

-0267

ICTR-07-91-T
08-05-2009
(4082 - 4079)

4082
A



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

BEFORE TRIAL CHAMBER III

Composed of the Honourable: Khalida Rachid Khan, President
Honourable Lee Gacuiga Muthoga
Honourable Aydin Sefa Akay

Registrar: Mr. Adama Dieng, Registrar

Date Filed: 8 May 2009

THE PROSECUTOR

v.

LÉONIDAS NSHOGOZA

Case #: ICTR-2007-91-T

JUDICIAL RECORDS/ARCHIVE
2009 MAY -8 P 2:47
A. Dieng 08/05/2009

**DEFENCE FURTHER MOTION TO ORDER REGISTRAR TO PROVIDE
COMPLETE INFORMATION ON OTP VISITS GAA, and MOTION TO
ORDER PROSECUTOR TO PROVIDE INFORMATION AND TO COMPLY
WITH RULE 66 and 68 DISCLOSURE OBLIGATIONS
(Articles 19 and 20 ICTR Statute and Rules 66 and 68 ICTR R.P.E.)**

Office of the Prosecutor

Richard Karegyesa
Paul Ng'arua
Abdoulaye Seye
Dennis Mabura

Counsel for Léonidas Nshogoza

Allison Turner

The Prosecutor v Léonidas NSHOGOZA ICTR-2007-91-PT
 DEFENCE FURTHER MOTION TO ORDER REGISTRAR TO PROVIDE COMPLETE INFORMATION
 ON OTP VISITS GAA, and MOTION TO ORDER PROSECUTOR TO PROVIDE INFORMATION AND
 TO COMPLY WITH RULE 66 and 68 DISCLOSURE OBLIGATIONS
 TO THE HONOURABLE TRIAL CHAMBER III, THE DEFENCE
 RESPECTFULLY SUBMITS

1. On 28 April 2009 the Trial Chamber granted the *Defence Motion for Order to Provide Information to the Nshogoza Defence Regarding Prosecution Visits to GAA at UNDF in 2007*,¹ ordering the Registrar to provide the Defence and the Trial Chamber, by the close of business 30 April 2009, with the following information with respect to Prosecution visits to Witness GAA while detained at the UNDF during the period August 2007 to November 2007:

- (i) The number of visits;
- (ii) The dates of the visits;
- (iii) The duration of the visits;
- (iv) The purpose of visits if recorded and available.

2. The next day the Registrar filed *Registrar's Submissions under Rule 33(B) of the Rules on the DECISION OF (sic) DEFENCE MOTION FOR ORDER TO REGISTRAR TO PROVIDE INFORMATION TO THE DEFENCE REGARDING PROSECUTION VISITS TO WITNESS GAA AT UNDF*, and a confidential Annex contained information on OTP visits. The information contained in the Annex raises more questions than it answers.

Further Order to Registrar

3. The defence submits that the information provided by the Registrar is inaccurate and / or incomplete for the following reasons:

- i) The 3 ½ hr long OTP visit to GAA on 9 August 2007 was attended by 6 persons. The Registrar submissions however only provide one name for the visit of that day. The defence moves the Chamber to order the Registrar to provide the names of the five other persons present at the OTP meeting with GAA on 9 August 2007;²
- ii) The information shows a 3 hr long visit by Ms Hélène Moenback to GAA on 10 August 2007, i.e. the day of GAA's initial appearance. GAA's initial appearance is on the record as transpiring from 10:14 to 10:50 a.m. The defence moves the Chamber to order the Registrar to provide a) the names of the other persons who attended this

¹ *Nshogoza*, Defence Motion for Order to Provide Information to the Nshogoza Defence Regarding Prosecution Visits to GAA at UNDF in 2007, 20 March 2009.

² On 12 February 2009 Defence counsel attended the unsealing of the original tape of the 9 August 2007 interview of GAA at OTP offices. Also present at the unsealing was Aaron Musonda who confirmed that the six signatures on the sealed envelope were those of the six persons present during the 9 August 2007 interview. Mr Musonda did not give the names of these 6 people to defence counsel.

The Prosecutor v Léonidas NSHOGOZA ICTR-2007-91-PT
DEFENCE FURTHER MOTION TO ORDER REGISTRAR TO PROVIDE COMPLETE INFORMATION
ON OTP VISITS GAA, and MOTION TO ORDER PROSECUTOR TO PROVIDE INFORMATION AND
TO COMPLY WITH RULE 66 and 68 DISCLOSURE OBLIGATIONS

meeting in addition to Ms Moenback and b) to clarify exactly when this meeting took place in view of the conflicting information contained in the court record;

- iii) The Registrar's information contains **no data** on any meeting by the OTP with GAA on 27 November 2007, i.e. the day GAA, his lawyer, and the OTP's Prosecutor Jallow and Ms Arbia, then Chief of Prosecutions signed GAA's Plea Agreement. The defence moves the Trial Chamber to order the Registrar to provide information including the date and the place of the meeting between the OTP and GAA when he signed the Plea Agreement.
- iv) The Registrar's Annex lists three long OTP visits with GAA in February 2008 and lists two people as being present at the first; two people being present at the second; and three people being present at the third. The Annex however only provides ICTR-personnel index numbers for a good number of the OTP personnel that attended these meetings. The defence moves the Chamber to order the Registrar to provide the identities of the OTP members who visited with GAA on 6, 19 and 28 February 2008.

Order to Prosecutor

4. The defence submits that the information provided by the Registrar is inaccurate and / or incomplete and requires additional information from the Prosecutor to provide the Trial Chamber with a complete picture of the OTP visits with GAA prior to the trial against Léonidas Nshogoza. In particular, the defence moves the Trial Chamber to order the Prosecutor to provide the following information:

- i) Purpose of 10 August 2007 visit by Hélène Moenback to GAA; and the written report or statement from GAA generated from said visit;
- ii) Purpose of 6, 19 and 28 February 2008 OTP visits to GAA (lasting approx. two, three and three and a half hours respectively); the identities of all those who attended the visit; and the written report or statement from GAA that was generated from said visits.

5. Rule 66(A)(ii) of the ICTR Rules of Evidence and Procedure requires the Prosecutor to provide the defence at least 60 days prior to the commencement of the trial, all witness statements for the witnesses he will call. The Registrar's Annex confirms that the OTP met with GAA on at least four occasions that, until the filing of the said Annex, was information that was never provided to the defence.

6.

The Prosecutor v Léonidas NSHOGOZA ICTR-2007-91-PT
DEFENCE FURTHER MOTION TO ORDER REGISTRAR TO PROVIDE COMPLETE INFORMATION
ON OTP VISITS GAA, and MOTION TO ORDER PROSECUTOR TO PROVIDE INFORMATION AND
TO COMPLY WITH RULE 66 and 68 DISCLOSURE OBLIGATIONS

7. The Defence submits that the Prosecution is, once again, in violation of his disclosure obligations under Rule 66 and possibly Rule 68, and Mr Nshogoza has suffered prejudice as a result of this disclosure violation in that, *inter alia*,

- (i) His trial came to a close the day before the Registrar provided this information to the defence;
- (ii) He has been deprived of the opportunity to cross-examine witness GAA on these meetings that he had with the OTP.

8. The Defence submits that the repeated failures of the Prosecutor to comply with his disclosure obligations, including this most recent example regarding the undisclosed OTP visits to GAA in August 2007 and February 2008 have rendered this trial unfair, and the Prosecutor should be sanctioned for the chronic repeated disclosure violations.

9. The Defence prays that the Trial Chamber render the necessary orders to ensure that both the Registrar and the Prosecutor provide clear and complete information regarding the OTP visits to GAA, to nourish it in its deliberations on these proceedings.

MAY IT PLEASE THIS HONOURABLE CHAMBER

ORDER the Registrar to provide complete and accurate information as requested in the body of the present motion;

ORDER the Prosecutor to provide complete and accurate information as requested in the body of the present motion; and, **ORDER** the Prosecutor to comply fully with his disclosure obligations under Rules 66 and 68 of the ICTR Rules of Procedure and Evidence; and,

SANCTION the Prosecutor for failing to comply with his disclosure obligations under Rules 66 and 68 of the ICTR Rules of Procedure and Evidence

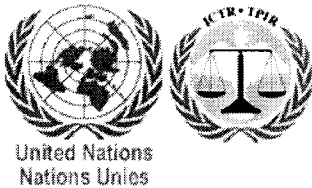
THE WHOLE respectfully submitted,

Arusha, 8 May 2009



Allison Turner
Counsel for Léonidas NSHOGOZA

1-0267



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. Hometowu	<input type="checkbox"/> Trial Chamber III A. N'Gum
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Appeals Chamber / Arusha Chamber II F. A. Talon		<input type="checkbox"/> Appeals Chamber / The Hague K. K. A. Afande R. Muzigo-Morrison
From:	<input type="checkbox"/> Chamber (names)	<input checked="" type="checkbox"/> Defence ALLISON TURNER (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. LÉONIDAS NSHOZOZA		Case Number: ICTR-2007-91-T	
Dates:	Transmitted: 9 March 2009		Document's date: 9 March 2009	
No. of Pages:	4	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	DEFENCE FURTHER MOTION TO ORDER REGISTRAR TO PROVIDE COMPLETE INFORMATION ON OTP VISITS GAA, and MOTION TO ORDER PROSECUTOR TO PROVIDE INFORMATION AND TO COMPLY WITH RULE 66 and 68 DISCLOSURE OBLIGATIONS			
Classification Level:	TRIM Document Type:			
<input type="checkbox"/> Ex Parte	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence	<input type="checkbox"/> Submission from non-parties
<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal	<input type="checkbox"/> Submission from parties
<input type="checkbox"/> Confidential	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book	<input type="checkbox"/> Accused particulars
<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Judgement	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities	

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

CMS SHALL take necessary action regarding translation.				
<input 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):				
<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 hereby submits BOTH the original and the translated version for filing, as follows:				
Original	in	<input checked="" 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):				
<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda		
KINDLY FILL IN THE BOXES BELOW				
<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to:		<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS):		
<input type="checkbox"/> The Language Services Section of the ICTR / Arusha.		Name of contact person:		
<input type="checkbox"/> The Language Services Section of the ICTR / The Hague.		Name of service:		
<input type="checkbox"/> An accredited service for translation; see details below:		Address:		
Name of contact person:		E-mail / Tel. / Fax:		
Name of service:				
Address:				
E-mail / Tel. / Fax:				

III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: