Contact Between Accused and his Counsel During Testimony, filed on 19 April 2010 ("Response").

³ *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić*, Case No. IT-04-74-AR73.10, Decision on Prosecution's Appeal Against Trial Chamber's Order on Contact Between the Accused and Counsel During an Accused's Testimony Pursuant to Rule 85(C) (AC), 5 September 2008, ("Prlić" Decision), para. 11.

⁴ *Id.*

⁵ *Ibid* at paras. 14, 19.


⁶ *Ibid* at para. 15.

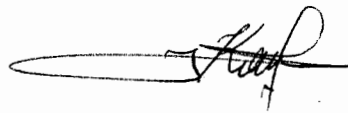
latter's testimony.⁷ The Prosecution always has the opportunity to carefully cross-examine the accused on the possibility that he or she may have been improperly coached by counsel on how to respond to certain questions.⁸ Furthermore, a Trial Chamber should generally presume, absent evidence to the contrary, that conversations between an accused and his counsel will be appropriate.⁹


6. If evidence of intentional interference with a witness's testimony comes to light, a Trial Chamber can take appropriate action by initiating contempt proceedings under Rule 77 and by excluding the evidence pursuant to Rule 95.¹⁰

7. Therefore, on balance, the Chamber finds that Joseph Nzirorera may have contact with his counsel during the period after which he has commenced his testimony, except while he is on the stand testifying during courtroom hours. The Chamber does not agree with the Prosecution's contention that Joseph Nzirorera must demonstrate good cause, with prior notice to the parties, and an explicit undertaking concerning the nature and purpose of the communication, before he is permitted to communicate with his counsel after he commences his testimony at trial.¹¹

Arusha, 26 April 2010, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]



⁷ *Ibid* at para. 17

⁸ *Id.*

⁹ *Ibid* at para. 18.

¹⁰ *Id.*

¹¹ Response, para. 6.