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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 Gberdao Gustave Kam
Judge Vagn Joensen

Registrar: Adama Dieng

Date: 25 October 2010

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THE PROSECUTOR

v.

ÉDOUARD KAREMERA
MATTHIEU NGIRUMPATSE

DECISION ON MATTHIEU NGIRUMPATSE'S MOTION FOR DISCLOSURE
PURSUANT TO
RULE 66(B) OF THE RULES OF PROCEDURE AND EVIDENCE

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CIII10-0157 (E)

Translation certified by LSS, ICTR

INTRODUCTION

1. In a motion of 1 June 2010, Matthieu Ndirumpatse requests the Chamber to order the Prosecutor to disclose all the materials which he is required to disclose pursuant to Rule 66(B) of the Rules of Procedure and Evidence, particularly his witnesses' immigration and judicial records.¹ He further requests the Chamber to reschedule his case, order the Prosecutor to provide him with the translations of the documents requested and preclude the Prosecutor from relying on undisclosed materials in the cross-examination of Defence witnesses.² The Prosecutor opposes the motion in its entirety.³

DELIBERATIONS

2. Rule 66(B) states that at the request of the Defence, the Prosecutor shall permit the Defence to inspect any books, documents, photographs and tangible objects in his custody or control which are material to the preparation of the defence. Rule 66(B) of the Rules does not create a broad affirmative obligation on the Prosecution to disclose all documents which may be relevant to its cross-examination.⁴ Disclosure of such documents is only triggered by a sufficiently specific request by the Defence.⁵ The Defence must clearly and sufficiently identify the specific materials that the Prosecutor has in his custody and control and for which inspection is requested⁶ and must demonstrate that the documents for which disclosure is sought are material to the preparation of the defence of the Accused.⁷ The immigration documents unquestionably constitute a specific and clearly identified category.⁸

3. Matthieu Ndirumpatse claims that the Chamber has not yet ruled on his Motion of 22 September 2008⁹ in which the relief sought is the same as that of this Motion.¹⁰ Contrary

¹ "Requête de Matthieu Ndirumpatse en communication de pièces sur le fondement de l'article 66 B) du Règlement", filed on 1 June 2010 ("Motion").

² *Idem*.

³ Prosecutor's Response to 'Requête de Matthieu Ndirumpatse en communication de pièces sur le fondement de l'article 66 B) du Règlement', filed on 7 June 2010 ("Prosecutor's Response").

⁴ *The Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, Case No. ICTR-98-41-AR73 ("Bagosora et al."), "Decision on Interlocutory Appeal Relating to Disclosure under Rule 66(B) of the Tribunal's Rules of Procedure and Evidence" (AC), 25 September 2006, ("Appeals Chamber Decision of 25 September 2006") para. 10.

⁵ *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, "Decision on the Appellant's Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filing" (AC), 26 September 2000, para. 40.

⁶ *The Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), "Decision on Motion to Inspect certain Documents" (TC), 24 February 2006, para. 5; "Decision on Joseph Nzirorera's Main Motion for Inspection of Defence Witness Information which Édouard Karemera Joined" (TC), 17 April 2008 ("Decision of 17 April 2008"), para. 5.

⁷ *The Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-PT, "Decision on Defence Motion for Disclosure", 15 January 2004, para. 11; *Karemera et al.*, "Decision of 17 April 2008", para. 5.

⁸ *Karemera et al.*, "Decision on Joseph Nzirorera's Main Motion for Inspection of Defence Witness Information which Édouard Karemera Joined", 17 April 2008, para. 7, citing *Bagosora et al.*, "Appeals Chamber Decision of 25 September 2006", para. 10.

⁹ Motion, para. 5.

¹⁰ See Defence Motion For The Prosecutor To Disclose Materials In His Possession Relating to Matthieu Ndirumpatse's Witnesses, 22 September 2008 ("Motion of 22 September 2008").

to this allegation, the Chamber's Decision of 2 December 2008 was in response to the said Motion.¹¹

4. The Prosecutor suggests that Matthieu Ndirumpatse's present motion, like that of 22 September 2008, does not satisfy the requirements of Rule 66(B) and that Matthieu Ndirumpatse does not show, in either of his motions, the category of material requested for inspection nor the usefulness of the material in the preparation of his defence case.¹²

5. The Chamber recalls that in its Decision of 2 December 2008 it already found that the testimonies and information given by Defence witnesses in other proceedings as well as their judicial records and immigration documents, which were admittedly in the Prosecution's possession, were relevant.¹³ The Chamber was also satisfied that the documents requested by Matthieu Ndirumpatse in his Motion of 22 September 2008 were clearly and sufficiently identified.¹⁴ The Chamber considers that in this motion, Ndirumpatse has sufficiently identified the materials requested for inspection because he explained that he was referring to immigration and judicial records concerning his witnesses, their previous statements and any other document concerning them which may be useful in the preparation of his defence.¹⁵

6. Matthieu Ndirumpatse submits that out of his 35 key and 28 additional witnesses, making a total of 63 witnesses, the Prosecutor only disclosed materials for 22 of them¹⁶ and that only partial disclosure of such materials was made. He alleges that the Prosecutor did not disclose transcripts, and that this also applies to several immigration and judicial documents.¹⁷ He submits that this breach infringes the rights of the Defence.¹⁸

7. The Chamber notes that the Prosecutor states in his Response that he made every effort to satisfy Matthieu Ndirumpatse's requests for disclosure of judicial records, immigration records and previous statements of persons on his list of key witnesses and that he already disclosed to him all the relevant documents in the Prosecution's possession which Matthieu Ndirumpatse requested.¹⁹ The Prosecutor further states that his searches did not produce documents related to Matthieu Ndirumpatse's key Witnesses BGD, A2, LAB, GCF, FGT, BVF, UD, KNM, MB, ZNJ, MCE, TB, SA, FAT, SEI, MT, REA, JCD and YBZ which are disclosable pursuant to Rule 66(B).²⁰ Lastly, the Prosecutor states that he is aware that he has a continuing obligation and gives assurances that he will disclose any relevant material that comes into his possession.²¹ The Chamber takes note of these details and explanations and directs the Prosecutor to continue to make efforts to disclose to the Defence all relevant materials that will come into his possession.

¹¹ *Karemera et al.*, "Décision relative à la Requête en communication des pièces concernant les témoins de Matthieu Ndirumpatse dont le Procureur est en possession," 2 December 2008, (TC).

¹² Prosecutor's Response, paras. 7 and 8.

¹³ *Karemera et al.*, "Decision of 2 December 2008", para. 4.

¹⁴ *Ibid.*, para. 3.

¹⁵ Motion, para. 12.

¹⁶ Motion para. 6.

¹⁷ *Idem.*

¹⁸ *Ibid.*, para. 8.

¹⁹ Prosecutor's Response, para. 12.

²⁰ *Ibid.*

²¹ *Idem.*

8. Matthieu Ndirumpatse submits that he has not received the relevant materials pursuant to Rule 66(B) for the following witness: HRI, WQE, BCM, HAM, SFA, HLM, WEG, JAZ, LEH, BGC, AB, BFI, FRJ, V06, MFN, FSU, VI4, PVB, FRA, BST, ZNQ and LEH on his list of additional witnesses.²² The Chamber recalls that in its Decision of 4 December 2008, it ordered the Prosecutor to disclose to the Defence all the testimonies of Matthieu Ndirumpatse's 35 witnesses as well as any judicial or immigration record concerning them which were in his possession.²³ Although the Chamber granted Matthieu Ndirumpatse's request to have recourse to an additional list of witnesses in the event that one or several *viva voce*²⁴ witnesses were unable to appear, any operation to vary his list of key witnesses must satisfy the requirements of Rule 73 *ter* (E) of the Rules. Accordingly, the Chamber considers that the Prosecutor is not under any obligation to disclose documents in his custody which are related to witnesses listed on Matthieu Ndirumpatse's list of the additional witnesses and which documents meet the requirements of Rule 66(B), provided that the list of the Accused's key witnesses has not been varied to include the said additional witnesses.

9. Matthieu Ndirumpatse requests that during cross-examination of witnesses, the Chamber should preclude the Prosecutor from relying on any material which has not been disclosed to him.²⁵ This motion is tantamount to a request for inspection of any and all documents the Prosecutor intends to use during cross-examination of Matthieu Ndirumpatse's witnesses, on pain of not being able to use them in the cross-examination of those same witnesses. Considering that the Appeals Chamber has unequivocally rejected such broad applications of Rule 66(B) of the Rules,²⁶ the Chamber does not find it appropriate to grant the request.

10. Matthieu Ndirumpatse further requests to start his case up to 30 days after the Prosecutor's disclosure of the documents which the Defence wishes to inspect.²⁷ The Chamber finds that the request is unfounded and that it is now moot.

11. Lastly, Matthieu Ndirumpatse requests the Chamber to order the Prosecutor to provide him with the translations of the documents that will be so disclosed, where appropriate. The Chamber considers that the Prosecutor should provide the translations of all the documents he has already disclosed or intends to disclose to the Defence, pursuant to Rule 66(B) of the Rules, provided that such translations are in his possession.

For these reasons, the Chamber

I. Grants in part Matthieu Ndirumpatse's Motion,

²² Motion, para 9.

²³ *Karemera et al.*, "Decision of 2 December 2008", p. 3.

²⁴ *Karemera et al.*, "Decision on Motion by Matthieu Ndirumpatse for the Admission of Statements pursuant to Rule 92 *bis* of the Rules and for the Protection of Witnesses" (TC), 11 November 2010, p. 13.

²⁵ Motion, para. 12.

²⁶ *Bagosora et al.*, "Appeals Chamber Decision of 25 September 2006", para. 10; *Karemera et al.*, "Decision on Joseph Nzirorera's Fifth Motion for Inspection of Defence Witness Information" (TC), 17 February 2009, paras. 3 and 4.

²⁷ *Ibid.*, para. 11.

- II. **Orders** the Prosecutor to disclose to the Defence as early as possible all the testimonies of Matthieu Ndirumpatse's 35 witnesses, as well as any judicial or immigration document concerning them which he may come to discover,
- III. **Further orders** the Prosecutor to disclose to the Defence the translations of all the documents he has already disclosed or intends to disclose pursuant to Rule 66(B) of the Rules, provided that the translations are in his custody,
- IV. **Finds** moot Matthieu Ndirumpatse's request to defer the commencement of his defence case,
- V. **Denies** Matthieu Ndirumpatse's Motion in all other respects.

Arusha, 25 October 2010

[Signed]

Dennis C. M. Byron
Presiding Judge

[Signed]

Judge Gberdao Gustave Kam

[Signed]

Judge Vagn Joensen

[Seal of the Tribunal]
