



ICR-00-55C-PT  
11-01-2011  
(5580-5578)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Lee Gacuiga Muthoga, *Presiding*  
Seon Ki Park  
Robert Fremr

**Registrar:** Adama Dieng

**Date:** 11 January 2011

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**THE PROSECUTOR**

v.

**Ildephonse NIZEYIMANA**

*CASE NO. ICTR-2000-55C-PT*

**DECISION ON PROSECUTION MOTION FOR DISCLOSURE OF THE  
PARTICULARS OF A DEFENCE PURSUANT TO RULE 67(A)(ii)**

**Office of the Prosecution:**  
Drew White  
Kirsten Gray  
Yasmine Chubin  
Zahida Virani  
Astou Mbow

**Defence Counsel for Ildephonse Nizeyimana:**  
John Philpot  
Cainech Lussiaà-Berdou  
Myriam Bouazdi

*Spate*

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## INTRODUCTION

1. The trial in this case is scheduled to commence on 17 January 2011.<sup>1</sup>
2. On 22 December 2010 the Office of the Prosecutor ("Prosecution") filed the "Prosecution Motion for Disclosure of the Particulars of a Defence Pursuant to Rule 67(A)(ii)" ("Motion"). The Prosecution submits that prior statements by the Defence team of the Accused, Ildéphonse Nizeyimana, ("Defence" and "the Accused" respectively), indicate that it intends to "rely on a form of special defence".<sup>2</sup> The Prosecution argues that Rule 67 of the Rules of Procedure and Evidence ("Rules") requires that the Defence notify the Prosecution as soon as possible of any special defence, even if that notification is initially only partial.<sup>3</sup> Thus the Prosecution requests that the Chamber, acting under Rule 54 of the Rules, order the Defence to make the disclosures required under Rule 67(A)(ii) of the Rules.<sup>4</sup> In addition, the "Prosecutor's Reply to Defence Response to Prosecution Motion for Disclosure of the Particulars of a Defence Pursuant to Rule 67(A)(ii)", filed on 28 December 2010 ("Reply"), asks that the Chamber consider whether to order the Defence to disclose any relevant *ex parte* submissions.<sup>5</sup>
3. On 23 December 2010, the Defence filed a response to the Motion,<sup>6</sup> arguing that it has until the day before trial starts to disclose any special defence.<sup>7</sup> It submits that its investigations and arrangements for witness protection are not yet complete, and thus that it is not in a position to provide any notice under Rule 67(A)(ii).<sup>8</sup>

## DELIBERATIONS

4. The Chamber recalls that Rule 67(A) of the Rules requires the Defence "[a]s early as reasonably practicable and in any event prior to the commencement of the trial", to notify the Prosecution of any "defence of alibi" or "special defence".
5. The Prosecution's submissions do suggest that the Defence is considering offering a special defence or alibi. They do not, however, conclusively demonstrate that it is already

<sup>1</sup> Scheduling Order (TC), 3 November 2010, Order II.

<sup>2</sup> Motion, para. 2. See also Motion, para. 6, citing T. 22 September 2010, p. 6 (wherein the Defence stated that it would introduce a defence prior to the beginning of trial and offered to make *ex parte* submissions on the issue).

<sup>3</sup> Motion, paras. 13-22.

<sup>4</sup> Motion, para. 23.

<sup>5</sup> See Reply, para. 24.

<sup>6</sup> Response to Prosecution Motion for Disclosure of the Particulars of a Defence Pursuant to Rule 67(A)(ii), filed on 23 December 2010 ("Response").

<sup>7</sup> Response, para. 3.

<sup>8</sup> See Response, paras. 6-7.

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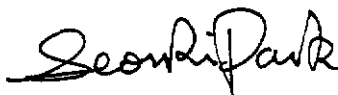
reasonably practicable for the Defence to provide notice of any such defence or alibi. In this context, any order by the Chamber based on the general powers granted by Rule 54 of the Rules is premature. Nonetheless, the Chamber underscores that the requirements of Rule 67 of the Rules are not discretionary, including those provisions relating to timing of notifications. The Chamber further notes that even in cases where full notification under Rule 67 of the Rules is not possible, the Rule does not preclude early partial notification addressing already decided elements of a special defence or alibi. The Chamber will closely monitor parties' submissions, and notes that non-timely submission of notice under Rule 67 of the Rules may well result in the consequences envisioned by the Tribunal's case-law.<sup>9</sup>

**FOR THESE REASONS, THE CHAMBER**

- I. **DENIES** the Motion; and
- II. **REMINDS** the parties of their obligation to provide timely notice to each other as required by Rule 67 of the Rules.

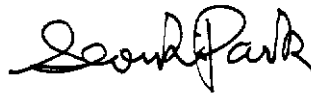
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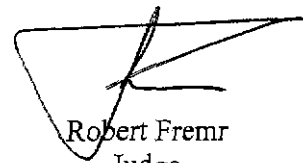


Lee Gacuiga Muthoga  
Presiding Judge

[absent at the time  
of signature]



Seon Ki Park  
Judge



Robert Fremr  
Judge

<sup>9</sup> See, e.g., *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Judgement, 20 October 2010, paras. 54, 56.