

ICTR-07-91-PT
17-12-2008
(2271-2269)

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UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Emile Francis Short

Registrar: Mr. Adama Dieng

Date: 17 December 2008

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JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

Léonidas NSHOGOZA

Case No. ICTR-07-91-PT

**ORDER REGARDING REGISTRAR'S
RULE 33 (B) SUBMISSIONS ON DISCLOSURE**

Rules 54 and 33 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Richard Karegyesa
Abdoulaye Seye
Dennis Mabura
Florida Kabisanga

For the Accused:

Allison Turner

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INTRODUCTION

1. The Registrar made submissions pursuant to Rule 33 (B) on 27 November 2008, seeking direction from the Chamber on the disclosure to the Prosecutor of Registry documents which had been disclosed to Defence Counsel at her request.¹
2. The Registrar advised the Chamber that he disclosed the Registry documents contained in Annexes I, II, and III to his Submission to Defence Counsel, upon request by Counsel.² He further advised that at a meeting between Defence Counsel and the Deputy Registrar, Counsel objected to disclosure of these documents to the Prosecutor on the basis that it would reveal the nature of Defence investigations.
3. On 2 December 2008, the Prosecutor submitted that no compelling reason was advanced for the disclosure of Tribunal documents solely to the Accused, and that equality of arms requires that the materials also be disclosed to the Prosecutor.³
4. On 10 December, the Chamber ordered the Defence to file detailed submissions to explain how the disclosure, to the Prosecution, of the documents contained in Annexes I, II, and III to the Submission, which had already been disclosed to the Defence, would reveal the nature of Defence investigations.
5. The Defence responded to the Registrar's and Prosecutor's submissions on 11 December 2008, and made further submissions on 12 December 2008, pursuant to the Chamber's Order of 10 December.⁴

DISCUSSION

6. The Chamber notes the Defence submission that it does not object to the disclosure to the Prosecutor of the Registry documents in question.
7. The Defence submits that Defence counsel asserted, in the meeting with the Deputy Registrar, that the request for the documents was made in the context of a Defence investigation, and that she did not believe that the Registrar was under any obligation to disclose the documents to the Prosecutor.⁵
8. The Defence further describes the conversation between Defence counsel and the Deputy Registrar as a "theoretical discussion that took place before Defence counsel received the documents, on the possible obligation of the Registrar" to disclose the documents to the Prosecutor.⁶

¹ *Prosecutor v. Léonidas Nshogoza*, Case No. ICTR-07-91-PT, "Registrar's Submission under Rule 33 (B) of the Rules on the Disclosure of Registry Documents," filed 27 November 2008 ("Submission").

² *Nshogoza*, "Ex Parte & Confidential Annex to Registrar's Submission Under Rule 33 (B) of the Rules on the Disclosure of Registry Documents," filed 28 November 2008, pp. 2-4.

³ *Nshogoza*, "Prosecutor's Submissions Concerning 'Registrar's Submissions Under Rule 33 (B) of the Rules on the Disclosure of Registry Documents'," filed 2 December 2008.

⁴ *Nshogoza*, "Defence Submissions on Registrar Submissions of 28 November 2008 and Prosecution Submissions of 2 December 2008," filed 11 December 2008; *Nshogoza*, "Defence Further Submissions Pursuant to the Court Order of 10 December 2008," filed 12 December 2008."

⁵ Defence Submissions, para. 3-6; Defence Further Submissions, paras. 4-5

⁶ Defence Further Submissions, para. 3

9. However, the Defence does not object to the Registrar providing copies of the documents to the Prosecutor.⁷

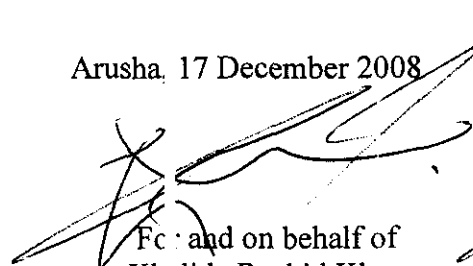
10. In light of the Defence submissions, the Chamber considers this a matter best left to the discretion of the Registrar.

FOR THESE REASONS, the Chamber

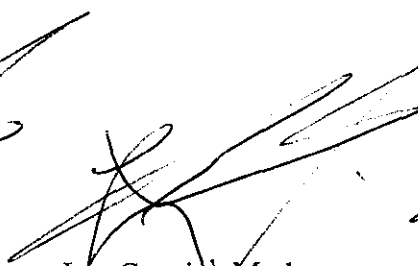
DIRECTS the Registrar to assess the Prosecutor's request for a copy of the documents contained in Annexes I, II, and III to the Submission, taking into consideration the Defence position that it does not object to the Registrar providing such copies to the Prosecutor; and,

DIRECTS the Registrar to take such further action as he may deem appropriate in the circumstances.

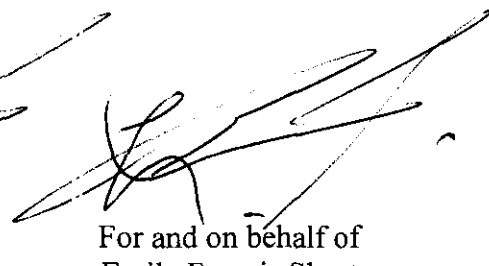
Arusha, 17 December 2008



For and on behalf of
Khalida Rachid Khan
Presiding Judge



Lee Gacuga Muthoga
Judge
[Seal of the Tribunal]



For and on behalf of
Emile Francis Short
Judge

⁷ Defence Submissions, para. 6; Defence Further Submissions, paras. 4-5.



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

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(Art. 27 of the Directive for the Registry)

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Case Name:	The Prosecutor vs. Leonidas Nshogoza		Case Number: ICTR-07-91-PT	
Dates:	Transmitted: 17 December 2008		Document's date: 17 December 2008	
No. of Pages:	3	Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda		
Title of Document:	ORDER REGARDING REGISTRAR'S RULE 33 (B) SUBMISSIONS ON DISCLOSURE			
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<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: