



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
(21-06-2006)
27036-27034

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Emile Francis Short
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 21 June 2006

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

Handwritten signature and date: 21 June 2006

**DECISION ON PROSECUTION'S MOTION TO PERMIT LIMITED DISCLOSURE
OF INFORMATION REGARDING PAYMENTS AND BENEFITS PROVIDED TO
WITNESS ADE AND HIS FAMILY**

Rules 66(C) and 68(D) of the Rules of Procedure and Evidence

Office of the Prosecutor:
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Dior Diagne Mbaye and Félix Sow

Defence Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika Ngimbi

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INTRODUCTION

1. On 15 December 2005, the Prosecution submitted a Motion to be relieved from its obligations under Rules 66 and 68 of the Rules of Procedure and Evidence to disclose information in its possession regarding payments and benefits paid to Witness ADE and his family. The document, which the Prosecution wishes to withhold, is an un-redacted budget for the payments and benefits paid to the family of Witness ADE signed by the Prosecutor himself on 27 October 2005. This document was disclosed to the Defence in a redacted form on 15 December 2005.

DISCUSSION

2. As a preliminary matter, the Prosecution requests sanctions to be imposed against Counsel for Nzirorera for not filing his response to the present Motion as confidential. It is the Chamber's view that in the normal course of proceedings, all submissions from the Parties are to be filed publicly unless the content warrants confidential filing.¹ The Chamber finds that the response does not contain any confidential information and denies the request for sanctions.

3. Nzirorera further argues as a preliminary matter that the Motion should be denied on a technical ground because the Prosecution did not submit the material sought to be kept confidential as mandated by the Rules. In its Interim Order of 31 March 2006, the Chamber found that "[t]he fact that the Prosecutor did not directly make available to the Chamber the material does not as such prevent the Chamber from considering the merits of the application".² It requested this information from the Prosecution, and it was provided to the Chamber *ex parte* on 4 May 2006. Consequently, this matter is now moot.

4. Regarding the merits of the Motion, the Prosecution acknowledges that it has provided certain payments and benefits for Witness ADE and his family. While the Prosecution claims that this material is not exculpatory, it wishes to withhold from the Defence detailed financial information in a budget form of payments and benefits paid to Witness ADE and his family seeking the application of Rules 66(C) and 68(D) of the Rules.

5. The Prosecution's submission is ambiguous. In the Chamber's view, in order for the Prosecutor to apply for relief from its disclosure obligations pursuant to Rules 66 and 68, the material itself must already be determined by the Prosecution as material to the preparation of the defence or exculpatory material. The Chamber, therefore considers that this application is made under Rule 66(C) or 68(D) of the Rules as information that is material to the preparation of the defence or exculpatory.

6. As stated in Rules 66(C) and 68(D), the Prosecution may be relieved of its obligation to disclose information that is material to the preparation of the defence or is exculpatory if its disclosure would 1) prejudice further or ongoing investigations; 2) be contrary to the public interests; or 3) affect the security interests of any State.

¹ See for example, *Prosecutor v. Slobodan Milosovic*, Case No. IT-02-54-T, Order on Defence Application for Re-Admission of Witness Henning Hensch (TC), 9 May 2005.

² *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, Order for the Prosecutor for Filing Information and Material *Ex Parte* and Under Seal Regarding Witness ADE (TC), 31 March 2006, para. 2.

7. The Chamber is not satisfied that the un-redacted budget submitted as a summary of benefits dated 4 May 2006 "may prejudice further or ongoing investigations, or for any other reasons which may be contrary to the public interest or affect the security interests of any State" to warrant limited disclosure pursuant to Rules 66(C) and 68(D). Although the Prosecution broadly states that the disclosure of the redacted material would prejudice further investigations and be contrary to the public interest, the Prosecution's only argument in that vein is that potential witnesses will use the disclosed information as a bargaining tool to cooperate with the Prosecution. The Prosecution focuses its submissions on its concerns for the safety of the witness, which is not a reason falling within the ambit of the exception provided by Rules 66(C) and 68(D). The Chamber further notes that the total amount paid to Witness ADE was disclosed to the Defence in the Decision of the Trial Chamber in the *Zigiranyirazo* case³, and in the disclosure to the Defence in this case of 15 December 2005 and 11 May 2006.

8. While the Prosecution's request is denied, the Chamber nevertheless accepts the Prosecution's concern for future witnesses using the information as a bargaining tool and to protect Witness ADE from further public scrutiny, and therefore orders the disclosure of the un-redacted budget of payments and benefits paid to Witness ADE as submitted to the Chamber on 4 May 2006 to be filed confidentially through the Registrar and distributed to the Defence of each Accused in the present case.

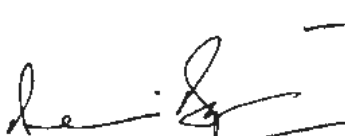
9. The Chamber declines to evaluate Nzirorera's proposal that Rule 68(D) of the Rules in itself contravenes the rights of the Accused, since the present application failed and the Rule is not being applied.

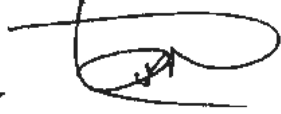
FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

DENIES the Prosecution Motion; and

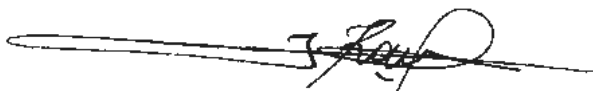
ORDERS the immediate disclosure of the un-redacted submission of 4 May 2006, to be filed confidentially.

Arusha, 21 June 2006, done in English.


Dennis C. M. Byron
Presiding






Gberdao Gustave Kam
Judge

³ *Prosecutor v. Protais Zigiranyirazo*, Case No. 2001-73-T, Decision on Defence and Prosecution's Motions Related to Witness ADE (TC), 31 January 2006, para. 23.