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ICTR-98-44-T
31-12-2009
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**-International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie

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IN TRIAL CHAMBER III

Before: Hon. Dennis C. M. Byron, Presiding
Hon. Gberdao Gustave Kam
Hon. Vagn Joensen

Registrar: Mr. Adama Dieng

Date Filed: 31 December 2009

JUDICIAL RECORDS ARCHIVES
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The PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

**Prosecution's Response to Joseph Nzirorera's
28th Notice of Rule 66(B) Violation**

For the Prosecutor:

Mr. Don Webster
Mr. Saidou N'Dow
Ms. Sunkarie Ballah-Conteh
Mr. Takeh Sendze
Mr. Eric Husketh

For the Accused:

Ms. Dior Diagne and Mr. Moussa Félix Sow *for Édouard Karemera*
Mr. Peter Robinson and Patrick Nimy Mayidika Ngimbi *for Joseph Nzirorera*
Ms. Chantal Hounkpatin and Mr. Frederick Weyl *for Mathieu Ngirumpatse*

1. Joseph Nzirorera made a Rule 66(B) inspection request by his letter to the Prosecutor of 29 October 2009. He later sought to clarify his request in a follow-up letter of 10 December 2009.
2. Initially Nzirorera requested inspection of, "... all documents obtained from the government of Rwanda, its agencies, departments, or subdivisions, or its Gacaca jurisdictions which deal with the following issues which are material to our defence ...", referring to an enumerated list of fourteen subjects. Afterwards, Nzirorera further clarified his request by listing over 80 "events" which should trigger his inspection request if they were mentioned in any documents held by the Prosecution.¹ Nzirorera also indicated that he would have more inspection requests, but that his letter of 29 October 2009 "... will get you [the Prosecution] started."²
3. The Prosecution responded to those letters on 15 December 2009. The entire correspondence is appended hereto in annexure.
4. In order to respond to Nzirorera's recent inspection request the undersigned Senior Trial Attorney met with staff members of the Information and Evidence Support Section (IESS) within the Office of the Prosecutor to assess the feasibility of compliance. After much extended, and repeated, internal discussion, the Office of the Prosecutor has determined that Nzirorera's recent inspection request is impermissively broad and cannot be satisfied. It also bears noting that the Prosecution has already afforded inspection of a large volume of materials over the last seven years, much of which would be duplicated in Nzirorera's recent requests. The Office of the Prosecutor has never resisted applications for inspection from the Defence and remains ready to comply with all reasonably practicable requests when they meet the appropriate legal standard, including the requirement of specificity.
5. To this end, and in order to facilitate and maximize the opportunities for the Defence to access relevant evidentiary materials held by the Prosecution, the Prosecutor has devised an electronic disclosure suite ["EDS"] which permits the Defence to review its IESS database from their home or office workstations. This EDS was initiated to comply with Rule 68(B), but also facilitates inspection under Rule 66(B). It contains folders of materials that are specifically targeted to the *Karemera et al.* trial, including a folder for Rule 66(B) materials. Indeed, despite the impracticable, overly broad inspection request from Nzirorera, the OTP IESS Section made good

¹ See letters of 29 October 2009 and 10 December 2009.

² See letter of 29 October 2009, at p. 2.

faith attempts to satisfy his recent request by posting additional relevant materials to the EDS in the specially marked Rule 66(B) folder.

Prosecutor's Opposition

6. Nzirorera's motion is baseless.

7. First of all, Nzirorera conflates his discussion of the Prosecutor's obligation to disclose exculpatory materials under Rule 68 with his present motion to compel inspection under Rule 66(B). This is inappropriate and confuses the issues. This Tribunal has already clearly articulated the legal standard for alleging violations of Rule 68 disclosure. Nzirorera has not met them. That portion of his motion is simply superfluous and should be disregarded.

8. The Prosecution invited the Lead Defence Counsel for Joseph Nzirorera to schedule an appointment for further discussion of his inspection request with a view to satisfying his request.³ The Nzirorera Defence team has never attempted to do so. Instead, it generated a series of correspondence in order to lay the ground work for its current motion.

9. As clearly stated in the letter that the Prosecution sent to Joseph Nzirorera, the Prosecution will continue to provide copies of certain materials to facilitate inspection, specifically referring to this Chamber's previous decisions of 17 April 2008 and 22 August 2008.⁴ Where the Prosecution affords inspection of "prior statements, judicial records and immigration records" of prospective Defence witnesses, it will do so by providing copies. However, the broad range of recent inspection requests will be satisfied by physical inspection on the premises of the Office of the Prosecutor or through EDS. The Prosecution will not undertake to copy and distribute hundreds of pages of additional materials.

³ See letter from STA Webster to Peter Robinson, dated 15 December 2009, which includes the following final paragraph:

My suggestion is that we schedule a Friday inspection session in our office at your earliest convenience. This will provide us with an opportunity to review your recent written requests of 29 October 2009 and 10 December 2009 and to devise a means of accomplishing the inspection to which you are entitled in a manner that is expeditious and to your satisfaction.

⁴ Ibid, at p.2, text corresponding to fn. 3:

You have already received copies of Rule 66(B) searches for prior statements, judicial records and immigration records of your prospective Defence witnesses, as previously ordered by Trial Chamber III. Any new materials that come into our possession that are subject to disclosure by the terms of Trial Chamber III's orders will be forwarded to you, just as we have done in the past.

10. As the Prosecution indicated in its letter to Nzirorera, this recent inspection request is simply too broad. Instead of delineating discreet *categories of documents*, Nzirorera lists certain *relevant subjects and events*, essentially delineating *substantive information* that he seeks, which he then suggests the Prosecution should search out and provide for him. This is simply impracticable and unwarranted under our jurisprudence. Should this Chamber deem any portion of Nzirorera's inspection request to have merit, the Chamber itself would have to better define its parameters in order to enforce it. Nzirorera's request, as currently articulated, is simply too broad and unspecified.

11. The EDS permits searches to be conducted for recently deposited materials. By filtering the search criteria, Nzirorera may conduct searches in the IESS database for materials that are added after a certain date, in which case his renewed searches can be directed to any recently obtained or deposited documents. This permits Nzirorera to search the OTP IESS database by subject matter, which seems to be his concern, and those searches may be tailored and restricted. In addition, where Nzirorera is able to refine his inspection request to *discreet categories of documents*, the Prosecution will attempt to comply with any reasonably practicable inspection request. That is simply not the case with Nzirorera's current request and motion. Nzirorera's current request does not even attempt to distinguish documents generated contemporaneously with the events of 1990-1994 from witness statements and second and third hand reports of events authored long after 1994 that were provided to the OTP by the Government of Rwanda.

12. Nzirorera also complains that EDS cannot be used to meet the Prosecution's obligations under Rule 66(B) because the Accused will not have direct access to it. This is incorrect. Where materials are deposited in a specially marked Rule 66(B) folder in the EDS, the Defence team may print out those specific materials and review them with the Accused. It is not suggested that the entire IESS database should be printed. Furthermore, where reasonably appropriate requests for inspection are made, the Prosecutor will assist the Defence by affording inspection on the physical premises of its office. Beyond that, the Defence may rely on the EDS.

13. As Nzirorera has not made any effort to schedule an appointment for inspection, his motion is baseless. Since it is wholly without merit, there can be no discussion of remedial measures, including his request for a delay in the resumption of the trial.

WHEREFORE the Prosecution submits that the Trial Chamber should deny Joseph Nzirorera's motion in its entirety.

Respectfully submitted

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Dated in Arusha, this 31st day of December 2009

For the Prosecutor:

for: Bianchi, Senior Appeal Counsel
Don Webster
Senior Trial Attorney

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ANNEX

Letters from Peter Robinson to STA Webster of 29 October 2009 and 10 December 2009, and STA Webster's response of 15 December 2009

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PETER ROBINSON
International Criminal Law
P.O. Box 1844
Santa Rosa, California 95402
(707) 575-0540
(208) 694-6161 (fax)
E-mail: peter@peterrobinson.com

29 October 2009

Mr. Don Webster
Senior Trial Attorney
International Criminal Tribunal for Rwanda
Arusha, Tanzania

Re: *Prosecutor v Joseph Nzirorera*
No. ICTR-98-44-T

Dear Don,

Pursuant to Rule 66(B), I hereby request inspection of the following documents:

All documents obtained from the government of Rwanda, its agencies, departments, or subdivisions, or its Gacaca jurisdictions which deal with the following issues which are material to our defence:

1. The acts and conduct of the Interahamwe in Kigali, Ruhengeri, Gisenyi, or Kibuye prefectures
2. Joseph Nzirorera's knowledge, notice, or responsibility for the acts of the Interahamwe
3. The existence of the Interahamwe in Kigali, Ruhengeri, Gisenyi, and Kibuye prior to the death of President Habyarimana
4. The fabrication of testimony against Joseph Nzirorera or any other ICTR detainee from Ruhengeri prefecture including Juvenal Kajelijeli, Casimir Bizimungu, Augustin Bizimungu, Jerome Bicamumpaka, or Ephrem Setako
5. Benefits offered to or provided to any person who has been listed as a prosecution witness in Mr. Nzirorera's case at any time.
6. Meetings of the MRND in Kigali, Ruhengeri, Gisenyi, or Kibuye at the prefecture or national level from 1992-94.
7. Meetings of any committees of the MRND in Kigali, Ruhengeri, Gisenyi, or Kibuye at the prefecture or communal level from 1992-94
8. Matters pertaining to the civil defence in Kigali, Ruhengeri, Gisenyi, or Kibuye at the national, prefectural or communal level from 1992-94

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9. Matters pertaining to military training and distribution of weapons to Interahamwe between 1992-94.
10. Matters pertaining to the MRND's position on the Arusha Accords and the establishment and swearing-in of the BBTG from 1992-94
11. Crimes committed by the RPF in Kigali, Ruhengeri, Gisenyi, or Kibuye during the time those areas were occupied by the Rwandan government in 1992-94.
12. Reports of activities of persons suspected of assisting the RPF in Kigali, Ruhengeri, Gisenyi or Kibuye prefectures between 1 October 1990 and 6 April 1994
13. Reports of security committees at the prefectural and communal level between 1992 and 1994 in Kigali, Ruhengeri, Gisenyi, and Kibuye communes.
14. Reports of all communal bodies in Mukingo commune and all prefectural bodies in Ruhengeri prefecture for the period 1992-94

I will have more requests, but this will get you started.

Thank you for your cooperation.

Respectfully submitted,



PETER ROBINSON

Lead Counsel for Joseph Nzirorera

cc: Judges and parties

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PETER ROBINSON
International Criminal Law
P.O. Box 1844
Santa Rosa, California 95402
(707) 575-0540
(208) 694-6161 (fax)
E-mail: peter@peterrobinson.com

10 December 2009

Mr. Don Webster
Senior Trial Attorney
International Criminal Tribunal for Rwanda
Arusha, Tanzania

Re: *Prosecutor v Joseph Nzirorera*
No. ICTR-98-44-T

Dear Don,

I am making a further effort to specify the items which are material to the defence of Joseph Nzirorera so as to be specific enough to trigger your disclosure obligations

Pursuant to Rule 66(B), I hereby request inspection of the following documents:

All documents in which the following events, which are material to our defence, are mentioned:

1. Ruhengeri events

- (A) The meeting at Nzirorera's Mother's House on 7 April
- (B) Mr. Nzirorera Communications with Interahamwe in Mukingo after the death of President Habyarimana
- (C) Juvenal Kajelijeli's Orders to Kill Tutsis in April 1994
- (D) Nzirorera Telephone Calls to Mukingo commune and Busengo sous prefecture in April 1994
- (E) The attack on the Ruhengeri Court of Appeal on 14 April 1994 and the arrest and release of suspected perpetrators that day
- (F) The 6 May 1994 Ruhengeri Pacification Meeting allegedly attended by Mr. Nzirorera
- (G) Juvenal Kajelijeli's Swearing-In Ceremony
- (H) Rapes in Mukingo Commune and Nzirorera's knowledge of them
- (I) The formation and existence of Interahamwe in Mukingo Commune
- (J) Meetings of authorities at Nzirorera's Mother's House between 1992-April 1994

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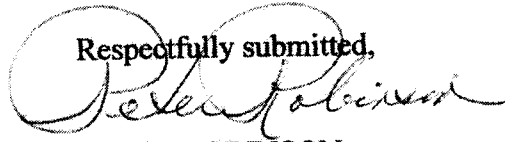
- (K) Founding of the Amahindure, including the timing and identity of those involved in its founding and operation
 - (L) Military Training in Mukingo Commune prior to the death of President Habyarimana
 - (M) Distribution of weapons in Mukingo commune prior to the death of President Habyarimana
 - (N) Distribution of MRND/Interahamwe Uniforms in Mukingo Commune
 - (O) Ownership and use of Isimbi Building in Mukingo commune
 - (P) Nzirorera's Superior Responsibility for Mukingo Events
 - (Q) April 1994 Meeting to Introduce New Prefet to Mukingo
 - (R) Election of Kajelijeli as Bourgmestre of Mukingo
 - (S) Youth of Mukingo actions in attacking Opposition Parties 1992-94
 - (T) Existence and distribution of Interahamwe Membership Cards in Mukingo
 - (U) Responsibility for Attacks on Makoni in Mukingo commune
 - (V) Creation and maintenance of lists of Tutsis in Mukingo to be Killed
 - (W) Financing the Interahamwe of Mukingo including maintenance of bank accounts
 - (X) Attacks Against Tutsis 1991-94 in Mukingo commune
 - (Y) Acts designed to fabricate evidence against Nzirorera in Ruhengeri prison
 - (Z) Witness GBU's rape of Witness GAY
 - (AA) Witness GAV's arrest, judicial case, and dispute with his brother and Juvenal Kajelijeli
2. Kibuye events
- (A) MRND rally in June 1993 at Gatwaro stadium
 - (B) Fabrication of documents and information by Witness BDW
3. National Events
- (A) Meeting of 7 April 1994 with MRND leaders and Colonel Bagosora
 - (B) Formation of Interim Government on 8 April 1994
 - (C) Nzirorera's Orders to and Control over Interahamwe in Kigali between 6 April and 13 July 1994
 - (D) Nzirorera's Meetings with Interahamwe at Diplomat Hotel on 9-12 April 1994
 - (E) Distribution of Weapons to Interahamwe in Kigali on 9-12 April 1994
 - (F) Killings in Kabeza on 7-12 April 1994
 - (G) Meeting of Prefets on 11 April 1994
 - (H) 19 April 1994 Speech of Sindikubabwo in Butare
 - (I) 27 April 1994 Instructions from Prime Minister
 - (J) Meeting in late April at Kigali Prefecture Office attended by Nzirorera, conseillers, and Interahamwe
 - (K) Establishment and operation of national Civil Defence Program after the death of President Habyarimana
 - (L) Rapes and Sexual Assaults in Kigali after the death of President Habyarimana and the responsibility of Nzirorera for that
 - (M) Existence of a Joint Criminal Enterprise to exterminate Tutsis

- (N) Formation and Expansion of the Interahamwe 1992-April 1994
 - (O) Military Training of the Interahamw from Kigali or Kibuye
 - (P) Distribution of Weapons to Interahamwe in Kigali
 - (Q) Composition and maintenance of lists of Tutsis to be Killed in Kigali
 - (R) Fundraising Meeting at Hotel Rebero for Interahamwe in February 1994
 - (S) 23 October 1993 MDR Rally at Nyamirambo Stadium
 - (T) 7 November 1993 MRND Rally at Nyamirambo Stadium
 - (U) 16 January 1994 MRND Rally at Nyamirambo Stadium
 - (V) Establishment of RTLM
 - (W) Identity of those responsible for Assassination of President Habyarimana
 - (X) Security Meetings at Kigali Prefecture Office in April 1994
 - (Y) Alleged 12 April 1994 Incitement at Nyabugogo Roadblock by Nzirorera
 - (Z) April 1994 MRND/Interahamwe Communiques
 - (AA) Presence of Witness HH in Murambi in April 1994
 - (BB) Efforts to Evacuate Refugees from Milles Collines Hotel in April-June 1994
 - (CC) MRND Meetings with Kigali Conseillers in 1992-April 1994
 - (DD) MRND Rally at Rwamagana
 - (EE) January 1994 Allegations by Jean-Pierre Turatsinze
 - (FF) MRND position and attitude on the Arusha Accords 1992-April 1994
 - (GG) MRND Cooperation with Military Plan to Exterminate Tutsis
 - (HH) March 1992 Events in Bugesera
 - (II) 28 May 1992 MRND March and Rally
 - (JJ) MRND/CDR Coalition
 - (KK) 15 November 1992 MRND Rally in Ruhengeri
 - (LL) 22 November 1992 Mugesera Speech at Kabaya
 - (MM) MRND/Interahamwe meetings attended by Ahmed Mbonnyunkiza
 - (NN) Existence of parallel committee of Interahamwe in Kigali 1992-94
 - (OO) Fabrication of evidence and collaboration of testimonies in Kigali central prison
4. Gisenyi Events
- (A) Kabuga Fund Raising Meeting of 25 April 1994
 - (B) Nzirorera Participation in Fundraising Meetings in June 1994
 - (C) October 1993 MRND Rally in Umuganda Stadium
 - (D) Nzirorera at Gisenyi Military Camp after death of President Habyarimana 327
 - (E) Nzirorera Distribution of Weapons in Gisenyi—April-July 1994
 - (F) Nzirorera acquisition of weapons after April 1994 via South Africa
 - (G) Nzirorera whereabouts from 6 April -13 July 1994
 - (H) Meetings at Butotori Camp in 1992-93
 - (I) Nzirorera 1993 Meetings at Meridian Hotel in Gisenyi with Interahamwe
 - (J) Nzirorera 1994 Distribution of Weapons at 42nd Battalion ceremony
 - (K) Witness ZF role in intercepting conversations on 7 April 1994
 - (L) Attacks at Mudende University April 1994

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Thank you very much for your cooperation.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Peter Robinson". The signature is written in black ink and is positioned above the printed name.

PETER ROBINSON

Lead Counsel for Joseph Nzirorera

cc: Judges and parties