

ICTR-98-44-AR11bis  
16-7-2007  
(1861/A - 1850/A)

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THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR RWANDA

CASE No. ICTR-98-44-AR73.10

IN THE APPEALS CHAMBER

Before: The Appeals Chamber

Registrar: Mr. Adama Dieng

Date Filed: 16 July 2007

THE PROSECUTOR

v.

EDOUARD KAREMERA,  
MATHIEU NGIRUMPATSE, and  
JOSEPH NZIRORERA

JUDICIAL RECORDS SECTION  
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JOSEPH NZIRORERA'S APPEAL FROM DECISION TO PROCEED  
IN THE ABSENCE OF THE ACCUSED

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The Office of the Prosecutor:

Mr. Don Webster  
Ms. Allayne Frankson-Wallace  
Mr. Iain Morley  
Ms. Gerda Visser  
Mr. Saidou N'Dow

Defence Counsel:

Mr. Peter Robinson  
Mr. Patrick Nimy Mayidika Ngimbi

Counsel for Co-Accused:

Ms. Dior Diagne Mbaye and Mr. Felix Sow for Edouard Karemera  
Ms. Chantal Hounkpatin and Mr. Frederick Weyl for Mathieu Ngirumpatse

1. Joseph Nzirorera respectfully appeals, pursuant to certification granted under Rule 73(B), from the decision of the Trial Chamber to proceed with the trial in his absence.

### **Procedural History**

2. The joint trial of Edouard Karemera, Mathieu Ngirumpaste, and Joseph Nzirorera began on 19 September 2005. The accused, all leaders of the ruling MRND party, are alleged to have engaged in a conspiracy and joint criminal enterprise to exterminate the Tutsi by, *inter alia*, training and arming the party's youth wing, the Interahamwe.<sup>1</sup>

3. On 25 June 2007, Jean Bosco Twahirwa, the 16<sup>th</sup> prosecution witness, commenced his testimony. He testified that in late 1993, firearms were imported from Romania by Mathieu Ngirumpaste and distributed to Interahamwe.<sup>2</sup> According to Twahirwa, the firearms were stored at a building owned by General Ndinliyimana in the Kimiruhura neighborhood in Kigali.<sup>3</sup> Other witnesses have identified this building as the MRND headquarters under the control of Mr. Nzirorera, the party's secretary general, and to seeing weapons there.<sup>4</sup>

4. On Wednesday, 27 June 2007, Mr. Nzirorera came to court and fell ill. He was taken to the UN health clinic, where he was immediately hooked up to an intravenous device and pronounced by the United Nations doctor to be unfit to attend his trial for the balance of the week.<sup>5</sup>

5. The Trial Chamber decided, over vigorous objection by Mr. Nzirorera, to continue the testimony of Witness Jean Bosco Twahirwa in the absence of Mr. Nzirorera.<sup>6</sup> On 28 June 2007, the proceedings continued in Mr. Nzirorera's absence, and Mr. Twahirwa was cross examined by counsel for the co-accused. Mr. Nzirorera's motion for stay of proceedings during his absence was denied, although his counsel's

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<sup>1</sup> Amended Indictment of 25 August 2005 @ paras. 14,24

<sup>2</sup> Transcript of 25 June 2007 @ 22

<sup>3</sup> Transcript of 25 June 2007 @ 23

<sup>4</sup> Transcript of 22 November 2006 @ 11-12; Exhibit P42 @ para. 8

<sup>5</sup> Transcript of 27 June 2007 @ 11,19

<sup>6</sup> Transcript of 27 June 2007 @ 11

own cross-examination was postponed until the following Monday when he could be present.<sup>7</sup>

6. On 11 July 2007, the Trial Chamber issued its written reasons for proceeding in the absence of the accused (the "Impugned Decision").<sup>8</sup> In the same decision, it granted certification to appeal, recognizing that the situation was likely to recur.

7. In the Impugned Decision, the Trial Chamber held that "hearing the testimony of a witness which goes to proof of matters other than the acts and conduct as charged in the indictment against the said accused, such as the alleged acts and conduct of the co-accused, in the absence of an accused who is unfit to attend his trial, does not materially and disproportionately impair his rights to be present at his trial."<sup>9</sup>

**Grounds of Appeal**

8. Mr. Nzirorera raises the following ground of appeal:

"The Trial Chamber erred in proceeding in the absence of an accused who wanted to attend his trial but was medically unfit to do so."

**Standard of Review**

9. The issue of whether a trial can proceed in the absence of an accused who wanted to attend his trial but was medically unfit to do so is reviewed as a decision relating to the general conduct of trial proceedings, and within the discretion of the Trial Chamber. A Trial Chamber's exercise of discretion may be reversed where it was based upon an incorrect interpretation of governing law, a patently incorrect conclusion of fact, or was so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.<sup>10</sup>

**Argument**

**I. The Right of the Accused to be Present at His Own Trial is an Important and Fundamental One**

10. Article 20(4) of the ICTR Statute provides in pertinent part:

In the determination of any charge against the accused pursuant

<sup>7</sup> Transcript of 28 June 2007 @ 1-3,7  
<sup>8</sup> *Decision on Joseph Nzirorera's Motion for Stay of Proceedings While he is Unfit to Attend Trial or Certification to Appeal* (11 July 2007)  
<sup>9</sup> Impugned Decision at para. 19  
<sup>10</sup> *Zigiranyirazo v Prosecutor*, No. ICTR-2001-73-AR73, *Decision on Interlocutory Appeal* (30 October 2006) at para. 9

to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:...

(d) To be tried in his or her presence..."

11. This provision was enacted after the United Nations Secretary-General had reported that:

"There is a widespread perception that trials *in absentia* should not be provided for in the statute, as this would not be consistent with Article 14 of the International Covenant on Civil and Political Rights, which provides that the accused shall be entitled to be tried in his presence."<sup>11</sup>

12. The Appeals Chamber has held that "the physical presence of an accused before the court, as a general rule, is one of the most basic and common precepts of a fair trial."<sup>12</sup>

13. The Appeals Chamber has also affirmed that the right to be tried in one's presence has been recognized as a fundamental right in international instruments such as the International Covenant on Civil and Political Rights<sup>13</sup>, the European Convention on the Protection of Human Rights and Fundamental Freedoms<sup>14</sup>, and the Statutes of the ICTY<sup>15</sup>, Special Court of Sierra Leone<sup>16</sup>, Serious Crimes Panels in East Timor<sup>17</sup>, and International Criminal Court.<sup>18</sup> The Appeals Chamber has also recognized that the right of an accused to be tried in his presence has a long history in the major national legal systems of the world.<sup>19</sup>

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<sup>11</sup> Report of the Secretary General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993) at para. 101

<sup>12</sup> *Zigiranyirazo v Prosecutor*, No. ICTR-2001-73-AR73, *Decision on Interlocutory Appeal* (30 October 2006) at para. 11

<sup>13</sup> Article 14

<sup>14</sup> Article 6(3)(c)

<sup>15</sup> Article 21(4)(d)

<sup>16</sup> Article 17(4)(d)

<sup>17</sup> Regulation 2000/30 s5

<sup>18</sup> Article 63(1)

<sup>19</sup> *Zigiranyirazo v Prosecutor*, No. ICTR-2001-73-AR73, *Decision on Interlocutory Appeal* (30 October 2006) at para. 12

## II. Qualifications on the Right to be Present Do Not Include Illness

14. Like most rights, the right to be present at one's trial is not absolute.<sup>20</sup> Rule 82 *bis*, entitled "Trial in the Absence of the Accused" provides that:

"If an accused refuses to appear before the Trial Chamber for trial, the Chamber may order that the trial proceed in the absence of the accused for so long as his refusal persists, provided that the Trial Chamber is satisfied that:

- (i) the accused has made his initial appearance under Rule 62;
- (ii) the Registrar has duly notified the accused that he is required to be present for trial;
- (iii) the interests of the accused are represented by counsel."

15. Rule 80(B) provides that "the Trial Chamber may order the removal of an accused from the proceedings and continue the proceedings in his absence if he has persisted in disruptive conduct following a warning that he may be removed."

16. The Appeals Chamber has held that:

"An accused person can waive or forfeit the right to be present at trial. For example, Rule 80(B) of the Rules allows a Trial Chamber to remove a persistently disruptive accused. Referring to the equivalent provision in the ICTY Rules, the Appeals Chamber observed that an accused's right to be present for his or her trial can be restricted 'on the basis of substantial trial disruptions.' In assessing a particular limitation on a statutory guarantee, the Appeals Chamber bears in mind the proportionality principle, pursuant to which any restriction of a fundamental right must be in service of a sufficiently important objective and must impair the right no more than is necessary to accomplish the objective. The explicit exception provided by Rule 80(B) and the ICTY Appeals Chamber's reference to 'substantial trial disruptions' provide a useful measure by which to assess other restrictions on the right to be present at trial."<sup>21</sup>

17. Therefore, the only permissible exceptions to the right of an accused to be present at his trial are those predicated on the doctrine of waiver or forfeiture—voluntary absence or absconding after his trial has begun, and forfeiture inferred from obstructionist conduct in the courtroom.

<sup>20</sup> *Zigiranyirazo v Prosecutor*, No. ICTR-2001-73-AR73, *Decision on Interlocutory Appeal* (30 October 2006) at para. 14

<sup>21</sup> *Zigiranyirazo v Prosecutor*, No. ICTR-2001-73-AR73, *Decision on Interlocutory Appeal* (30 October 2006) at para. 14

18. While other Trial Chambers have proceeded in the absence of an accused who refused to attend the proceedings<sup>22</sup>, upon an express waiver by an accused who was unable to attend<sup>23</sup>, or after the close of the accused's case<sup>24</sup>, the Trial Chamber in Mr. Nzirorera's case has the ignominious distinction of being the first Trial Chamber in the history of international criminal law to take testimony in the absence of an accused who wished to attend his trial, but was too ill to do so.

19. The Trial Chamber in the *Sesay* case at the Special Court of Sierra Leone specifically recognized that illness constituted just cause not to proceed in the absence of the accused.<sup>25</sup> In the case of *R v Jones* in the House of Lords of England and Wales, it was held that:

"If the absence of the defendant is attributable to involuntary illness or incapacity, it would very rarely, if ever, be right to exercise the discretion in favour of commencing the trial, at any rate unless the defendant is represented and asks that the trial should begin."<sup>26</sup>

20. In the United States, a trial can never proceed in the absence of an accused who is legitimately ill, even when he had voluntarily taken an overdose of drugs.<sup>27</sup>

21. Therefore, the Trial Chamber made an incorrect interpretation of governing law when it decided to continue the trial when Mr. Nzirorera wanted to be present and was unable to attend due to illness.

**III. The Trial Chamber Misapplied the Proportionality Principle**

22. The Trial Chamber justified proceeding in the absence of Mr. Nzirorera by the language in the Appeals Chamber decision in *Zigiranyirazo* that applied the proportionality principle to the right of the accused to be tried in his presence.<sup>28</sup>

<sup>22</sup> *Prosecutor v Barayagwiza*, No. ICTR-97-19-T, *Decision on Defence Counsel Motion to Withdraw* (2 November 2000); *Prosecutor v Sesay et al*, No. SCSL-2004-15-T, *Ruling on the Issue of the Refusal of the Accused Sesay and Kallon to Appear for their Trial* (19 January 2005)

<sup>23</sup> *Prosecutor v Simic*, No. IT-95-9/2-S, *Sentencing Judgement* (17 October 2002) at para. 8

<sup>24</sup> *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Nsengiyumva Motions to Call Doctors and to Recall Eight Witnesses* (19 April 2007) at para. 1

<sup>25</sup> *Prosecutor v Sesay et al*, No. SCSL-2004-15-T, *Ruling on the Issue of the Refusal of the Third Accused Augustine Gbao to Attend Hearing of the Special Court of Sierra Leone on 7 July 2004 and Succeeding Days* (13 July 2004)

<sup>26</sup> *R v Jones*, 1 A.C. 1 H.L. [2003]

<sup>27</sup> *United States v Latham*, 874 F.2d 852 (1<sup>st</sup> Cir. 1989)

<sup>28</sup> Impugned Decision at paras. 13 and 14

23. Mr. Nzirorera contends that the Trial Chamber misinterpreted the language of the *Zigiranyirazo* decision as a license to proceed in the absence of the accused, so long as he would not be *too* prejudiced by proceeding in his absence.

24. The Appeals Chamber in *Zigiranyirazo* was clear that restrictions on the right to be present at trial should only be imposed where an accused disrupts the trial or in other similar circumstances. It held that:

“The explicit exception provided by Rule 80(B) and the ICTY Appeals Chamber’s reference to ‘substantial trial disruptions’ provide a useful measure by which to assess other restrictions on the right to be present at trial.”<sup>29</sup>

25. The Trial Chamber therefore erred in continuing the trial in the absence of an accused who was genuinely ill and not engaged in voluntary disruption of the trial or other similar conduct.

26. The Trial Chamber seized upon the Appeals Chamber’s discussion in the *Zigiranyirazo* decision of alternatives to the procedure employed by the Trial Chamber and interpreted it as an opportunity to proceed in the absence of the accused if it balanced the prejudice to him against the benefits of an expeditious trial.<sup>30</sup>

27. This was error. The Appeals Chamber never sanctioned proceeding in the complete absence of the accused, but considered alternatives in which the accused might, under some circumstances, be required to participate in his trial via video-link. It ultimately concluded that no such circumstances existed in the *Zigiranyirazo* case and reversed the Trial Chamber’s decision.

28. If it was error in *Zigiranyirazo* to take testimony which an accused could observe by video-link next to his counsel, it is certainly error to take testimony in the total absence of Mr. Nzirorera.

29. If the Trial Chamber’s interpretation of the *Zigiranyirazo* decision is correct, it would completely vitiate the right of an accused to be present at his trial, relegating it to a discretionary call on the part of the Trial Chamber depending on the nature of the

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<sup>29</sup> *Zigiranyirazo v Prosecutor*, No. ICTR-2001-73-AR73, *Decision on Interlocutory Appeal* (30 October 2006) at para. 14

<sup>30</sup> Impugned Decision at para. 14

testimony, which party was examining the witness, and how far behind schedule the trial was.

30. Instead, if it were concerned with the expeditiousness of the trial in the face of illness of the accused which was likely to re-occur, the Trial Chamber should have considered other alternatives, such as severance of Mr. Nzirorera's case from that of his co-accused, as suggested by Mr. Nzirorera.<sup>31</sup>

31. Rule 81 provides that:

- “(A) In joint trials, each accused shall be accorded the same rights as if he were being tried separately.
- (B) The Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice.

32. By proceeding with testimony in the absence of Mr. Nzirorera on the theory that it went only to the acts and conduct of the co-accused Ngirumpatse, the Trial Chamber violated the principle set forth in Rule 81(A) that Mr. Nzirorera shall be accorded the same rights as if he were being tried separately. If Mr. Nzirorera were being tried separately, the Trial Chamber could not have proceeded in his absence on the same theory that the evidence was not being directed against him.

33. The Trial Chamber should have considered the remedy provided in Rule 81(B) of ordering a separate trial for Mr. Nzirorera to protect the interests of justice, rather than proceeding in his absence.<sup>32</sup>

34. Therefore, it is respectfully contended that the Trial Chamber erred in interpreting the proportionality principle from the Appeals Chamber decision in *Zigiranyirazo* as a green light by which it could proceed “full speed ahead” in the absence of the accused due to illness.

**IV. The Trial Chamber Made Up its Own Rule**

35. As noted above, the ICTR Rules make specific provision for proceeding in the absence of the accused in the case of a refusal to appear (Rule 82 *bis*) and obstructing the

<sup>31</sup> Transcript of 27 June 2007 @ 12

<sup>32</sup> It should be noted that the co-accused joined in Mr. Nzirorera's request that the trial not be continued in his absence. Transcript of 27 June 2007 @ 13-15

proceedings (Rule 80(B)). The Trial Chamber in Mr. Nzirorera's case made up its own rule by holding that it could proceed in the absence of the accused when the evidence did not go to his acts and conduct as charged in the indictment.<sup>33</sup>

36. Even assuming that the statutory right of the accused to be present at his trial could be legitimately diminished by provisions of the Rules of Procedure and Evidence, the Judges of the Tribunal, meeting twice a year in plenary session, have not seen fit to do so, other than in the case of refusal or obstruction. It was not for the Trial Chamber to make up such a rule on its own.

37. This is amply demonstrated by the Trial Chamber's reliance on Rule 92 *bis*. The decision to allow written statements in lieu of *viva voce* evidence was made by the Judges sitting in plenary session, not by a rogue Trial Chamber taking away rights of the accused by claiming to balance the interests of the accused against the need for an expeditious trial.

38. Therefore, even if the right of the accused to be present at his trial can be limited, given the presence of Rules 82 *bis* and 80(B) in the existing Rules, such limitations must come from amendments to the Rules, not *ad hoc* decisions of a Trial Chamber.

**V. The Trial Chamber's "Acts and Conduct" Exception to Article 20(4)(c) was Erroneous**

39. The Trial Chamber's reliance on Rule 92 *bis* was also misplaced in the Impugned Decision. It reasoned that because a written statement that does not go to the acts and conduct of the accused can be admitted at his trial, he need not be present when live testimony that does not go to the acts and conduct of the accused is heard.<sup>34</sup>

40. The Trial Chamber confused the right of an accused to confront witnesses with his right to be present at his trial. The former is subject to numerous exceptions, such as the admission of hearsay evidence. If the rights were coextensive, the accused need not be brought to court every time hearsay evidence is admitted in his trial.

41. Indeed, under the Trial Chamber's interpretation of Article 20(4)(d)'s right to be present, whenever evidence at the joint trial goes to something other than the acts and

<sup>33</sup> Impugned Decision at para. 19

<sup>34</sup> Impugned Decision at paras. 15-17

conduct of the accused, he can be left at the UN Detention Facility. In joint trials such as Mr. Nzirorera's, involving allegations of a nationwide joint criminal enterprise spanning a four year period, the accused could be relegated to making cameo appearances at his own trial, turning up only when his name is mentioned. Such a radical transformation of a criminal trial is unwarranted and unacceptable.

42. The Trial Chamber's reliance on Rule 92 *bis* was also misplaced because it ignored the provisions of Rule 92 *bis* (E), which allows a Trial Chamber to require the witness to appear for cross examination even if it decides to admit his written statement. As the Trial Chamber itself had recognized when earlier denying the prosecution's motion to admit statements of sexual assault victims under Rule 92 *bis*, even when not going to the acts and conduct of the accused, "cross-examination shall be granted if the statement touches upon a critical element of the prosecution's case, or goes to a live and important issue between the parties, as opposed to peripheral or marginally relevant issue."<sup>35</sup>

43. A Trial Chamber at the ICTY has held that "evidence of the conduct of forces under the command of the accused, or going to the existence and goal of the joint criminal enterprise, and effective control of the accused is so pivotal to the prosecution's case that cross-examination of witnesses on these facts is required."<sup>36</sup>

44. Another Trial Chamber at the ICTY very recently held that "when determining whether particular evidence goes to the acts and conduct of the accused, special consideration should be given to the special and sensitive situation posed by the charge of command responsibility where the evidence goes to the acts and conduct of the accused's immediately proximate subordinates—those subordinates from whose conduct it would be easy to infer that he knew or had reason to know."<sup>37</sup> The same reasoning

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<sup>35</sup> *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Prosecution Motion for Admission of Evidence of Rape and Sexual Assault Pursuant to Rule 92 bis of the Rules and Order for Reduction of Prosecution Witness List* (11 December 2006) at para. 16, citing *Prosecutor v. Milošević*, No. IT-02-54-T, *Decision on Prosecution's Request to have Written Statements Admitted Under Rule 92 bis* (21 March 2002) at para. 24

<sup>36</sup> *Prosecutor v Martić*, No. IT-95-11-T, *Decision on Prosecution's Motions for Admission of Written Evidence Pursuant to Rule 92 bis of the Rules* (16 January 2006) at paras. 29, 33

<sup>37</sup> *Prosecutor v Delić*, No. IT-04-83-PT, *Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 quarter* (9 July 2007) at page 5

must apply to the conduct of one's co-accused with whom one worked side-by-side on a regular basis.

45. The testimony of Jean Bosco Twahirwa, taken in the absence of Mr. Nzirorera, went to a live and important issue between the parties—the importation and distribution of weapons by MRND leaders to the Interahamwe—an allegation that Mr. Nzirorera vigorously denies.

46. Given the fact that the importation and distribution of weapons testified to by Twahirwa occurred when Mr. Ngirumpatse was President of the MRND and Mr. Nzirorera was Secretary-General, and that the weapons were said to be stored at the MRND building where Mr. Nzirorera was in charge, it can hardly be said that he was not concerned by that matter.

47. In addition, under the prosecution's joint criminal enterprise and conspiracy theories, Mr. Nzirorera can be convicted for the acts of Mr. Ngirumpatse if it is shown that they were in furtherance, or a foreseeable consequence of, the alleged agreement to exterminate the Tutsi.

48. Therefore, even if the Trial Chamber's analogy to Rule 92 *bis* was appropriate, the evidence taken during Mr. Nzirorera's absence could not have been admitted under that Rule without in court cross-examination for which Mr. Nzirorera would have a right to be present.

49. The Trial Chamber also erred in its analogy to Rule 94(B) pertaining to judicial notice of adjudicated facts.<sup>38</sup> In its own earlier decision on judicial notice of adjudicated facts, the Trial Chamber held as to acts implicating Juvenal Kajelijeli, an alleged subordinate and member of the joint criminal enterprise with Mr. Nzirorera, that:

“While judicial notice can be taken of acts and conducts of persons for which an accused is alleged to be responsible, the Chamber finds that Facts 19, 40, 50-53, 55-56, 60, 62 and 63 sought for admission are so proximate and central to the criminal responsibility of Joseph Nzirorera following the allegations pleaded in the Indictment that it would compromise the rights of the Accused if judicial notice was taken of these facts.”<sup>39</sup>

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<sup>38</sup> Impugned Decision at paras. 15-17

<sup>39</sup> Decision on Appeals Chamber Remand of Judicial Notice (11 December 2006) at para. 40

50. If the taking of judicial notice of the acts of Juvenal Kajelijeli would have compromised Mr. Nzirorera's rights, so too must the testimony of Jean Bosco Twahirwa as to the importation and distribution of weapons by the co-accused Mathieu Ngirumpatse.

51. Therefore, even if the Trial Chamber's analogy to Rule 94(B) was appropriate, the facts contained in the testimony which was taken in the absence of Mr. Nzirorera would not have qualified for judicial notice under Rule 94(B) and would have been required to have been presented orally in the presence of the accused.

### Conclusion

52. This is an important appeal for Mr. Nzirorera, and for international criminal law. The Trial Chamber's curtailment of Mr. Nzirorera's right to be present at his own trial was an unprecedented and dangerous violation of a timeless and fundamental right of an accused.

53. It is useful on this occasion to call attention to the words of Appeals Chamber Judge David Hunt in the *Milosevic* case:

"This Tribunal will not be judged by the number of convictions which it enters, or by the speed with which it concludes the Completion Strategy which the Security Council has endorsed, but by the fairness of its trials. The Majority Appeals Decision and others in which the Completion Strategy has been given priority over the rights of the accused will leave a spreading stain on this Tribunal's reputation."<sup>40</sup>

54. The decision of the Trial Chamber should be reversed.

Word count: 3517

Respectfully submitted,



PETER ROBINSON

Lead Counsel for Joseph Nzirorera

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<sup>40</sup> *Prosecutor v Milosevic*, No. IT-02-54-AR73.4, *Dissenting Opinion of Judge David Hunt on Admissibility in Evidence in Chief in the Form of Written Statement* (20 October 2003) at para. 22



# TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

**COURT MANAGEMENT SECTION**  
(Art. 27 of the Directive for the Registry)

## I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

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<b>Case Name:</b>	The Prosecutor vs. Joseph Nzirorera			<b>Case Number:</b> ICTR-98-44-AR73.10
<b>Dates:</b>	Transmitted: 14 July 2007		Document's date: 16 July 2007	
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## II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

**CMS SHALL** take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

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**INTERLOCUTORY APPEALS - PROOF OF SERVICE – BY FAX  
PREUVE DE NOTIFICATION - CHAMBRE D'APPEL – PAR FAX**

Date: <b>16/7/2007</b>	Case Name / affaire: <b>- Edouard KAREMERA - Joseph NZIRORERA - Mathieu NGIRUMPATSE</b>  Case No / no. de l'affaire: <b>ICTR-98-44-A</b>	
To: A:	Appeals Chamber Support Unit, The Hague: - Mr. Koffi Afande - Mr. Patrice Tchidimbo - Mr. Ramadhani T. Juma <input type="checkbox"/> Judge / Juge Fausto Pocar <input type="checkbox"/> Judge / Juge Mohamed Shahabuddeen <input type="checkbox"/> Judge / Juge Liu Daqun <input type="checkbox"/> Judge / Juge Theodor Meron <input type="checkbox"/> Judge / Juge Wolfgang Schomburg	
	<b>ACCUSED / DEFENSE</b> <input checked="" type="checkbox"/> Accused / Accusé <b>KAREMERA, NGIRUMPATSE, NZIRORERA</b> <small>see / voir CMS4</small> <input checked="" type="checkbox"/> Lead Counsel / Conseil Principal: <b>D. Diagne, C. Hounkpatin, P. Robinson</b> <input type="checkbox"/> In Arusha / à Arusha: <small>(see / voir CMS3)</small> <input type="checkbox"/> Fax: <input type="checkbox"/> Co-Counsel / Conseil Adjoint: <b>F. Sow, F. Weyl, P. Ngimbi</b> <input type="checkbox"/> Arusha <small>(see / voir CMS3)</small> <input type="checkbox"/> Fax: <b>OTP / BUREAU DU PROCUREUR</b> <input type="checkbox"/> Hassan Bubacar Jallow, Prosecutor <input type="checkbox"/> B. Majola, Deputy Prosecutor <input checked="" type="checkbox"/> <b>Don Webster</b> Senior Trial Attorney in charge of case: <small>(name)</small> <input type="checkbox"/> The Hague / La Haye <input type="checkbox"/> Arusha <small>(see / voir CMS3)</small> <input type="checkbox"/> Kigali	
From: De:	<input type="checkbox"/> JP. Fomété (Chief, CMS) <input type="checkbox"/> Matar Diop (Chief, JPU) <input checked="" type="checkbox"/> <b>C. Hometowu (TC III)</b> <input type="checkbox"/> F. A. Talon (Appeals/Team IV) <input type="checkbox"/> Other	
CC:	<input checked="" type="checkbox"/> Registrar <input type="checkbox"/> OLA, NY <input checked="" type="checkbox"/> Deputy Registrar <input type="checkbox"/> Press <input checked="" type="checkbox"/> ICTR Spokesperson <input checked="" type="checkbox"/> SAR <input type="checkbox"/> WVSS <input type="checkbox"/> DCDMS <input checked="" type="checkbox"/> CSS <input checked="" type="checkbox"/> SADR <input type="checkbox"/> Other	
Subject Objet:	<b>Kindly find attached the following documents / Veuillez trouver en annexe les documents suivants:</b>	
Documents name / titre du document	Date Filed / Date enregistrée	Pages
<b>JOSEPH NZIRORERA'S APPEAL FROM DECISION TO PROCEED IN THE ABSENCE OF THE ACCUSED</b>	<b>16/7/2007</b>	<b>12</b>

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