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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:** 17 June 2011

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**THE PROSECUTION**

v.

**Édouard KAREMERA and  
Matthieu NGIRUMPATSE**

*Case No. ICTR-98-44-T*

**DECISION ON NGIRUMPATSE'S MOTION TO STRIKE PROSECUTION  
CLOSING BRIEF AND ANNEXES**

*Practice Direction on Length and Timing of Closing Briefs and Closing Arguments*

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## INTRODUCTION

1. On 30 November 2010, the Chamber ordered the Prosecution to file a closing brief with a 73,000 word limit and each Accused to file a closing brief with a 53,000 word limit, as provided for in Section 1 of the Practice Direction on Length and Timing of Closing Briefs and Closing Arguments ("Practice Direction").<sup>1</sup> The parties filed their closing briefs on 2 June 2011.
2. On 4 June 2011, Matthieu Ngirumpatse filed an urgent motion to strike the Prosecution closing brief and its annexes or, in the alternative, annexes A-I only.<sup>2</sup> The Motion is based on Ngirumpatse's allegation that Annexes A through I violate Article 1.4(ii) of the Practice Direction because they contain argumentative material.
3. The Prosecution responded that its annexes merely provide references to admitted exhibits in the trial or contain relevant, non-argumentative material.<sup>3</sup> Nonetheless, the Prosecution submitted a revised Annex A to its Response, in the event the Chamber considers the original unacceptable. The Prosecution proposes that it can prepare another set of annexes, revised in the same manner as Annex A, which may be substituted for current Annexes B-F.<sup>4</sup>

## DELIBERATION

4. Article 1.4(ii) of the Practice Direction states that an appendix to a closing brief shall not contain factual or legal arguments, but rather references, source materials, items from the record, exhibits, and other relevant, non-argumentative material.<sup>5</sup>

### *Annexes A-F*

5. Annexes A-F to the Prosecution Closing Brief are lists of exhibits that the Prosecution has grouped chronologically, according to themes it believes are relevant to its case. The annexes also contain descriptions of each exhibit.<sup>6</sup>

<sup>1</sup> *The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T ("Karemera et al."), Ordonnance concernant les dernières conclusions écrites ainsi que les plaidoiries et réquisitions, 30 November 2010 ("Word Limit Decision").

<sup>2</sup> Requête urgente pour Matthieu Ngirumpatse en exclusion du mémoire du Procureur et subsidiairement de ses annexes, filed on 4 June 2011 ("Motion"); Réplique pour Matthieu Ngirumpatse sur sa requête en exclusion du mémoire du Procureur et subsidiairement de ses annexes, filed 9 June 2011 ("Reply").

<sup>3</sup> Prosecutor's Response to Ngirumpatse's Motion to Exclude the Prosecutor's Final Brief, filed on 8 June 2011 ("Response").

<sup>4</sup> *Id.*

<sup>5</sup> Practice Direction, Article 1.4(ii).

<sup>6</sup> See Prosecutor's Final Brief, filed 2 June 2011 ("Prosecution Closing Brief"): Annex A (Implementation of the Broad-based Transitional Government under the Arusha Accords); Annex B (Human Rights NGOs and UN Agencies, Including UNAMIR); Annex C (Civil Defence, and the Implication of the *Interahamwe*); Annex D (Interim "*Abatabazi*" Government Campaign Against the Tutsi of Kibuye); Annex E (Édouard Karemera *in his own words*); and Annex F (Matthieu Ngirumpatse *in his own words*).

6. The Prosecution contends that Annexes A-F simply provide references to admitted exhibits in the trial by listing them chronologically and in thematic clusters. According to the Prosecution, it is merely providing a more effective means of drawing the attention of the parties and Chamber to the relevant materials. It maintains that the lists are not argument, and the brief descriptions not argumentative.<sup>7</sup>

7. The Chamber finds that grouping exhibits into thematic clusters is argumentative. Through this exercise, the Prosecution suggests that the exhibits should be categorized according to its own interpretation, which may differ from that of the Defence or the Chamber. The descriptions of the exhibits are even more argumentative. The vast majority of the descriptions are replete with inferences, interpretation, and liberal use of capitalization and bold font to underscore what the Prosecution considers to be the salient issues for each exhibit.<sup>8</sup> Accordingly, the Chamber rejects Annexes A-F because they violate Article 1.4(ii) of the Practice Direction.

8. It does not matter if most of the exhibits listed in the annexes were admitted by the Defence or initially cited in the Prosecution Closing Brief.<sup>9</sup> Likewise, for the purpose of this decision, it does not matter that the Defence may have included exhibits in the annexes to its closing briefs that were never part of the trial record.<sup>10</sup> The issue before the Chamber is whether the annexes to the Prosecution Closing Brief violate Article 1.4(ii) of the Practice Direction.

*Prosecution's Proposed Revised Annex A*

9. The Prosecution has submitted a revised Annex A to replace the original if the Chamber considers that the revised version is more in line with the Practice Direction. The revised annex contains the same list of grouped exhibits as the original, slightly abridged descriptions for each exhibit, and copies or excerpts of each exhibit. The Prosecution offers to prepare similar revised versions of Annexes B-F if the Chamber so desires. It maintains, however, that the original two and half-page annex is more effective and efficient than the 86-page revised version, while remaining fully in line with the Practice Direction.

<sup>7</sup> Motion, paras. 5, 7.

<sup>8</sup> The description attached to Exhibit P-188 in Annex D is illustrative: "Letter – Kibuye Prefet Kayishema to MININTER – re – Security in Kibuye – 05-May-1994 – reporting that calm is starting to return as of 25 April 1994 but that insecurity remains in Bisesero; pacification meetings are held at the prefecture, commune & secteur levels; **internal conflicts over division of property from looting** – (significant for it is [sic] lack of mention of attacks against the Tutsi o [sic] primary concern is property-related & fighting among population to divide spoils)" (Emphasis in original).

<sup>9</sup> Prosecution Closing Brief, para. 7.

<sup>10</sup> *Id.*

10. The revised annex suffers from the same defects as the original. It is a thematic grouping of exhibits with descriptions designed to emphasize particular interpretations or aspects of each exhibit.<sup>11</sup> Therefore, it violates Article 1.4(ii) of the Practice Direction and is unacceptable.

#### *Annex G*

11. Annex G to the Prosecution Closing Brief is a restatement of the Prosecution's case against the Accused.<sup>12</sup>

12. The Prosecution contends that Annex G does not contain factual or legal argument because it simply summarizes the case against the Accused without references to jurisprudence or evidence. According to the Prosecution, Annex G is much more efficient than appending excerpts of the Indictment, Pre-Trial Brief, and opening statement.<sup>13</sup>

13. The Prosecution's case against the Accused is a factual and legal argument; therefore, a restatement of its case also contains factual and legal argument. Contrary to the Prosecution's assertion, a text can contain factual and legal argument even if it does not refer to jurisprudence or evidence. In any event, Annex G specifically refers to evidence because it contains numerous footnotes to the Prosecution's Pre-Trial Brief, which point directly to the anticipated testimony of multiple witnesses who actually testified before the Chamber in this case.<sup>14</sup> Finally, Annex G contains a section titled "Responsibility of the Accused", which sets forth the Prosecution's factual and legal theory on the culpability of the Accused. Accordingly, the Chamber rejects Annex G because it violates Article 1.4(ii) of the Practice Direction.

14. The Chamber commends all efforts to help the case proceed more smoothly. It would like to remind the Prosecution, however, that efficiency does not always equal legal viability. For example, Annex G still violates the Practice Direction even if it appears more efficient than a more cumbersome alternative presented to the Chamber.

#### *Annex H*

15. Annex H to the Prosecution Closing Brief is a procedural synopsis of the case in narrative form.<sup>15</sup> The Prosecution argues that Annex H contains no factual or legal argument

<sup>11</sup> See Annex A, Line 10 (Exhibit P-219): "Letter – F-X Nsanzuwera Proc de la Republique to PROC GEN – dated 1 February 1994 – re-General insecurity in Kigali – complaining of INTERAHAMWE violence & vandalism, *particularly on 8 January 1994 in front of CND*" (Emphasis in original).

<sup>12</sup> Annex G to Prosecution Closing Brief (Prosecution Theory of the Case, *Restated*).

<sup>13</sup> Motion, para. 8.

<sup>14</sup> See, for example, footnote 3 from Annex G: "PTB, paras. 108, 110." Paragraphs 108 and 110 of the Pre-Trial Brief refer to the anticipated testimony of Prosecution Witnesses T, G, GFJ, and HH – all of whom testified before the Chamber in this case.

<sup>15</sup> Annex H to Prosecution Closing Brief (Overview of the Trial and Procedural Synopsis).

and that it is no different than the procedural summary contained in Édouard Karemera's closing brief as Annex 3.<sup>16</sup>

16. Even if the procedural summary of a case drafted in the Prosecution's own words does not risk being argumentative *per se*, Annex H is problematic because it sets forth the Prosecution's theory on how its Pre-Trial Brief and opening argument could be useful to the Chamber. Most notably, Annex H states: "In sum, the PTB provides context for the specific pleadings of the indictment and the opening statement emphasizes the arc and thrust of the case against the Accused. The Prosecution submits that the evidence that was actually adduced during the trial, both in direct-examination of Prosecution witnesses as well as in cross-examination of Defence witnesses, fully substantiates the accusations that were outlined at the very inception of the case."<sup>17</sup> It bears noting that the Practice Direction categorically disallows argumentative material, regardless of how obvious or frequent the arguments may be. Thus, the Chamber rejects Annex H because it violates Article 1.4(ii) of the Practice Direction.

17. Whether Édouard Karemera filed a procedural synopsis as an annex to his closing brief has no bearing on the legality of Annex H. In any event, the procedural history attached to Karemera's closing brief as Annex I does not violate the Practice Direction because, unlike the Prosecution's version, it does not highlight the utility of pretrial submissions for the Chamber. Instead, it is a brief, bullet-pointed synopsis containing only dates and events.

#### *Annex I*

18. Annex I to the Prosecution Closing Brief is a list of the adjudicated facts in this case. The Prosecution claims that Annex I does not contain factual or legal argument and was appended to facilitate cross-referencing for the reader.

19. While the Chamber appreciates the Prosecution's efforts to assist the readership of its closing brief, it emphasizes that this cannot come at the price of compliance with the Practice Direction. The Prosecution has chosen to highlight and label 23 adjudicated facts, which it considers related to sexual violence. Accordingly, Annex I is argumentative and the Chamber rejects it because it violates Article 1.4(ii) of the Practice Direction.

#### *Annex J*

20. Annex J is a list of all witnesses who testified in this case. It contains witness numbers, names, pseudonyms, and dates of testimony. Matthieu Ngirumpatse does not contest the

<sup>16</sup> Motion, para. 9. It appears that the Prosecution may have been referring to Annex I of Édouard Karemera's closing brief.

<sup>17</sup> Annex H to Prosecution Closing Brief, para. 5.

validity of this annex and the Chamber does not find that it contains any argumentative material. Therefore, Annex J does not violate the Practice Direction.

21. Accordingly, the Chamber rejects Annexes A-1 to the Prosecution Closing Brief. If the Prosecution so desires, it may refile non-argumentative versions of the annexes, which do not exceed the page limit set forth in Article 1.4(iii) of the Practice Direction within two working days of the date of this decision.

*Footnotes to the Closing Briefs of Matthieu Ngirumpatse and the Prosecution*

22. The Chamber has noticed disturbing irregularities in the footnotes to the closing briefs of Matthieu Ngirumpatse and the Prosecution.

23. Aside from doing their client a terrible disservice by filing footnotes that are virtually unintelligible and largely erroneous,<sup>18</sup> counsel for Matthieu Ngirumpatse have chosen to substitute periods for spaces in between the words in the footnotes. Where periods were not substituted for spaces, counsel for Ngirumpatse have eliminated spaces between punctuation marks and the following word. They have also eliminated all spaces between designations for name, date, page and line when referring to transcripts. The effect of these tactics is that Microsoft Word's word-count function counts each footnote as one word, regardless of how many words it actually contains. This is a premeditated and deliberate attempt to circumvent Article 1.3(iv) of the Practice Direction, which states that footnotes count towards the word limit for closing briefs. It is also a direct violation of a court order because the real word count for Ngirumpatse's footnotes elevates the total word count for the closing brief beyond the limit set forth in the Word Limit Decision.

24. The Prosecution has also chosen to manipulate the formatting of the footnotes to its closing brief by eliminating spaces between punctuation marks and the following word in nearly all of its footnotes that do not contain obvious narrative text. Additionally, the Prosecution has eliminated spaces between numbers and words and subsequent parenthesis marks. Finally, the Prosecution has substituted dashes for spaces between designations for date, month, and year when referring to transcripts. This tactic also cheats Microsoft Word's word-count function by causing it to count large clusters of words within footnotes as one word, regardless of how many words the cluster actually contains. Therefore, the Prosecution

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<sup>18</sup> The Language Services Section of the Tribunal ("LSS") is facing severe problems translating Matthieu Ngirumpatse's closing brief from French into English. By way of example, a recent report from LSS notes that in a span of only forty pages twenty footnotes are either incomprehensible or inaccurate, and ten paragraphs contain quotations that lack footnotes. Counsel for Ngirumpatse have also omitted pronouns and articles throughout the closing brief in another attempt to defy the word limit imposed by the Chamber. As a result, the meaning and force of their client's argument has been severely diluted.

has also carried out a premeditated and deliberate attempt to circumvent Article 1.3(iv) of the Practice Direction that directly violates the court order contained in the Word Limit Decision.


25. The Chamber is deeply troubled by the unprofessional behavior exhibited by Matthieu Ngirumpatse and the Prosecution in an attempt to gain an unfair advantage over their opponents in this case.

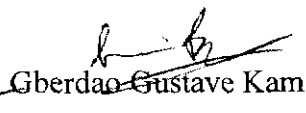
26. The Chamber has considered whether Édouard Karemera has suffered any prejudice as a result of these tactics. It does not find that Karemera has been prejudiced by Matthieu Ngirumpatse's closing brief because it fails to meet minimum linguistic and academic standards, and does not respect the integrity of the legal profession or this Tribunal. The Chamber does not consider that Karemera has been prejudiced by the Prosecution Closing Brief because Karemera was able to summarize his arguments well enough within the word limit that his available balance exceeds the amount of words by which the Prosecution surpassed the limit. Moreover, it is already apparent that the additional words the Prosecution secured for itself through its maneuvering will not afford it a substantive advantage of any sort.

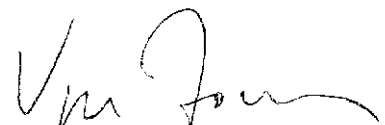
**FOR THE ABOVE REASONS, THE CHAMBER**

- I. GRANTS** Ngirumpatse's Motion in part;
- II. REJECTS** Annexes A-I to the Prosecution Closing Brief; and
- III. PERMITS** the Prosecution to refile non-argumentative versions of Annexes A-I, which, in conjunction with Annex J, do not exceed the page limit set forth in Article 1.4(iii) of the Practice Direction within two working days of the date of this decision.

Arusha, 17 June 2010, done in English.

  
Dennis C. M. Byron  
Presiding Judge

  
Gberdao-Gustave Kam  
Judge  
(in absentia)

  
Vagn Joensen  
Judge

[Seal of the Tribunal]

