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

**Registrar:** Adama Dieng

**Date:** 2 June 2011

**THE PROSECUTOR**

v.

**Ildéphonse NIZEYIMANA**

**CASE NO. ICTR-00-55C-T**

JUDICIAL RECORDS ARCHIVES  
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**DECISION ON DEFENCE MOTION FOR EXCLUSION OF EVIDENCE**

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

**Defence Counsel for Ildéphonse Nizeyimana:**  
John Philpot  
Cainnech Lussiaà-Berdou  
Myriam Bouazdi  
Sébastien Chartrand

## INTRODUCTION

1. The trial commenced on 17 January 2011 with the opening statements of both the Prosecution and the Defence. The Prosecution closed its case-in-chief on Friday, 25 February 2011, after having called 38 witnesses. The Defence case commenced on 9 May 2011.
2. On 29 April 2011, the Defence team of the Accused, Ildéphonse Nizeyimana (“the Defence” and “the Accused” respectively) filed a ‘Motion for Exclusion of Evidence’ (“Defence Motion”).<sup>1</sup> The Defence submits that the Prosecution failed to provide it with sufficient notice of various allegations against the Accused.<sup>2</sup> The Defence therefore requests the Chamber to exclude the evidence for which it received insufficient or untimely notice.<sup>3</sup> More generally, the Defence argues that the Pre-Trial Brief impermissibly expanded the scope of material facts underpinning the counts in the Indictment, and that the disclosure of witness statements and summaries are not enough to give an accused notice of the specific charges against him.<sup>4</sup>
3. On 29 April 2011, the Office of the Prosecutor (“Prosecution”) filed a motion requesting the Chamber to extend the time limit for filing its response to the Defence Motion.<sup>5</sup>
4. On 3 May 2011, the Defence filed its response to the Prosecution Motion for Extension of Time, opposing the Prosecution’s request to extend the time for filing their response to the Defence Motion.<sup>6</sup>
5. On 3 May 2011, the Chamber rendered a decision, granting the Prosecution an extension of time to file their response to the Defence Motion.<sup>7</sup>
6. On 13 May 2011, the Prosecution filed its response to the Defence Motion.<sup>8</sup> The Prosecution opposes the exclusion of all the evidence challenged by the Defence.<sup>9</sup> In particular, the Prosecution submits, *inter alia*, that the Defence, when challenging the

<sup>1</sup> Defence Motion for Exclusion of Evidence, 29 April 2011.

<sup>2</sup> Defence Motion, paras. 35-81.

<sup>3</sup> Defence Motion, paras. 34, 82.

<sup>4</sup> Defence Motion, paras. 25-33.

<sup>5</sup> Prosecutor’s Extremely Urgent Motion for Extension of the Time Limit for Filing its Response to Defence Motion for Exclusion of Evidence (“Prosecution Motion for Extension of Time”), 29 April 2011.

<sup>6</sup> Response to Prosecutor’s Extremely Urgent Motion for Extension of the Time Limit for Filing its Response to Defence Motion for Exclusion of Evidence, 3 May 2011.

<sup>7</sup> Decision on Prosecutor’s Extremely Urgent Motion for Extension of Time Limit for Filing its Response to Defence Motion for Exclusion of Evidence, 3 May 2011.

<sup>8</sup> Prosecutor’s Response to Defence Motion for Exclusion of Evidence (“Prosecution Response”), 13 May 2011.

<sup>9</sup> Prosecution Response, paras. 27-99.

evidence, is confusing the concepts of “evidence” and “material fact”.<sup>10</sup> The Prosecution further submits that the Trial Chamber already ruled upon the issue related to the Pre-Trial Brief possibly expanding upon the charges against the Accused.<sup>11</sup>

7. The Defence did not file a reply.

### DELIBERATIONS

8. The Chamber recalls that Rule 89 (C) of the Rules of Procedure and Evidence (“Rules”) provides the Chamber with a broad discretion to admit any evidence it deems relevant and probative to the case.<sup>12</sup> Once the evidence is admitted, the exact probative weight to be attached to it is to be determined by the Chamber at a later stage when assessing the totality of the evidence.<sup>13</sup>

9. While the Prosecution is obliged to provide notice of the material facts underpinning the charges in the indictment,<sup>14</sup> the Appeals Chamber has held that Rule 89 (C) permits a Trial Chamber to admit evidence that may be relevant to proof of an allegation in the indictment, even where it is not possible to convict an accused in respect of that evidence directly, due to lack of notice.<sup>15</sup>

10. A Trial Chamber can exclude relevant evidence if it is determined that its probative value is substantially outweighed by the prejudicial effect of admitting it.<sup>16</sup> According to the Tribunal’s jurisprudence, exclusion is a remedy which is at the extreme end of a scale of

<sup>10</sup> Prosecution Response, para. 17.

<sup>11</sup> Prosecution Response, paras. 8-10.

<sup>12</sup> See also *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Casimir Bizimungu’s Urgent Motion for the Exclusion of the Report and Testimony of Déo Sebahire Mbonyinkebe (TC), 2 September 2005 (“*Bizimungu Decision of 2 September 2005*”), para. 10; *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2, Decision on Appeal Regarding Statement of a Deceased Witness (AC), 21 July 2000, paras. 19-20; *Nyiramasuhuko v. the Prosecutor*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko’s Appeal on the Admissibility of Evidence (AC), 4 October 2004 (“*Nyiramasuhuko Appeal Decision of 4 October 2004*”), paras. 6-7.

<sup>13</sup> *Nyiramasuhuko Appeal Decision of 4 October 2004*, paras. 6-7; *Bizimungu Decision of 2 September 2005*, para. 16; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Defence Oral Motions for Exclusion of Witness XBM’s Testimony, for Sanctions Against the Prosecution, and for Exclusion of Evidence Outside the Scope of the Indictment (TC), 19 October 2006, para. 18. See also *Prosecutor v. Gatete*, Case No. ICTR-2000-61-T, Decision on Defence Motion on Admissibility of Allegations Outside the Temporal Jurisdiction of the Tribunal (TC), 3 November 2009, para. 17.

<sup>14</sup> *Muvunyi v. Prosecutor*, Case No. ICTR-2000-55A-A, Judgement (AC), 29 August 2008, para. 18; *Prosecutor v. Seromba*, Case No. ICTR-2001-66A, Judgement (AC), 12 March 2008, para. 27; *Simba v. Prosecutor*, Case No. ICTR-01-76-A, Judgement (AC), 27 November 2007, para. 63.

<sup>15</sup> *Ntahobali and Nyiramasuhuko v. Prosecutor*, Case No. ICTR-97-21-AR73, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the “Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible” (AC), 2 July 2004, paras. 14-15.

<sup>16</sup> *Prosecutor v. Kupreškić, et al.*, Case No. IT-95-16-A, Judgement (AC), 23 October 2001, para. 31.

measures available to the Chamber in addressing prejudice caused to an accused in the preparation of his defence.<sup>17</sup>

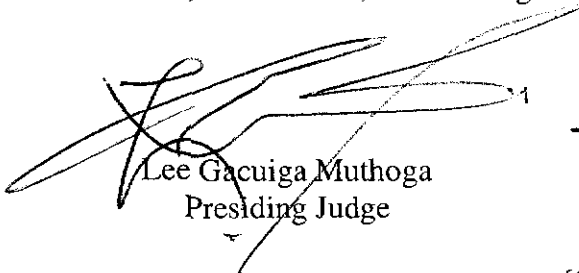
11. Having considered the totality of the matters sought to be excluded by the Defence, the Chamber finds the evidence to be relevant and of probative value, outweighing any prejudice the Accused may suffer at this stage of the proceedings. The Chamber therefore exercises its discretion pursuant to Rule 89(C), and declines to exclude the evidence at this stage.

12. The Chamber notes that it is alive to the Tribunal's jurisprudence regarding the curing of an indictment and the requirements surrounding notice. The Chamber will, however, in the interest of justice, defer its assessment of matters related to alleged defects in the Indictment and lack of notice raised by the Defence until the final judgment.<sup>18</sup>

**FOR THESE REASONS, THE CHAMBER**

**DENIES** the Defence Motion.

Arusha, 2 June 2011, done in English.



Lee Gacuiiga Muthoga  
Presiding Judge



Seon Ki Park  
Judge



Robert Fremr  
Judge

[Seal of the Tribunal]



<sup>17</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR 98-42-T, Decision on Alphonse Nteziryayo's Motion for Exclusion of Evidence (TC), 25 February 2009 ("Nyiramasuhuko Decision of 25 February 2009"), para. 26; *Prosecutor v. Karemera et al.*, Case No. 98-44-T; Decision on Defence Motions to Exclude Testimony of Professor André Guichaoua (TC), 20 April 2006, para. 8; *Prosecutor v. Karemera et al.*, Case No. 98-44-T, Decision on Prosecutor's Notice of Delay in Filing Expert Report of Professor André Guichaoua; Defence Motion to Exclude the Witness' Testimony; and Trial Chamber's Order to Show Cause (TC), 1 February 2006, para. 11 *Prosecutor v. Karemera et al.*, Case No. 98-44-T, Decision on Defence Oral Motions for Exclusion of XBM's Testimony, for Sanctions against the Prosecution and Exclusion of Evidence outside the Scope of the Indictment (TC), 19 October 2006, para. 6.

<sup>18</sup> See Nteziryayo Decision, para. 18; *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Ndayambaje's Motion for Exclusion for Evidence, 1 September 2006, para. 25.