

ICTR-98-44-T
31-03-2008
(34482 - 34473)

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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA

CASE No. ICTR-98-44-T

IN TRIAL CHAMBER No. 3

Before: Judge Dennis C.M. Byron, Presiding
Judge G. Gustave Kam
Judge Vagn Joensen

Registrar: Mr. Adama Dieng

Date Filed: 31 March 2008

THE PROSECUTOR

v.

JOSEPH NZIRORERA

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JOSEPH NZIRORERA'S FIRST RULE 73 TER FILING

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 hereby makes this filing pursuant to Rule 73 *ter*, as ordered by the Trial Chamber in its *Reconsideration de la Decision du 27 Fevrier 2008 Relative a la Reprise du Proces et au Commencement de la Presentation des Moyens de Preuve a Decharge* (6 March 2008).

Admissions and Matters Not in Dispute

2. Rule 73 *ter* (C)(i) provides that the defence may be required to file “admissions by the parties and a statement of other matters which are not in dispute.”

3. There are no admissions or matters to which Mr. Nzirorera wishes to stipulate are not in dispute.

Statement of Contested Matters of Facts and Law

4. Rule 73 *ter* (C)(ii) provides that the defence may be required to file “a statement of contested matters of fact and law.”

5. At this stage, all matters of fact and law are contested. However, Mr. Nzirorera intends to file a comprehensive pre-defence brief prior to the commencement of his case which will set forth in detail the facts he expects to prove during his case.

List of Witnesses

6. Rule 73 *ter* (C)(iii) provides that the defence may be required to file a “list of witnesses the Defence intends to call.”

7. At the present time, Mr. Nzirorera is not in a position to provide a final list.

8. Before and during the prosecution case, the defence has conducted investigations in which it identified and contacted individuals with information about the allegations in the indictment and about the statements and testimony of prosecution witnesses.

9. When the prosecution case closed in December 2007, the defence had a list of over 350 potential defence witnesses.

10. Commencing on 2 January 2008, the defence has begun conducting missions to interview (or re-interview) and evaluate potential witnesses so that it may file the list required by Rule 73 *ter* (C)(iii).

11. In January 2008, lead counsel undertook a mission to Canada, within the United States, New Zealand, Singapore, and Dubai. Co-counsel and an investigator undertook a mission within several countries in Europe.

12. In February, 2008, lead counsel and an investigator undertook a three week mission to Rwanda. Co-counsel and the other investigator continued their mission in Europe.

13. In the first week of March, lead counsel and an investigator conducted a mission in Kenya. After the commencement of the trial was postponed, lead counsel returned to Rwanda and conducted a mission there. He is currently interviewing potential witnesses in Europe. Co-counsel returned to Brussels and is interviewing witnesses there. One investigator continues to interview witnesses in Rwanda, while the other investigator is concluding the interviews in Kenya.

14. These missions are scheduled to continue in the coming months. Lead Counsel will return to Arusha for the beginning of the trial session in April, and will then interview potential witnesses in West Africa in April. In May, he will interview potential witnesses in Southern Africa, as well as in Rwanda. In June, he will interview potential witnesses in the United States, as well as re-contact those witnesses who have expressed a reluctance to testify before seeking a subpoena for them.

15. Meanwhile, the investigator in Rwanda will continue to interview witnesses there.

16. When these missions are completed and lead counsel has knowledge of which potential witnesses are available to testify on various subjects, he will evaluate the defence case and select those witnesses to be called.

17. As soon as this process is completed, Mr. Nzirorera will make another Rule 73 *ter* filing and provide his final witness list to the Trial Chamber and parties. However, he is not in a position to do so at this time as he simply does not yet know who his witnesses will be.

18. By way of summary, Mr. Nzirorera can inform the Trial Chamber and parties that as of this writing his potential witness list can be broken down as follows:

Mukingo events:	49 witnesses ¹
Kigali events:	82 witnesses
Gisenyi events:	53 witnesses ²
Kibuye events:	5 witnesses ³
RPF witnesses:	5 witnesses ⁴
Adjudicated facts:	
Kajelijeli case:	14 witnesses
Semanza case:	52 witnesses
Niyitegeka and Ntakirutimana cases:	30 witnesses

¹ This number may be reduced after the testimony of Witness BTH during the week of 7 April 1994

² Pending ruling on *Joseph Nzirorera's Second Motion for Subpoena to Leon Mugesera* (3 March 2008).

³ This number may be increased slightly after the testimony of Witnesses AXA and BDW during the week of 7 April 1994.

⁴ Pending ruling on *Motion for Modification of Decision on Disclosure of RPF Witnesses* (18 February 2008) and *Application for Certification to Appeal Decision on Joseph Nzirorera's Motion for Subpoena to President Paul Kagame* (25 February 2008)

OTP employees: 10 witnesses⁵

19. Mr. Nzirorera expects his potential witness list to be substantially reduced once the process described above is completed. He notes that, in particular, the witnesses to be called to rebut the adjudicated facts for which judicial notice was taken have been given the lowest priority and therefore the "whittling down" process has not yet taken place for those witnesses.

20. In *Joseph Nzirorera's Current Projections for his Defence Case* (7 January 2008), Mr. Nzirorera estimated that he will call 180 live witnesses in his case, with an estimated duration of 180 trial days. He remains on track to meet those projections.

21. Mr. Nzirorera is not expected to commence his defence case until 2009. Therefore, there is no cogent reason why he should be required to file a final witness list one year in advance, even if he was able to do so.

22. The principle of equality of arms with the Karemera defence team does not compel such a result. Mr. Nzirorera has provided a copy of his rolling list of potential witnesses to the Karemera team in December 2007 and an updated list in March 2008. He invited the Karemera team to pick some witnesses for itself from his list, which it has done. Therefore, the Karemera team knows as much as the Nzirorera team does at this time about who are the likely witnesses for Mr. Nzirorera's case.

23. In addition, it would be contrary to the principle of equality of arms to require Mr. Nzirorera to disclose information about his potential witnesses to the prosecution one year in advance when such disclosure was not required of the Karemera team until 30

⁵ Pending ruling on *Joseph Nzirorera's Request for Admissions or Motion to Order Interviews of OTP Investigators and Interpreters* (11 February 2008)

days before it commences its case.⁶ Disclosure of the identity of prosecution witnesses was also not required until 30 days before the trial session at which the witness testified.⁷

24. Nevertheless, Mr. Nzirorera remains completely willing to assist the Trial Chamber in its management of the case by providing the Trial Chamber on a confidential *ex parte* basis, if requested, with whatever further details he can provide.

List of Exhibits

25. Rule 73 *ter* (C)(iv) provides that the defence may be required to file a “a list of exhibits the Defence intends to offer in its case.”

26. At the present time, Mr. Nzirorera is not in a position to provide such a list.

27. The list of exhibits is necessarily contingent on which witnesses are to be called.

28. Once the decision on calling witnesses has been made, the defence of Mr. Nzirorera will endeavor to obtain potential exhibits such as Rwandan judicial records which are not currently in its possession.

29. In addition, Mr. Nzirorera expects to use exhibits from the documents provided to the prosecution by the United States National Security Archives. The prosecution only disclosed these documents on 4 March 2008. There are approximately 5000 documents to review and select exhibits from.

30. Mr. Nzirorera is also in the process of obtaining access to the RPF Archives in Kigali and expects to obtain potential exhibits from that collection.

⁶ *Decision Relative a la Requete d'Edouard Karemera en vue d'une Ordonnance de Protection des Temoins a Decharge* (19 February 2008) at para. 7

⁷ *Order on Protective Measures for Prosecution Witnesses* (4 December 2004) at para. 12

31. As soon as this process is completed, Mr. Nzirorera will make another Rule 73 *ter* filing and provide his final exhibit list to the Trial Chamber and parties. However, he is not in a position to do so at this time.

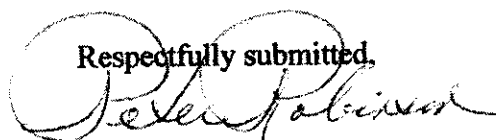
Opening Statement

32. Counsel for Mr. Nzirorera will be prepared to make a brief opening statement at the commencement of his case. He does not desire to make an opening statement at the commencement of the Karemera defence case.

Conclusion

33. Mr. Nzirorera wishes to assure the Trial Chamber that he will make the most comprehensive Rule 73 *ter* filing ever made on behalf of an accused person at this Tribunal and will do so well in advance of the commencement of his defence case.⁸ However, he is not yet in a position to do so. In this filing, he has endeavored to provide the Trial Chamber and the parties with as much information as he can at this stage of the proceedings.

Respectfully submitted,



PETER ROBINSON

Lead Counsel for Joseph Nzirorera

⁸ In Annex "A", he provides a draft table of contents for one section of his pre-defence brief (pertaining to Mukingo events) to give the Trial Chamber an idea of the kind of detail he plans to provide in advance of the commencement of his case. He cautions, however, that this particular section may be extensively revised after the recall of Witness BTH

ANNEX "A"

- I. Mukingo events**Error! Bookmark not defined.**
- A. Post 6 April 1994 Events Charged in the Indictment**Error! Bookmark not defined.**
1. Meeting of Authorities at Joseph Nzirorera's Mother's House on the Morning of 7 April 1994**Error! Bookmark not defined.**
 2. Nzirorera Communications with Interahamwe on the Morning of 7 April
Error! Bookmark not defined.
 3. Orders by Kajelijeli for the Killings in Mukingo Commune**Error! Bookmark not defined.**
 4. Nzirorera telephone calls to Mukingo Commune Office and Busengo .**Error! Bookmark not defined.**
 5. Nzirorera Role in Attack on Ruhengeri Court of Appeal.....**Error! Bookmark not defined.**
 6. Nzirorera Participation in 6 May 1994 Ruhengeri Pacification Meeting **Error! Bookmark not defined.**
 7. Swearing-in Ceremony for Kajelijeli and Passing-Out Ceremony **Error! Bookmark not defined.**
 8. Rapes in Mukingo Commune**Error! Bookmark not defined.**
- B. Pre 6 April 1994 Events Charged in the Indictment **Error! Bookmark not defined.**
1. Formation of the Interahamwe in Mukingo Commune . **Error! Bookmark not defined.**
 2. Meetings at Joseph Nzirorera's Mother's House **Error! Bookmark not defined.**
 3. Founding of the Amahindure.....**Error! Bookmark not defined.**
 4. Military Training in Mukingo Commune.....**Error! Bookmark not defined.**
 5. Distribution of Weapons in Mukingo Commune **Error! Bookmark not defined.**
 6. Distribution of Uniforms in Mukingo Commune..... **Error! Bookmark not defined.**
 7. Nzirorera Giving Isimbi Building to Interahamwe..... **Error! Bookmark not defined.**
- C. Superior Responsibility for Mukingo Events.....**Error! Bookmark not defined.**
- D. Post 6 April 1994 Events Admitted Outside the Indictment... **Error! Bookmark not defined.**
1. Meeting to Introduce New Prefet to Mukingo Population ...**Error! Bookmark not defined.**
 2. Election of Kajelijeli as Bourgmestre of Mukingo..... **Error! Bookmark not defined.**
- E. Pre 6 April 1994 Events Admitted Outside the Indictment..... **Error! Bookmark not defined.**
1. Attacking Leaders and Taking Down the Flags of Opposition Parties ... **Error! Bookmark not defined.**
 2. Issuance of Interahamwe Membership Cards in Mukingo ...**Error! Bookmark not defined.**
 3. Nzirorera Ordered Attack on Makoni.....**Error! Bookmark not defined.**
 4. Lists of Tutsis in Mukingo to be Killed.....**Error! Bookmark not defined.**

5. Nzirorera financed the Interahamwe of Mukingo **Error! Bookmark not defined.**
 6. Interahamwe attacks against Tutsis in 1992-93..... **Error! Bookmark not defined.**
- F. Facts Relating to the Credibility of Prosecution's Mukingo Witnesses **Error! Bookmark not defined.**
1. Witness BTH**Error! Bookmark not defined.**
 2. Witness GBU**Error! Bookmark not defined.**
 3. Witness ANU.....**Error! Bookmark not defined.**
 4. Witness GAV.....**Error! Bookmark not defined.**



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)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hornetowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input type="checkbox"/> Chamber (names)	<input checked="" type="checkbox"/> Defence Peter Robinson (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Joseph Nzirorera		Case Number: ICTR-98-44-T	
Dates:	Transmitted: 30 March 2008		Document's date: 31 March 2008	
No. of Pages:	9	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
Title of Document:	JOSEPH NZIRORERA'S FIRST RULE 73 ter FILING			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Confidential		<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
		<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
		<input type="checkbox"/> Submission from non-parties	<input checked="" type="checkbox"/> Submission from parties	
		<input type="checkbox"/> Accused particulars		

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.	
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and will not submit any translated version.	
<input type="checkbox"/> Reference material is provided in annex to facilitate translation.	
Target Language(s):	
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<input type="checkbox"/> Kinyarwanda	
CMS SHALL NOT take any action regarding translation.	
<input type="checkbox"/> Filing Party hereby submits BOTH the original and the translated version for filing, as follows:	
Original	in <input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Translation	in <input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
CMS SHALL NOT take any action regarding translation.	
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s):	
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<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:

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<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: