



UNITED NATIONS
NATIONS UNIES

ICTR-2001-73-T
10-4-2006
(4787-4784)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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Dumf

OR: ENG

TRIAL CHAMBER III

Before Judges: Inés Mónica Weinberg de Roca, Presiding
Khalida Rachid Khan
Lee Gacuiga Muthoga

Registrar: Adama Dieng

Date: 7 April 2006

THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-T

10-04-2006

**DECISION ON PROSECUTION MOTION FOR CONDITIONAL
DISCLOSURE OF WITNESS STATEMENTS**

Rules 39, 68 and 75 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Wallace Kapaya
Gina Butler
Iskandar Ismail
Jane Mukangira

Defence Counsel:

John Philpot
Peter Zaduk

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“Tribunal”),

SITTING as Trial Chamber III, composed of Judges Inés Mónica Weinberg de Roca, presiding, Khalida Rachid Khan, and Lee Gacuiga Muthoga (“Chamber”);

BEING SEIZED of the Prosecution Urgent and Confidential Application Pursuant to Rules 39, 68 and 75 for an Order for Conditional Disclosure of Witness Statements, filed on 23 March 2006;

CONSIDERING the Defence Response, filed on 28 March 2006;

CONSIDERING the Statute of the Tribunal and the Rules of Procedure and Evidence particularly Rules 39, 68 and 75;

NOW DECIDES the Motion on the basis of the written briefs of the parties pursuant to Rule 73(A) of the Rules.

SUBMISSIONS

1. By way of the present application, the Prosecution is requesting protective measures for witnesses whose statements allege the criminal involvement of Witness ADE in the events of 1994. The Prosecutor intends to disclose these statements, unredacted, to the Defence, pursuant to Rule 68(A). The Prosecution argues that some of these witnesses are protected in other cases before the Tribunal while some others are protected by the Prosecution pursuant to Rule 39.
2. The Prosecution requests two specific protective orders: that the Defence shall (i) notify the Prosecutor of its intent to contact such witnesses or make a written request to the Trial Chamber to contact such witnesses; and (ii) to keep the statements confidential to itself and not to reveal the identities of the witnesses to any person outside of the Defence team, except for the Accused himself who should be directed not to reveal the identities to any other person. The Prosecution also requests to be granted any other or further relief that meets the ends of justice. The Prosecution attaches an affidavit of its Commander of Investigations to support the allegation of risks faced by the witnesses.
3. The Defence, in its response, argues that late disclosure is of little use given the time it actually takes to conduct serious investigations, particularly given that statements with regard to the witness in question were completed in January 2005. The Defence requests the Chamber to reserve the Defence recourse to apply for a remedy due to late disclosure.
4. In order to be able to make proper use of this disclosure, the Defence requests the Chamber to order the Prosecutor to make disclosure to all members of the Defence in their various locations.
5. The Defence further requests that the following be made possible:
 - a) that the Defence investigator in Kigali be authorised to meet with the witnesses in question immediately upon recommendation of lead counsel, and before the latter comes to Arusha on 5 May 2006.
 - b) that DCDMS be apprised so that sufficient notice is this work programme is provided to the Section and for it to be included in it's consideration of the Defence team's work programme.

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c) that the Chamber's Decision of 25 February 2003 on Protective Measures be extended to apply to the witnesses who are the subject of the instant Motion.

DELIBERATIONS

5. Rule 75 (F) reads as follows:

(F) Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the "first proceedings"), such protective measures:

(i) shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the "second proceedings") unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule; but

(ii) shall not prevent the Prosecutor from discharging any disclosure obligation under the Rules in the second proceedings, provided that the Prosecutor notifies the Defence to whom the disclosure is being made of the nature of the protective measures ordered in the first proceedings.

5. Given the terms set out in Rule 75(F)(ii), particularly the reference to "any disclosure obligation under the Rules," it is incumbent upon the Prosecutor to fulfil his disclosure obligations under the Rules notwithstanding applicable protective orders, and that upon such disclosure, the party receiving the materials is then bound *mutatis mutandis* by the terms of the applicable protective measures in accordance with the provisions of Rule 75(F). The Chamber recalls that according to the jurisprudence of the Tribunal,¹ Rule 75(F) is intended to create a mechanism for the routine disclosure of closed session testimony.

6. With regard to Rule 39, which deals specifically with protection afforded by the Prosecutor during the conduct of investigations, the Chamber wishes to point out that the measures stipulated in that Rule cannot be equated with the protective measures that are afforded to witnesses by a Chamber. The Prosecutor cannot therefore redact statements to be disclosed to the Defence on the basis of Rule 39 protection.²

7. The Chamber is concerned that an application for the protection of these witnesses has been left to this late stage of the proceedings, particularly given how long these statements have actually been in the possession of the Prosecutor. The Prosecutor should have been diligent in its effort to satisfy both its duty to disclose, and to seek protection of its witnesses, earlier.

8. Be that as it may, in the interests of protecting the witnesses in question, and in the interests of justice as a whole, the Chamber deems it appropriate to extend the Protective Measures ordered on 25 February 2003 in this case to these additional witnesses.

¹ *Prosecutor v. Nahimana et al.* Case No. ICTR-99-52-T "Decision on Disclosure of Transcripts and exhibits of Witness X," (TC) 3 June 2004 paras. 4 and 5; *Prosecutor v. Nyiramasuhuko et al.* Case No. ICTR-98-42-T, "Decision on the Prosecutor's ex-parte and Extremely Urgent Motion to Access Closed Session Transcripts in Case No. ICTR-96-3-A to Disclose to Case No. ICTR-98-42-T" (TC) of 23 September 2004

² *Prosecutor v. Rutaganira*, ICTR-95-1C-PT "Decision Relative A La Protection Des Temoins A Charge", 24 November 2004.

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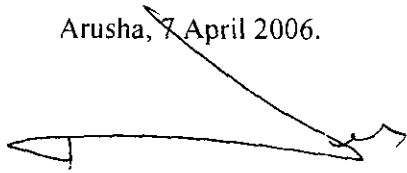
9. Considering the imminent testimony of Witness ADE, the documents which are the subject of the present application must be disclosed to the Defence, in keeping with the established practice on the service of confidential documents, and the Accused forthwith.

FOR THE ABOVE REASONS, THE CHAMBER

EXTENDS the Protection Order of 25 February 2003 to all witnesses whose statements will be disclosed in accordance with this Decision, and who are not subject to any protective order before the Tribunal.

ORDERS the immediate disclosure of all the unredacted witness statements relating to Witness ADE.

Arusha, 7 April 2006.



Inés Mónica Weinberg de Roca
Presiding Judge



Khalida Rachid Khan
Judge



Lee Gacuiga Muthoga
Judge

[Seal of the Tribunal]

