ICTR-98-44-AR73.18
22-2-2010
(3321/A - 3300/A) 3321/A

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

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IN THE APPEALS CHAMBER

Before: **Judge Patrick Robinson**
Judge Fausto Pocar
Judge Liu Daqun
Judge Theodor Meron
Judge Carmel Aguis

Registrar: **Mr. Adama Dieng**

Date Filed: **22 February 2010**

The PROSECUTOR
v.
Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-AR-73.18

Prosecutor's Response to Joseph Nzirorera's Interlocutory Appeal of Trial Chamber III's Decision on 27th Rule 66 Violation

For the Prosecutor:
Mr. Don Webster
Mr. Saidou N'Dow
Ms. Sunkarie Ballah-Conteh
Mr. Takeh Sendze
Mr. Jean Baptist Nsanzimfura

For the Accused:
Mr. Peter Robinson and Mr. Patrick Nimy Mayidika Ngimbi *for Joseph Nzirorera*
Ms. Dior Diagne Mbaye and Mr. Félix Sow *for Édouard Karemera*
Ms. Chantal Hounkpatin and Mr. Frédéric Weyl *for Mathieu Ngirumpatse*

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PART I—NATURE OF THE APPEAL AND RESPONDENT'S POSITION

1. On 15 February 2010, Joseph Nzirorera, the Appellant, filed *Joseph Nzirorera's Appeal from Decision on 27th Rule 66 Violation*, pursuant to certification. The Appellant appeals from the Trial Chamber's oral decision of 24 November 2009, *Decision on Joseph Nzirorera's 27th Notice of Rule 66 Violation and Motion for Remedial and Punitive measures".*

2. The Prosecutor, the Respondent in this appeal, requests the Appeals Chamber to dismiss the appeal in its entirety because:

- The Trial Chamber did not make a discernible error by incorrectly interpreting the governing law. The Trial Chamber correctly applied the jurisprudence of the Appeals Chamber when it held that the "Karekezi" letter was not disclosable pursuant to Mr. Nzirorera's Rule 66(B) request of 14 June 2002 since the letter was not in the possession of the Prosecutor at the time that request was made;

- The Trial Chamber correctly exercised its discretion when it concluded that the Appellant's request pursuant to Rule 66(B) of the Rules of 29 October 2009 was not sufficiently specific to trigger inspection of the "Karekezi" letter. The Trial Chamber's exercise of its discretion was based on the correct interpretation of the jurisprudence emanating from the Appeals Chambers of this Tribunal.

PART II – PROCEDURAL BACKGROUND

3. By letter of 5 June 2002 the Lead Defence Counsel for Joseph Nzirorea made several requests for inspection of materials under Rule 66(B), specifically acknowledging that,

> ... I understand that I am requesting more than I may be entitled to under the Rules, and that some of the materials I am requesting may be available from other sources. Nevertheless, in order to avoid any further delays in my ability to prepare, I would greatly appreciate it if you would construe your discovery obligations liberally and cooperate with me as much as possible...[1]

4. Thereafter, on 14 June 2002, the Nzirorera Defence supplemented its previous written requests for inspection by adding the following item #64:

> 64. A copy, in electronic format if possible, of all documents furnished to the OTP by the government of Rwanda that is intended to be used by the Prosecution at trial, is material to the defence, is exculpatory, or affects the credibility of evidence to be offered by the Prosecution.

[1] See letter from Peter Robinson to Ken Fleming, dated 5 June 2002, included in Nzirorera's 26th Notice of Rule 66 Violation and 17th Notice of Rule 68 Violation: Witness 6, 27 October 2009, as Annex A.

5. The request under item 64, above, was made in relation to a collection of materials that the Prosecution expected to receive from the Government of Rwanda, as stated by STA Ken Fleming during a Status Conference held on 8 February 2002.[2]

6. In his letter of 14 June 2002, Lead Counsel for the Defence, Peter Robinson also provided a 12-point listing of criteria that was intended to inform the Prosecution of what types of information should be deemed "material to the preparation of the defence".[3] Two criteria from that listing are relevant for the present interlocutory appeal:

> (C) acts committed by members of the MRND party and whether Mr. Nzirorera planned, ordered, or otherwise aided and abetted those acts, or was responsible for them under Article 6(3);
>
> (D) acts committed by members of the Interahamwe and whether Mr. Nzirorera planned, ordered, or otherwise aided and abetted those acts, or was responsible for them under Article 6(3);[4]

7. Thereafter, on 4 December 2002, Nzirorera sought to compel inspection by filing his *Motion for Inspection of Items "Material to the Preparation of the Defence"* before Trial Chamber III.[5] The inspection request of 14 June 2002 was addressed in paragraph 12 of that motion.

8. By decision of 29 September 2003 Trial Chamber III held that,

> 14. ... The Chamber therefore considers that the request for an inspection of all Interahamwe-related documents and for all MRND-related documents should be granted in the sole respect of all official correspondence between the MRND Party directors and the Interahamwe officers and directors, during the period 1992 – 1994.
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> 15. Rule 66(B) of the Rules affords the Defence a right to inspect relevant documents. Upon inspection, the Defence may make all the copies of the documents it deems relevant to its preparation. If the Prosecutor opposes the copying of specific documents, the Defence may seize the Chamber for a ruling on this issue.[6]

9. Thereafter, the Prosecution afforded inspection of voluminous materials obtained from the Government of Rwanda, specifically its Ministry of Local Affairs and from the RPF Secretariat, by simply copying thousands of documents onto CD-ROMs and sending them to the Defence teams. Those disclosures were made on a routine basis, motivated in part by

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[2] See letter from Peter Robinson to Ken Fleming, dated 14 June 2002, included in Nzirorera's 27th Notice of Rule 66 Violation – Niyoyita, 23 November 2009, as Annex A.
[3] *Ibid*, at page 2 of Robinson's letter.
[4] *Ibid.*
[5] *Prosecutor v. Karemera et al.* Case No. ICTR-98-44, Joseph Nzirorera's Motion for Inspection of Items "Material to the Preparation of the Defence", 4 December 2002.
[6] See *Prosecutor v Karemera et al*, Case No. ICTR-98-44-T, Decision on the Defence Motion for Disclosure of Items Deemed Material to the Defence of the Accused, 29 September 2003. This decision, like the overwhelming bulk of decisions rendered by Trial Chamber III in the first, aborted *Karemera et al.* trial was vacated by decision of the Trial Chamber currently seized of the *Karemera et al.* trial.

requests from the various Defence teams, but not specifically tailored to Peter Robinson's inspection request of 14 June 2002. However, the massive disclosures were intended to comply with the Trial Chamber III decision of 29 September 2003 even after that decision was vacated by a reconstituted Trial Chamber in 2004 after the first *Karemera et al.* trial was aborted.[7]

10. Noting its authority to … exercise control over the presentation of evidence ... under Rule 90(F), a reconstituted Trial Chamber III ordered all of the parties in *Karemera et al.* to afford inspection of any documents intended to be used during their examinations and/or cross-examinations of witnesses by circulating copies thereof prior to commencing the examination of witnesses in court. This has become the routine practice for the retrial of *Karemera et al.* before Trial Chamber III.

11. The Nzirorera Defence team made another request for inspection by letter of 29 October 2009, seeking 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:
>
> 1. The acts and conduct of the Interahamwe in Kigali, Ruhengeri, Gisenyi, or Kibuye prefectures
> 3. The existence of the Interahamwe in Kigali, Ruhengeri, Gisenyi, and Kibuye prior to the death of President Habyarimana[8]

12. The letter from Aloys Karekezi, dated 30 November 1993, that forms the basis of Nzirorera's current interlocutory appeal was disclosed to the parties on 19 November 2009, prior to the Prosecution's cross-examination of Nzirorera's Defence witness, Jean-Damascene Niyoyita.[9]

13. The Nziroera Defence team objected to the Prosecution's use of the Aloys Karekeza letter to cross-examine Niyoyita, alleging that having failed to disclose the letter pursuant to Nzirorera's requests for inspection of 14 June 2002 and 29 October 2009, the Prosecutor violated Rule 66(B) and should be enjoined from using it to cross-examine witnesses.[10]

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[7] *Prosecutor v. Karemera et al.* Case No. ICTR-98-44, Decision on Joseph Nzirorera's Motion for Order Finding Prior Decisions to be of "no effect", 24 May 2005, para. 9

[8] *Prosecutor v. Karemera et al.* Case No. ICTR-98-44-T Joseph Nzirorera's Appeal From Decision on 27th Rule 66 Violation, 15 February 2010, at Annex "C".

[9] T. 19 November 2009, p. 22.

[10] T. 23 November 2009, pp. 1 – 2. See also Joseph Nzirorera's 27th Notice of rule 66 violation, 23 November 2009, and the Prosecution's Response to Joseph Nzirorera's 27th Notice of Rule 66(B) Violation – Niyoyita Document, 23 November 2009.

14. Trial Chamber III entertained oral arguments on the matter, allowing the parties' oral submissions to supplement their written filings, all of which transpired on the morning of 23 November 2009. [11]

15. By oral decision of 24 November 2009 Trial Chamber III denied Nzirorera's motion.[12] Nzirorera filed an application for certification to appeal the Chamber's adverse ruling.[13] The Prosecution opposed certification to appeal by written submission of 4 December 2009.[14] Thereafter, Trial Chamber III granted certification for interlocutory appeal in the following terms:

> 3. The Chamber, in the Impugned Decision, reiterated that **the Prosecution does not have an ongoing obligation to produce materials for inspection under Rule 66(B) pursuant to a request for the Defence which was made before the Prosecution came into possession of the material sought.** The Chamber further ruled that **the requests Nzirorera previously made could not have triggered an inspection obligation under this rule because the requests were not sufficiently specific.** Joseph Nzirorera contends that both holdings concerning disclosure under Rule 66(B) in the Impugned Decision are recurring and because of that they affect the fair and expeditious conduct of the proceedings ...
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> 4. The Chamber agrees ... [and] ... therefore, grants Nzirorera's application [emphasis added].[15]

PART III—DECISION UNDER APPEAL

16. In its decision dated 24 November 2009, the Trial Chamber refused to make a finding that the Prosecutor had violated his disclosure obligations under Rule 66(B) of the Rules of Procedure and Evidence. The impugned decision reads as follows.

> ... The Chamber recalls the Appeals Chamber's holding in a 25 September 2006 decision in *Bagosora et al* that Rule 66(B) disclosure obligations are only triggered by a sufficiently specific request by the Defence.
>
> Joseph Nzirorera argues that he made a sufficiently specific request to the Prosecution for disclosure of the document at issue in two letters dated 14 June 2002 and 29 October 2009. Joseph Nzirorera contends that his 14 June 2002 request is sufficiently specific because it requests a copy of all documents furnished to the Prosecution by the government of Rwanda that concern acts committed by members of the *Interahamwe* and whether Mr. Nzirorera planned, ordered or otherwise aided and abetted those acts or was responsible for them under Article 6(3).

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[11] T. 23 November 2009, pp. 1 – 12
[12] T. 24 November 2009, pp. 1 – 3
[13] *Prosecutor v. Karemera et al.* Case No. ICTR-98-44-T, Joseph Nzirorera's Application for Certification to Appeal Decision on 27th Rule 66 Violation, 1 December 2009
[14] *Prosecutor v. Karemera et al.* Case No. ICTR-98-44-T, Prosecutor's Response to Joseph Nzirorera's Application for Certification to Appeal the Decision on 27th Rule 66 Violation, 4 December 2009
[15] *Prosecutor v. Karemera et al.* Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Application for Certification to Appeal Decision on 27th Rule 66 Violation, 9 February 2010

However, the Prosecution has stated that it did not receive the "Karekezi" letter until October 2002. In the *Niyitegeka* judgment the Appeals Chamber held that something which is not in the possession of or accessible to the Prosecution cannot be subject to disclosure because no one is bound to an impossibility. Further, the Chamber has already stated in its oral decision of 28th October 2009 that a document which is not in the custody or control of the Prosecution when a Rule 66(B) request is made cannot be subject to inspection.

The Chamber reiterates that the Prosecution does not have an ongoing obligation under Rule 66(B) to disclose all information that comes into its custody or control regarding a request made at a particular moment in the past. Thus, the Chamber dismisses the 14th June 2002 request as irrelevant because it is clear that the "Karekezi" letter was not in the custody or control of the Prosecution at that time.

Concerning the 29th October 2009 request, Joseph Nzirorera contends that it is sufficiently specific because it requests all documents obtained from the government of Rwanda, its agencies, departments or subdivisions or its Gacaca jurisdictions, which deal with: (1) the acts and conduct of the *Interahamwe* in Kigali, Ruhengeri, Gisenyi or Kibuye *préfectures*; and (2) the existence of the *Interahamwe* in Kigali, Ruhengeri, Gisenyi or Kibuye *préfectures* prior to the death of President Habyarimana. The Chamber will consider whether this request satisfies the requirement of Rule 66(B) because it was made after the Prosecution came into possession of the "Karekezi" letter.

In the *Bagosora et al* decision, the Appeals Chamber noted that a request for documents related to the immigration, refugee and asylum status of certain defence witnesses constituted a precise category of documents, which was sufficiently specific to trigger a Rule 66(B) inspection by the Prosecution. While the current request does not concern immigration documents, the Chamber considers the degree of specificity accepted by the Appeals Chamber to be instructive.

The Chamber finds that Joseph Nzirorera's 29th October 2009 request for all documents furnished to the Prosecution by the Rwandan government which concern the acts and conducts -- conduct or existence of the *Interahamwe* in Kigali, Ruhengeri, Gisenyi or Kibuye *préfectures* is impermissibly broad because it arguably encompasses any document related to these *préfectures* which mentions the word "*Interahamwe*". The scope of this request far exceeds the degree of specificity that was accepted by the Appeals Chamber in its *Bagosora et al* decision. The Chamber considers that Nzirorera has many options available to him for tailoring his requests to match the degree of specificity required by Rule 66(B).[16]

PART IIII—STANDARD OF REVIEW

17. The Appeals Chamber has held that matters relating to the applicability of Rule 66(B) of the Rules relates to the general conduct of the proceedings, as such these matters fall within the discretion of the Trial Chamber.[17] The Appeals Chamber has also previously held

[16] T. 24 November 2009, pp. 1 – 3

[17] *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41*AR73*, Decision on Interlocutory Appeal relating to Disclosure Under Rule 66(B) of the Tribunal's Rules of Procedure and Evidence, 25 September 2006, para. 6

that discretionary matters are decisions to which the Appeals Chamber must accord deference.[18]

18. The Trial Chamber's exercise of discretion in the decision under appeal may only be reversed if it is demonstrated that: (i) the Trial Chamber made a discernible error because the decision was based on an incorrect interpretation of governing law; (ii) on a patently incorrect conclusion of fact; (iii) or because it was so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.[19] The Appellant relies only on the first part of this 3-part disjunctive test.[20]

PART V—RESPONSE TO APPELLANT'S ISSUES

A. The Trial Chamber did not err by not placing the burden of proof on the Prosecutor to show that he was not in possession of the "Karekezi" document when the Appellant made his request pursuant to Rule 66(B) on 14 June 2002. The Trial Chamber correctly interpreted the governing law with respect to the application of Rule 66 (B) to documents not in the Prosecutor's possession.

19. The Appellant claims that the Trial Chamber erred in failing to require that the Prosecutor establish that the document was not in his possession in June 2002 when the Appellant made his first request. The logic of the Appellant's position is flawed. Contrary to the Appellant's contention, the burden of proof is on the Appellant to make a showing that the document in question was actually in the Prosecutor's possession at the time of his Rule 66(B) request of June 2002. The Trial Chamber correctly interpreted and applied the binding jurisprudence of this Appeals Chamber.

20. The Appeals Chamber has found that for a Trial Chamber to order inspection of documents considered material to the defence case, the Defence must firstly demonstrate that the material sought is in the custody or control of the Prosecutor.[21] It follows logically that the party alleging that there has been a violation of this Rule is required to make a showing

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[18] *See Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.10, Decision on Nzirorera's Interlocutory Appeal Concerning his Right to be Present at Trial (AC), 5 October 2007, para. 7; *Prosecutor v. Élie Ndayambaje et al.*, Case No. ICTR-98-42-AR73, Decision on Joseph Kanyabashi's Appeals against the Decision of Trial Chamber II of 21 March 2007 concerning the Dismissal of Motions to Vary his Witness List (AC), 21 August 2007

[19] *See Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.10, Decision on Nzirorera's Interlocutory Appeal Concerning his Right to be Present at Trial (AC), 5 October 2007, para. 7; *Prosecutor v. Élie Ndayambaje et al.*, Case No. ICTR-98-42-AR73, Decision on Joseph Kanyabashi's Appeals against the Decision of Trial Chamber II of 21 March 2007 concerning the Dismissal of Motions to Vary his Witness List (AC), 21 August 2007, para.10; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.11, Decision on the Prosecution's Interlocutory Appeal Concerning Disclosure Obligations (AC), 23 Jan 2008, para. 7

[20] *Prosecutor v. Karemera et al.* Case No. ICTR-98-44, Joseph Nzirorera's Appeal of Decision on Admission of Evidence Rebutting Adjudicated Facts, (30 March 2009), paras. 16,17

[21] *Prosecutor v. Karemera et al.*, ICTR-98-44*AR73*, Decision on the Prosecution's Interlocutory Appeal Concerning Disclosure Obligations, 23 January 2008, para.12

that the documents requested were in the Prosecutor's possession at the time of the request. This is the position that has been taken by the Trial Chamber in relation to the rules governing disclosure.

21. Trial Chamber III has previously stated with regards to Rule 68 of the Rules that, "if the defence claims that the obligation to disclose exculpatory material has been violated it must... establish that it [the material] is in the custody and control of the Prosecutor". It follows that this reasoning should apply to Rule 66(B) despite the fact that the Rule does not govern disclosure, but rather inspection.

22. The Respondent recalls that he actually provided the Chamber with evidence that he was not in possession of the "Karekezi" letter at the time the Appellant made his Rule 66(B) request.[22] As such, the Trial Chamber correctly applied the Appeals Chamber judgment in the *Niyitegeka* case, in which the Appeals Chamber stated that "something which is not in the possession of or accessible to the Prosecution cannot be subject to disclosure because no one is bound to an impossibility."[23] The Trial Chamber also correctly maintained its position that a document which is not in the custody or control of the Prosecution when a Rule 66(B) request is made can not be subject to inspection.[24]

23. The Appellant alleges that the statement in question could have been amongst a large amount of material that was received by the Prosecutor from the Rwandan Government sometime in February 2002, but which was only formally entered into its database in October 2002 because it could have taken a very long time for the OTP to process it.[25] This is pure speculation on Nzirorera's part and cannot be the basis for serous consideration by the Appeal Chamber. A cursory perusal of the transcripts of the Status Conference of 8 February 2002 clearly indicates that the material was not in the Prosecutor's custody or control when STA Fleming discussed it on 8 February 2002.[26] Putting aside the issue of

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[22] See T. 23 November 2009, pp. 3, 4. The Senior Trial Attorney for the Prosecutor presented the Trial Chamber with a printout from the Prosecutor's evidentiary database which indicates that the "Karekezi" document was entered into that database on 9 October 2002. A copy of that print-out is appended hereto as Annex A.

[23] *Prosecutor v. Eliezer Niyitegeka*, Case No. ICTR-96-14-A, Appeals Chamber Judgment, 9 July 2004, p.13, para. 35

[24] *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, T. 28 October 2009, p. 2

[25] Prosecutor v. Karemera et al., Joseph Nzirorera's Appeal From Decision on 27th Rule 66 Violation, 15 February 2010, para. 10.

[26] Immediately following the excerpt of Ken Fleming's statement that was incorporated in Peter Robinson's letter of 14 June 2002 is the following exchange between the Presiding Judge and STA Fleming:

> MADAM PRESIDENT:
> Mr. Fleming, how do you mean disclosed to you? The material is now in the possession of the Prosecution?
> MR. FLEMING:
> No, Your Honours. It is not in the possession of the Prosecution. It is in the possession of the Rwandan Government. Just what will happen from here I can't tell the Court now. I will attempt to obtain answers but I don't have these answers presently.

whether Nzirorera's inspection requests of June 2002 met the required thresholds of specificity and materiality, it is incumbent upon the party alleging the violation to demonstrate that the "Karekezi" letter was in the Prosecutor's custody in order to make out a *prima facie* case of Rule 66(B) violation.

24. The Respondent stresses that he discharges his obligations under the Rules with good faith, as is the presumption.[27] The Appellant's assertion that the Prosecutor seeks to "ambush" him by deliberately withholding documents that should have been disclosed is completely untenable.

B. The Trial Chamber did not make a discernable error when it stated that the Prosecutor does not have a continuing obligation to afford inspection of all items that come into its possession after a request has been made and satisfied.

25. The Appellant maintains that the Trial Chamber's ruling that, "... the Prosecution does not have an ongoing obligation under Rule 66(B) to disclose all information that comes into its custody or control regarding a request made at a particular moment in the past", amounts to a correct application of the governing law. The Appellant suggests that the Trial Chamber erred by not considering the application of Rule 67(D), which provides for a continuing obligation of disclosure upon the parties when it states that "if either party discovers additional evidence or information or material which should have been produced earlier pursuant to the Rules, that party shall promptly notify the other party and the Trial Chamber of the existence of the additional evidence or information or material".

26. The Respondent submits that the Appellant has confused the *inspection* afforded under Rule 66(B) with *disclosures* that the Prosecutor is required to make by Rule 66(A) and Rule 68(A) and for which Rule 67(D) is applicable. They are two separate regimes. Disclosure imposes an affirmative obligation on the Prosecutor to locate material, copy it and give the copy to the Defence. Under Rule 66(B), the Prosecutor will permit the Accused to conduct *physical inspection* of certain materials in the Prosecutor's custody and control that may be material to the preparation of his Defence if and when the Accused identifies such materials with sufficient particularity. To expedite and facilitate the *process of inspection*, the Prosecutor usually discloses the material by providing copies of the relevant documents to the Defence.

27. The Respondent submits that *inspection* under Rule 66(B) and *disclosure* under Rules 66(A) and 68 are not co-extensive. They are different regimes. Rule 67(D) applies to the

[27] *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44, 25 October 2007, Decision on Nzirorera's Notices of Rule 68 violations Motions for Remedial and Punitive Measures, at para. 5. The Trial Chamber states that "the Prosecutor is generally presumed to discharge his obligations under Rule 68 in good faith".

Prosecutor's disclosure obligations. Because the Prosecutor has facilitated the process of inspection by forwarding copies of documents to the Defence, the Appellant now wishes to seize upon this courtesy to extend the Prosecutor's ongoing *disclosure* obligation to a Defence request for *inspection.*

28. The Trial Chambers of this Tribunal have also made a distinction between the Prosecutor's disclosure obligations and his obligation to permit inspection under Rule 66(B). Trial Chamber II has previously stated that "[a] plain reading of the sub-rule shows that the Prosecutor is obliged, subject to sub-rule (C), to permit the defence to inspect the items enumerated, and is not obliged to disclose them pursuant to the sub-rule".[28]

29. The Appellant may well recall that the parties in this trial confronted this very issue during the first, aborted *Karemera et al.* trial when the previous Trial Chamber seized of this case held that, "... Rule 66(B) affords the defence the right to inspect relevant documents. Upon inspection, the defence ***may make all the copies*** of the documents it deems relevant to its preparation. If the prosecutor ***opposes the copying*** of specific documents, the defence ***may seize the Chamber for a ruling*** on the issue [emphasis added]". [29]

30. It is clear, however, that this is a novel issue, not yet specifically addressed by the Appeals Chamber of this Tribunal. The jurisprudence put forward by the Appellant to support his contention that the Prosecutor has an *ongoing* obligation to search for, monitor and disclose materials encompassed by a prior request for *inspection* under Rule 66(B) does not adequately or clearly support his arguments. [30]

31. The Respondent maintains that the applicability of Rule 67(D) is, and should be, limited to the Prosecutor's *disclosure* obligations, and would not extend to the Prosecutor's affordance of inspection under Rule 66(B), which, given a plain reading, reasonably anticipates *physical inspection.* Clearly, the Prosecution cannot afford physical inspection of materials not within its custody or control.

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[28] *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Arséne Ntahobali's Motion for Disclosure of Documents, 31 January 2006, para. 22

[29] *Prosecutor v. Karemera et al*, Case No. ICTR-98-44-PT, Decision on the Defence Motion for Disclosure of Items Deemed Material to the Defence of the Accused, 29 September 2003, at para. 15. The decision retraces the extended motion practice between the Nzirorera Defence team and the Office of the Prosecutor in relation to its voluminous pre-trial disclosure requests at paras. 1 – 7. After lengthy discussion of each disclosure request, the Trial Chamber ordered the Prosecutor to authorize the Defence to inspect all official correspondence between the MRND Party director and the Interahamwe officers and directors, during the period 1992 – 1994; and dismissed the Motion in all other respects.

[30] *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-T, Trial Chamber's Order Clarifying Proper Late Disclosure Procedure under Rule 67(C) and / or Other Appropriate Sanction, 7 November 2007

32. Should this reasoning fail to persuade the Appeal Chamber, the Prosecution maintains that Rule 67(D) could only be applicable to the extent that the *original* Rule 66(B) inspection request could be subject to enforcement. If inspection under Rule 66(B) could not have been compelled when the original request was made in June 2002 because the request did not meet the "specificity" or "materiality" thresholds for enforcement, then the "Karekezi" letter could not have been subject to disclosure under rule 67(D) when *subsequently acquired* by the Prosecution in October 2002.

33. The Prosecution submits that Joseph Nzirorera's request to inspect "all documents furnished to the OTP by the government of Rwanda" that pertain to "... the acts and conduct of the members of (i) the MRND party or (ii) the Interahamwe, and whether Mr. Nzirorera planned, ordered, or otherwise aided and abetted those acts, or was responsible for them under Article 6(3)" is not a *discreet category* of documents. The request is impermissibly broad. There is no mention made of the *types* of documents requested, or whether Nzirorera is requesting documents generated contemporaneously with events during the period 1990-1994 or after the events at issue. The request could feasibly include witness statements, judicial records, hearsay accounts, post-1994 government reports and analyses, and virtually any document that mentions the words "MRND" or "Interahamwe". Indeed, the request is structured in a way that would require the Prosecution to review all documentation that it has ever received from the Government of Rwanda to ensure compliance.

34. This is not the type of request that constitutes "a precise category of documents" which triggers Rule 66(B); this is a broad and wide-ranging request for substantive information rather than a request to inspect discrete categories of documents, as the jurisprudence requires. This inspection request from June 2002 is even broader, and less amenable to reasonable definition or enforcement, than Nzirorera's subsequent inspection request of October 2009. As such, further discussion of it here would be redundant. The Prosecution will simply rely on its discussion of the October 2009 inspection request to support its argument that the Chamber applied the appropriate legal standard in its exercise of discretion.

35. Based on the reasoning set forth above, Trial Chamber III did not make a discernable error when it stated that a document which is not in the custody or control of the Prosecution when a Rule 66(B) request is made cannot be subject to inspection. Rule 67(D) cannot conceivably trigger a Rule 66(B) request for inspection of materials that were not in the Prosecutor's custody when the initial request was made. This is all the more so when that initial Rule 66(B) inspection request is defective for lack of "specificity".

C. The Trial Chamber's ruling that the request of October 2009 lacked the required specificity did not constitute an abuse of the Chamber's discretion and was based on the correct application of the governing law.

36. The Appellant argues that the Trial Chamber's decision of 24 November 2009 should be reversed on the ground that the Chamber incorrectly applied the governing law when it held that the Appellant's Rule 66(B) request of 29 October 2009 was too broad to trigger the Prosecutor's obligation to afford inspection under the Rule. The Respondent asserts that the Appellant's contention is unsustainable. The Chamber's exercise of its discretion with respect to the level of specificity required by Rule 66(B) in this case was based on a fair and reasonable application of the standard enunciated in the Appeals Chamber's decision in the *Bagosora* case.[31] Moreover, "…[t]he Trial Chamber is the appropriate authority to make this case specific assessment in the first instance under the appropriate standard".[32]

37. Additionally, the Appellant's assertions that the Respondent has interpreted its disclosure obligations very narrowly throughout this case, such that disclosure has become a "carnival game" in which the Appellant is expected to participate with blind folds over his eyes, is farcical. It is not the Prosecutor, but the Trial Chamber and the Appeals Chamber, that have interpreted the Rules with regards to the Prosecutor's disclosure obligations. One should note that, contrary to the Appellants contention, the Prosecutor's disclosure obligations have constantly been interpreted broadly. The Appeals Chamber of this Tribunal has stated that it routinely construes the Prosecutor's disclosure obligations under the Rules broadly in accord with their plain meaning.[33] The Prosecutor consistently endeavors to execute his disclosure obligations in good faith and within the ambits of the Rules and the jurisprudence.

38. Even with the broad interpretation of the Rules governing the Prosecutor's disclosure obligations, the Appeals Chamber has affirmed that Rule 66(B) is only triggered by a sufficiently specific request by the Defence.[34] In its deliberations, regarding the level of specificity required for the Appellant's request to have triggered a Rule 66(B) obligation on the part of the Prosecutor, the Trial Chamber relied on the jurisprudence emanating from the Appeals Chamber in the *Bagosora* case, which seems to have established the standard.[35]

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[31] *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41*AR73*, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66 (B) of the Tribunal's Rules of Procedure and Evidence, 25 September 2006,
[32] *Ibid*, para. 9
[33] *Ibid*, para. 8
[34] *Ibid*, para. 10
[35] *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41*AR73*, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66 (B) of the Tribunal's Rules of Procedure and Evidence, 25 September 2006

There the Appeals Chamber considered that a request for documents relating to the immigration, refugee and asylum status of certain Defence witnesses constituted a precise category of documents and would generate an obligation on the Prosecutor to make such documents available to the defence for inspection.

39. The Appeals Chamber was careful to note that its "plain reading of Rule 66 (B)" did "not create a broad affirmative obligation on the Prosecution to disclose any and all documents which may be relevant to its cross-examination … Rule 66 (B) is only triggered by a sufficiently specific request by the defence".[36] In that case, the Appeals Chamber stated that "immigration-related material, admittedly in the possession of the Prosecution" was sufficiently specific.[37] The overriding concern that seems to have motivated the Appeal Chamber's reasoning was to enhance the capacity of the Accused to make a final selection of witnesses to be called to testify in his Defence.

40. The Appeals Chamber has also determined that requests to inspect prior recorded statements from prospective Defence witnesses are also within the scope of documents to be disclosed under 66(B) of the Rules.[38]

41. The Appeals Chamber left the timing of inspection to the discretion of the Trial Chamber, but noted that where the requested materials are intended to assist the Defence in selecting its witnesses, disclosure at the time of cross-examination would not be sufficient.[39]

42. The Trial Chamber seized of the *Zigiranyirazo* case applied this standard when faced with Defence motions challenging the Prosecution's resistance to its inspection requests.[40]

43. The Appellant's request of 29 October 2009 sought inspection of "all documents obtained from the Government of Rwanda, its agencies, departments, or subdivisions, or its Gacaca jurisdictions that deal with the following issues and are material to his defence: a) the *acts and conduct of the Interahamwe* in Kigali, Ruhengeri, Gisenyi, or Kibuye prefectures; and b) the *existence of the Interahamwe* in Kigali, Ruhengeri, Gisenyi, and Kibuye prior to the death of President Habyarimana".[41] The Trial Chamber applied the correct legal standard when it concluded that the request far exceeded the level of specificity that was accepted by

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[36] *Ibid.*, para. 10.
[37] *Ibid.*
[38] *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-*AR73.11*, Decision on the Prosecution's Interlocutory Appeal Concerning Disclosure Obligations, 23 January 2008, para.12, Prosecutor v. Georges Rutaganda, Case No. ICTR-96-3-A, T. 4 July 2002, p.18
[39] *Ibid.*, para. 12.
[40] *Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on Defence Motion for Disclosure under Rule 66(B) of the Rules, 21 February 2007.
[41] *Prosecutor v. Karemera et al.* Case No. ICTR-98-44, See Joseph Nzirorera's Appeal form Decision on 27th Rule 66 Violation, 15 February 2010, at Annex "C".

the Appeals Chamber in *Bagosora*, as it encompasses any document pertaining to the said regions in which the word "Interahamwe" is mentioned.[42] As the Interahamwe were predominant in Kigali, Gisenyi and Ruhengeri, most "Interahamwe"-related documents would originate from or mention those regions. Consequently, it should be expected that thousands of documents could conceivably mention the acts and conduct of the Interahamwe, whether criminal or non-criminal, or the very existence of the Interahamwe prior to 6 April 1994. Undeniably, any document that mentions the word "Interahamwe" would fall within the ambit of the impugned request. It would be impossible for the Prosecutor to conduct a targeted search on the basis of the Appellant's request of 29 November 2009.

44. The diffuse and non-specific nature of the Appellant's inspection request cannot be satisfied by identifying a discreet category of documents; clearly, this request for inspection is simply a means by which Nzirorera seeks to obligate the Prosecution to provide access to its entire evidentiary database and to make the Prosecution responsible for culling and analyzing information on his behalf. As a practical matter, the Prosecution has virtually acceded to the former, as all non-confidential documents archived in its evidentiary holdings are currently accessible to the Defence in electronic form in an Electronic Disclosure Suite ["EDS"]. However, as concerns the latter, the standard that the Appeal Chamber articulated in the *Bagosora* decision does not support such an expansive inspection regime. The Appellant's request is akin to the impermissibly diffuse request for "impeachment material" that the *Zigiranyirazo* Trial Chamber roundly rejected, "... so as to avoid creating the broad disclosure obligation rejected by the Appeals Chamber" in *Bagosora.*[43] It cannot be over-emphasized that a "plain reading of Rule 66 (B)" did "not create a broad affirmative obligation on the Prosecution to disclose any and all documents which may be relevant to its cross-examination ... Rule 66 (B) is only triggered by a sufficiently specific request by the defence".[44]

45. Similarly, in the *Prosecutor v. Nyiramasuhuko et al.,*[45] the Defence request for documents pursuant to Rule 66(B) was for documents that formed part of the Belgian files, a specific category of documents. The request was not simply for any and all documents pertaining to the geographical area of Butare, as the Appellant would lead the Chamber to believe. Moreover in that case, the documents requested were identified by their specific ERN numbers, enabling the Prosecutor to identify the relevant documents with some

[42] *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, T. 24 November 2009, p.3
[43] *Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on Defence Motion for Disclosure under Rule 66(B) of the Rules, 21 February 2007, at para. 9.
[44] *Ibid*, para. 5, citing the *Bagosora* Appeals Chamber Decision, para 10.
[45] *Prosecutor v. Nyiranasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Arséne Ntahobali's Motion for Disclosure of Documents, 31 January 2006

specificity and avoid the type of wholesale inspection that the jurisprudence regarding rule 66(B) seeks to prevent. [46]

46. As already stated, the Trial Chamber is the most appropriate authority to make the case specific assessment whether a certain request is sufficiently specific or too broad.[47] Undoubtedly, the Trial Chamber in this case made its own case specific assessment of the Appellant's request of October 2009, taking into account all the facts of this case, including the indictment, when it concluded that the impugned request was impermissibly broad.

47. The Appellant's analogy of the Prosecutor's indictment to a "big menu" at a restaurant, from which he is expected to choose, is comical.[48] The Respondent concurs with the Appellant that in such a situation, the restaurant is expected to bear the burden of requests for any *particular* item on that menu. However, the Respondent stresses that even where a restaurant has a "big menu" the customer is expected to make a specific request with respect to that menu so as to enable the restaurant to identify the item and prepare it. It is not sufficient for him to request that the restaurant give him anything or indeed everything on the menu.

48. Finally, the Appellant goes to great lengths to explain that the "Karekezi" letter should have been disclosed as "material to the preparation of his defence" because it was written by a person whose killing Nzirorera is charged with having ordered.[49] However, the Appellant makes this argument for the very first time in this interlocutory appeal, and moreover, over-states the argument. The indictment does *not* charge Nzirorera with ordering Karekezi to be killed; Aloys Karekezi is simply listed as a victim of killings perpetrated by Interahamwe.[50]

49. The Appellant argues that since Prosecution witnesses have testified at trial that Noeli, Musafiri and Bagabo were members of the Interahamwe in Mukingo Commune, the "Karekezi" letter falls within the rubric of "documents furnished to he OTP by the Government of Rwanda" that concern "acts committed by members of the Interahamwe and whether Mr. Nzirorera planned, ordered, or otherwise aided and abetted those acts, or was responsible for them under Article 6(3)".[51] This argument is untenable. While Musafiri,

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[46] ERN stands for Evidence Related Number. All documents entered into the Prosecutor's database are stamped with a unique number for the purposes of identification.
[47] *Ibid.* para. 9
[48] *Prosecutor v. Karemera et al. Case No.* ICTR-98-44, Joseph Nzirorera's Appeal From Decision on 27th Rule 66 Violation, 15 February 2010, para. 44
[49] *Prosecutor V. Karemera et al.* Case No. ICTR-98-44, Joseph Nzirorera's Appeal From Decision on 27th Rule 66 Violation, 15 February 2010, paras. 5 – 7, p. 40.
[50] See Third Amended Indictment, at para. 63.2.
[51] *Prosecutor V. Karemera et al.* Case No. ICTR-98-44, Joseph Nzirorera's Appeal From Decision on 27th Rule 66 Violation, 15 February 2010, paras. 6 – 8.

Noeli and Bagabo are clearly identified in the "Karekezi" letter, they are not characterized as Interahamwe or as MRND-party members by that letter. Indeed, the concerted thrust of the joint Defence case in the *Karemera et al.* trial is that while various militia, night patrols, civil defence forces, etc., may indeed have existed in parts of Rwanda at various times, those militia should *not* be ascribed to the *MRND party* or its *Interahamwe za MRND* youth wing. The Appellant's inspection requests addressed materials concerning acts committed by "MRND party members" or "members of the Interahamwe"; the fundamental criterion suggested by the Appellant was precisely an explicit or formal identification with the MRND. The "Karekezi" letter does not identify Noeli, Musafiri or Bagabo as MRND party members or as members of its Interahamwe youth wing. The Respondent even made the argument that the word "*Interahamwe*" appears nowhere in the "Karekezi" letter, in which case even if the Trial Chamber deemed the inspection request sufficiently particularized, the "Karekezi" letter would not be encompassed under the rubric of "*Interahamwe* documents". The Trial Chamber, it its Impugned Decision, did not deem this a significant argument since Nzirorera's motion could be dismissed on other grounds.[52]

50. Again, however, the nuanced argument concerning the identities of Karekezi, Musafiri, Noeli, and the specific pleadings of the indictment and extant trial record did not surface in the Appellant's written motion of 23 November 2009 or in his supplementary oral submissions before Trial Chamber III. Since neither party raised the issue of the authorship of the "Karekezi" letter in relation to the pleadings of paragraph 63.2 of the indictment, Trial Chamber III neither considered this argument nor certified it for interlocutory appellate review. The only issues that have been certified for review by the Appeals Chamber are (i) whether the Prosecution has an ongoing obligation to produce materials for inspection under Rule 66(B) pursuant to a request for the Defence which was made *before* the Prosecution came into possession of the material sought; and (ii) whether Nzirorera's requests of 14 June 2002 or 29 October 2009 could have triggered an inspection obligation under this Rule.[53]

51. To reiterate, the Trial Chamber applied the correct legal principles and did not abuse its discretion when it ruled the Appellant's request of October 2009 did not trigger an obligation to afford inspection of the "Karekezi" letter. The Appellant's request did not meet the threshold requirement of "specificity"; the scope of his request far exceeded the degree of specificity that was accepted by the Appeals Chamber in its *Bagosora et al* decision

[52] T. 23 November 2009, p. 5, ln. 29 – 34.
[53] *Prosecutor v. Karemera et al.* ICTR-98-44, Decision on Joseph Nzirorera's Application for Certification to Appeal Decision on 27th Rule 66 Violation, 9 February 2010.

52. The Respondent stresses that he has never shunned his responsibility under Rule 66(B). The Prosecution is prepared to honor his obligations with respect to any Rule 66(B) request that meets the appropriate standard.

PART VI — RELIEF SOUGHT

53. For all of the foregoing reasons, the Respondent respectfully submits that the Impugned Decision does not constitute a discernible error of law warranting reversal by the Appeals Chamber; the Appellant's appeal should be dismissed in its entirety.

Respectfully Submitted

On this 22nd day of February 2010, at Arusha, Tanzania

Word Count: 5774

Don Webster
Senior Trial Attorney

Sunkarie Ballah Conteh
Assistant Appeals Counsel

3304/A

ANNEX A

3303/A

Standard Fields:

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File path	\\ICTR_OTP_1\DATA\ZYLAB\EXPORT\PRODUCTION\1ST JANUARY TO PRESENT\TXT\0000000B\
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Number of hits	1
Hit density	0.14
Comment	<ERN>K024-5491-K024-5492</ERN><Evidence_Status></Evidence_Status><Document_Tit in French written by KAREKEZI, Aloys, MUVUNYI, Gabriel and BIZIMUNGU, Dieudonne addressed to the Rwandan Prime Minister, Re: SOS for Bagogwe from Gisenyi and Ruhengeri, dated and signed 30-Nov-93.</Document_Title><Document_Date>19931130</Document_Date><Doc_Date_Is DAUTOVIC - IESS ARUSHA, CHESYA MTAMIRA - IESS
Index	Index 1 of 10: General Documents

Comment Fields:

ERN	K024-5491-K024-5492
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Document_Title	Letter in French written by KAREKEZI, Aloys, MUVUNYI, Gabriel and BIZIMUNGU, Dieudonne addressed to the Rwandan Prime Minister, Re: SOS for Bagogwe from Gisenyi and Ruhengeri, dated and signed 30-Nov-93.
Document_Date	19931130
Doc_Date_Is_Estimate	
Doc_Summary_By	ALEKSANDRA DAUTOVIC - IESS ARUSHA, CHESYA MTAMIRA - IESS ARUSHA
Category_Of_Document	Correspondence
Type_Of_Document	Letter
Source	
Associated_ERNs	
Submitter_Details	Kirsten KEITH, Case Manager, OTP ICTR, Arusha
Number_Of_Pages	2
Original_Language	FRENCH
Creation_Date	20021010
Last_Modification	20021127, 20040914
Date_To_Translation	20021202
Date_From_Translation	
Date_Original_To_IES	20021009
Not s	
Collecti	
For_EDS	Yes

PV n° 0002/D00L3/KP/KGL/90

KAREKEZI Aloys
C/O B.P. 621
KIGALI.
Copie pour information à:
MUVUNYI Gabriel
C/O B.P. 1528 Kigali.
BIZIMUNGU Dieudonné
C/O B.P. 1034 Kigali.
Fax 25077482

Kigali, le 30 Novembre 1993.

3302/A

K0245401

Madame le Premier Ministre de la République Rwandaise
Kigali.

Objet: Cri de secours S.O.S des Bagogwe de Gisenyi et de Ruhengeri.

- LICHREDOR A.S.B.L.
Kigali.

Madame,

AUTRES RENSEIGNEMENTS ET TEMOIGNAGES D'UN DEPLACE QUI EST VENU DE ... LE 29/11/1993.

Nous vous lançons un appel d'alarme pour les Bagogwe de Ruhengeri et Gisenyi. Ces jours-ci des exécutions sommaires sont opérées par des militaires de l'Armée Rwandaise ... de NZINGRE ..., ancien

En effet, Madame le Premier Ministre, le Jeudi 25/11/1993 un enseignant de la Commune de Mukingo, secteur Busogo, nommé GARANDE Joseph, fils de Kabayi, a été tué par les militaires qui étaient à la barrière de MUSANZE, Commune Kigombe (...).

Un nommé TEGELI, fils de RUSEKA et de NYIRABUSHASHI, du secteur Rwinzovu, de la même commune qui était en compagnie de ce dernier, y a échappé par la Providence divine, mais a été grièvement blessé par les mêmes militaires. Actuellement il se fait soigner au Centre de Santé de Busogo. Ils revenaient tous les deux du Parquet de Ruhengeri pour un ... sur les massacres et autres dégâts qui ont eu lieu chez eux en Février-Avril 1991, s'il n'y avait pas un MUTUTSI ... qu'on le seconde!

Madame le Premier Ministre, vous vous souvenez qu'avant les massacres de Février 1991 une mise en scène avait été organisée par les militaires du Camp de Bigogwe faisant croire à l'attaque des INKOTANYI en Commune Mutura, et la suite a été le massacre systématique des Bagogwe innocents sur toute la région. Vous êtes sans ignorer les malheurs qu'a connu cette partie de la population rwandaise de décembre 1992 à février 1993. Aujourd'hui les rescapés sont seulement des femmes et des orphelins de sexe féminin et quelques rares hommes. Comme il a été procédé les années passées, nous venons d'entendre à la radio nationale que des tirs ont été entendus cette nuit du 29 au 30/11/1993 en Commune Mutura. Nous craignons que le pire soit arrivé à ces malheureux Bagogwe qui sont toujours la cible au moment des tensions politiques dans cette région.

Les témoins ont requis l'anonymat pour leur sécurité, mais ils peuvent ... se confier à quiconque promet de garder secret. Nous demandons à qui de droit de faire des investigations et de se lancer sur les traces ci-haut déclarées.

Nous vous prions, Madame le Premier Ministre, de prendre toutes les dispositions nécessaires pour protéger cette population éprouvée et assurer leur sécurité.

Veuillez agréer, Madame le Premier Ministre, l'expression de notre plus haute considération.

KAREKEZI Aloys.
MUVUNYI Gabriel.
BIZIMUNGU Dieudonné

3301/A

K0245492

Copie pour information à:

- KANYARWANDA A.S.B.L.
  Kigali.
- A.V.P. A.S.B.L.
  Kigali.
- A.D.L. A.S.B.L.
  Kigali.
- LICHREDOR A.S.B.L.
  Kigali.

AUTRES RENSEIGNEMENTS ET TEMOIGNAGES D'UN DEPLACE QUI EST VENU DE MUKINGO EN DATE DU? 29/11/1993.

Monsieur NZIRORERA Joseph,Secrétaire Exécutif du M.R.N.D. a une milice armée à BYANGABO,Commune MUKINGO dont un nommé NOHELI,neuveu de NZIRORERA,ancien élève à l'école des sous-officiers à Butare,et MUSAFIRI fils de RWIRASIRA Ephrem ancien militaire de l'A.R. pendant la guerre,renvoyé pour raisons disciplinaires, BAGABO,cousin de NZIRORERA,fils de MUKANGAHE et de NYIRAMAJERENGE(tante paternelle de NZIRORERA).Ceux-ci ont tiré pendant la nuit du Samedi au dimanche 27/11. La veille,ils avaient sillonné les ménages des Bagogwe en les menaçant qu'ils allaient les tuer parce que,disaient-ils,les INKOTANYI allaient attaquer cette nuit là!Un autre témoin qui est rentré de GISENYI nous a rapporté que cette milice stoppait des véhicules qui venaient de GISENYI ou RUHENGERI pendant la journée de lundi et mardi 29/11 en demandant s'il n'y avait pas un MUTUTSI dedans pour qu'on le descende!
Les témoins ont reçu l'anonymat pour leur sécurité,mais ils peuvent toujours se confier à quiconque promet de garder secret.Nous demandons à qui de droit de faire des investigations de se lancer sur les traces ci-haut déclarées.

3300/A

Unofficial English Translation

Letter from Aloys KAREKEZI to Prime Minister, dated 30 November 1993, p.2
[K024-5491-5492]

"Sounding the Alarm – SOS for the Bagogwe of Gisenyi, Kigali and Ruhengeri"

Other information and first-person accounts coming from a refugee from Mukingo, dated 29/11/1993

Mr. Joseph Nzirorera, Executive Secretary of the MRND, has an armed militia in Byangabo, Mukingo commune, which includes a certain NOHELI, a nephew of Nzirorera, who was a former student at the *Ecole des Sous-officers* in Butare; and MUSAFIRI, the son of RWIRASIRA Ephrem, who is a former soldier of the Rwandan Army that, during the war, was dismissed for disciplinary reasons; and BAGABO, a cousin of Nzirorera and son of MUKANGAHE and of NYIRAMAJERENGE (the paternal aunt of Nzirorera). These persons fired shots during the night of Saturday to Sunday 27/11. The day before they had rifled through the homes of the Bagogwe, threatening that they were going to kill them because, according to them, the Inkotanyi were going to attack that same night. Another witness who came from Gisenyi informed us that this militia stopped vehicles that were coming from Gisenyi or Ruhengeri during the days on Monday and Tuesday 29/11 and were asking if there weren't any Tutsi aboard, so that they could be removed.

The witnesses have requested anonymity for their security, but they are willing to confide in anyone who promises to maintain confidentiality. We request that whoever is so concerned conduct investigations and pick up on the leads that are provided herein.

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(Art. 27 of the Directive for the Registry)

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	☐ OIC, JLSD P. Besnier	☐ OIC, JPU C. K. Hometowu	☐ F. A. Talon (Appeals/Team IV)	☐ Appeals Chamber / The Hague K. K. A. Afande R. Muzigo-Morrison
From:	☐ Chamber (names)	☐ Defence (names)	☐ Prosecutor's Office **Sunkarie Ballah-Conteh** (names)	☐ Other: (names)
Case Name:	The Prosecutor vs. **Karemera et al.**		**Case Number:** ICTR-98-44	
Dates:	Transmitted: **22 February 2010**		Document's date: **22 February 2010**	
No. of Pages:	**21**	**Original Language:** ☒ English	☐ French	☒ Kinyarwanda
Title of Document:	**Prosecutor's Response to Joseph Nzirorera's Interlocutory Appeal of Trial Chamber III's Decision on 27th Rule 66 Violation**			

Classification Level:
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☐ Indictment	☐ Warrant	☐ Correspondence	☐ Submission from non-parties
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☐ Disclosure	☐ Order	☐ Appeal Book	☐ Accused particulars
☐ Judgement	☒ Motion	☐ Book of Authorities	

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Translation	in	☐ English	☐ French	☐ Kinyarwanda

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☐ Normal		☐ Other deadlines: