



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

**TRIAL CHAMBER III**

Original: English

**Before:**

Judge Lloyd George Williams, Presiding  
Judge Yakov Ostrovsky  
Judge Pavel Dolenc

**Registrar:**

Agwu U. Okali

**Date:**

23 August 2000

**THE PROSECUTOR**

v.

**LAURENT SEMANZA**

*Case No. ICTR-97-20-I*

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**DECISION ON THE DEFENCE EXTREMELY URGENT APPLICATION**

**EX PARTE FOR A SUBPOENA TO COMPEL CONSISTENT DISCLOSURE,  
BETTER AND FURTHER PARTICULARS**

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**Counsel for the Accused:**

Charles Achaleke Taku

**Office of the Prosecutor:**

Chile Eboe-Osuji  
Frédéric Ossogo  
Holo Makwaia  
Patricia Wildermuth

**1. THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (Tribunal),**

**SITTING** as Trial Chamber III (the Chamber), composed of Judge Lloyd George Williams, presiding, Judge Yakov Ostrovsky, and Judge Pavel Dolenc;

**BEING SEISED** of the "Defence Extremely Urgent Application Ex Parte for a Subpoena to Compel Consistent Disclosure, Better and Further Particulars", filed on 13 April 2000 (Motion);

**CONSIDERING** the "Prosecutor's Response to the Defence's Extremely Urgent Application for a Subpoena to Compel Consistent Disclosure, Better and Further Particulars", filed on 20 April 2000;

**NOTING** the Decision of 10 December 1998 of the former Trial Chamber II on the Prosecution Motion for the Protection of Witnesses (Decision);

**HAVING HEARD** the parties at the hearing on 6 July 2000;

**NOW CONSIDERS** the matter.

**SUBMISSIONS BY THE DEFENCE**

2. The Defence requests the disclosure of "instruments" referred to in paragraph 3.2 of the Third Amended Indictment (Indictment). The Defence asks for "all relevant information" relating to paragraph 3.4.2 of the Indictment, including "all relevant reports as well as any facts relating to the death of President Juvénal Hyabarimana". The Defence also requests the supporting material for paragraph 3.9 and 3.16 of the Indictment.

3. The Defence, in the Motion, submits that the Prosecutor should disclose to the Defence consistent and final copies of documents annexed to the Motion.

4. The Defence argued at the hearing that the Prosecutor handed over a supplementary list of witnesses and that the Prosecutor did not apply for protection of these supplementary witnesses under Rule 66(D). The Defence submits that it received the list on 17 April 2000, in which the Prosecutor adds some new witnesses and omits some witnesses.

5. The Defence requests that the Prosecutor disclose "better and further particulars of assertions" reproduced and annexed to the Motion in order for the Defence to prepare appropriate responses.

6. The Defence contends that some of the redacted witness statements are unintelligible and that the Defence cannot use them to prepare its case.

**SUBMISSIONS OF THE PROSECUTOR**

7. Concerning the disclosure of supporting material for the Indictment, the Prosecutor submits that the supporting material already is in possession of the Defence as part of the disclosed witness statements or other material.

8. As to the disclosure of further particulars, the Prosecutor represents that she has fulfilled her obligation under Rule 66(A)(ii) with regard to the material requested by the Defence. Further, in compliance with the Decision authorising her to disclose materials in a redacted form, the Prosecutor does not intend to disclose any further particulars at this time.

9. The Prosecutor contends that, in accordance with Rule 70, reports, memoranda, or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case are not subject to disclosure.

10. The Prosecutor argues that, with regard to the Decision, the identities of the witnesses including those on the supplementary list are protected. If the Prosecutor discloses identifying information in witness summaries it would defeat the purpose of the abovementioned Decision.

11. Consequently, the Prosecutor prays that the Motion be dismissed as it is without merit.

## **DELIBERATIONS**

### **Disclosure of Supporting Material for the Indictment**

12. With respect to the supporting material for the Indictment, the Defence refers to the disclosure of "instruments". The Chamber notes that pursuant to Rules 50(C) and 66(A)(i) the Prosecutor shall disclose additional supporting materials for new amended charges within thirty days after the further appearance. The Prosecutor further disclosed additional supporting materials on 17 December 1998, which included "instruments" to which the Prosecutor refers as supporting materials for paragraph 3.2 of the Indictment (legislative acts of Rwanda from 16 January 1981) and paragraph 3.4.2 (Report by R. Degni-Ségué). Thus, with regard to additional supporting materials, the Chamber finds that the Prosecutor has fulfilled her duties under Rule 66(A)(i).

13. Disclosure under Rule 66(A) relates to documents that are solely in the hands of the Prosecutor, which the Prosecutor must disclose to the Defence. The Defence refers to "instruments" and "all relevant information" relating to the above mentioned paragraphs of the Indictment. It appears to the Chamber that the Defence requests disclosure of public documents such as legislative instruments of the Republic of Rwanda and publicly accessible reports of a UN Special-Rapporteur. These documents are public documents and the Defence can receive them through diligent legal research. It is not for the Chamber to order disclosure of legislative instruments or reports, which are available to the public. The Defence also may request such materials informally and directly from the

Prosecutor without first filing a motion. The Chamber urges the parties to co-operate in matters of disclosure.

14. Rule 70(A) states that notwithstanding the provisions of Rules 66 and 67, reports, memoranda, or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case, are not subject to disclosure or notification under the above mentioned provisions. The Defence requests disclosure of "all relevant information . . . including all reports", investigative reports as well as "any fact" relating to the death of President Juvénal Habyarimana. The Defence, however, has failed to establish that the Prosecutor is in possession of any such documents related to the plane crash, its relevance to the witness statements referred to by the Defence and that such report is subject to disclosure. *See also Prosecutor v. Bagambiki & Imanishimwe, Prosecutor v. Ntagerura*, ICTR 99-46-I, at para. 10 (Decision on Imanishimwe's Motion for Amendment of the Indictment and Disclosure) (23 August 2000). In addition, this request is so general that the Chamber is not in position to order the Prosecutor to disclose a specific or identifiable document.

#### **Disclosure of Witness Statements**

15. The Chamber also notes that the Decision in paragraphs 2(g) and (i), *inter alia*, prohibits the disclosure to the Defence of any identifying data, which would reveal the identities of potential prosecution witnesses until such time as a Trial Chamber is assured that the witnesses are adequately protected. The Decision also requires that the Prosecutor designate a pseudonym for each witness. The Chamber finds that the scope of the witness protection provided in the Decision applies prospectively and covers newly added witnesses. This objection, therefore, is without merit.

#### *Request for Further and Better Particulars*

16. The Defence contends that the consistent disclosure of witness statements and the submission of better particulars are fundamental for the preparation of the defence of the Accused. The Defence refers to the redacted witness statements, which it received in November 1998.

17. With regard to the disclosure of further particulars in the statements of certain witnesses the Chamber notes that Rule 66A(ii) provides that copies of statements of all witnesses the Prosecutor intends to call to testify at trial shall be made available to an accused no later than sixty days before the date set for trial. The Tribunal, however, pursuant to Rules 75 and 69, may order disclosure of witness statements to be in a redacted form until the witnesses come under the protection of the Tribunal or until a certain number of days before their testimony. Identities of witnesses and their non-redacted statements shall be disclosed to the Defence in sufficient time prior to the trial pursuant to Rule 69(C). In this case, the Prosecutor served witness statements upon the Defence in redacted form according to the Decision.

18. The Decision orders that the Prosecutor disclose the identity of a witness and serve his or her statements on the Defence when the witness is under the Tribunal's protection or twenty-one days before he or she is to testify at trial, whichever comes first. In this case, the Chamber has set a trial date of 16 October 2000. Because the trial date is more than twenty-one days away, the request for consistent disclosure and better particulars is premature. The Chamber finds no violation of the Rules.

19. The Defence cites *Prosecutor v. Blaskic*, IT-95-14 (Decision on the Production of Discovery Materials) (27 January 1997), in which the International Criminal Tribunal for the Former Yugoslavia (ICTY) held that a list of prosecution witnesses was not strictly required under Rule 67(A), but that the names should be clearly and comprehensively set out. The Chamber, however, finds that the section of the cited ICTY decision makes no reference to protected witnesses pursuant to Rule 69. The Chamber finds that this authority and others upon which the Defence relies are not relevant to the matters at issue.

20. For all the above reasons, the Tribunal DENIES the Motion.

Arusha, 23 August, 2000.

Lloyd George Williams

Judge, Presiding

Yakov Ostrovsky

Judge

Pavel Dolenc

Judge

Seal of the Tribunal