



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1714
Swamp

ICTR-2001-63-T
12-10-2006
(1714-1712)

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Robert Fremr

Registrar: Adama Dieng

Date: 12 October 2006

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JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR
v.
Siméon NCHAMIHIGO
Case No. ICTR-2001-63-T

ORDER FOR JUDICIAL RECORDS

Rules 98 and 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Alphonse Van
Lloyd Strickland
Madeleine Schwarz
Adama Niane

Defence Counsel:
Denis Turcotte
Benoît Henry

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1. The Defence made an application today, 12 October 2006, for the Chamber to order the Prosecution to obtain the complete judicial records from the Rwandan government regarding Prosecution Witness LDB. After hearing the start of his testimony yesterday morning, it became apparent that LDB's judicial records were incompletely disclosed by the Prosecution. The Defence submitted that the Prosecution witness list contains 9 other detained witnesses whose judicial files are also likely to be incomplete. It further requests the Chamber to adjourn the proceedings and order the Prosecution not to call any of those detained witnesses until the complete judicial records have been disclosed.

2. The Prosecution claims that it has made its best efforts to obtain the judicial records, that it disclosed all the material it received, and that it could not force the Rwandan government to produce additional documentation.

3. Trial Chambers have concluded that disclosure of judicial records is not merely for the benefit of the preparation of the Defence but it is also required to assist the Trial Chamber in its assessment of witness credibility pursuant to Rule 90(G) of the Rules.¹

4. During Witness LDD's testimony earlier this week, evidence was adduced concerning judicial records that were not previously disclosed to the Defence. In response to the Defence's submission, on 10 October 2006, the Chamber ordered the Prosecution to request the judicial records regarding Witness LDD from the Rwandan authorities. If necessary, depending on the information in the documents disclosed, the Defence can move the Chamber to allow further cross-examination of the witness. As of today, the Prosecution has not yet made that request.

5. For the present application, the Chamber notes that the Defence has not specified, because it is not aware, for which witnesses the judicial records remain incomplete. The Defence has demonstrated that the file for Witness LDB is obviously incomplete, and has submitted that the same situation may exist for other detained Prosecution witnesses. Without a specific factual submission, it is purely speculation at this point as to which judicial records exist that have not been disclosed.

6. The Prosecution is in the best position to know what judicial records should exist for its witnesses and must review the information already disclosed and determine what is incomplete from the judicial files of its detained witnesses. The Defence has agreed to assist the Prosecution in this determination.

7. The Chamber therefore considers that it is appropriate to use its power pursuant to Rule 98 at this time and requires the Prosecution to use its best efforts to obtain the incomplete records from the Rwandan authorities and disclose them to the Defence. This action is also permitted by Rule 54, whereby a Trial Chamber may issue orders necessary for the preparation or conduct of the trial, either at the request of either party or *proprio motu*. The Chamber's order in no way minimizes the Defence's obligation to prepare its case.

FOR THOSE REASONS, THE CHAMBER

I. **DIRECTS** the Prosecution and the Defence, as agreed, to meet tomorrow, Friday 13 October 2006, and consult on what judicial records should be requested from the Rwandan authorities;

¹ See for example: *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case No. ICTR-96-10-A, ICTR-96-17-A, Reasons for the Decision on Request for Admission of Additional Evidence (AC), 8 September 2004, paras. 47-52.

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II. **ORDERS**, pursuant to Rule 98 of the Rules, the Prosecution to submit a request to the Rwandan authorities for the required judicial records by Monday, 16 October 2006, a copy of the request shall be filed with CMS. In that request, the Prosecution shall require a response from the Rwandan authorities in one week's time, by Monday, 23 October 2006. If the Rwandan authorities require more time to comply with the request, it shall be asked to *inform* the Prosecution by which date it will be able to comply with the request. Any response shall be filed with CMS. If there is no response received from the Rwandan authorities, this shall also be communicated to the Chamber through CMS.

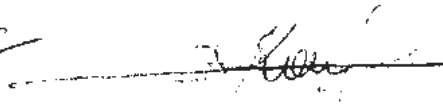
III. **AMENDS** its oral decision of 10 October 2006 and **DIRECTS** the Prosecution's request to the Rwandan authorities regarding the judicial records of Witness LDD to be included in the upcoming request of 16 October 2006.

Arusha, 12 October 2006, done in English.



Dennis C. M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge



Robert Fremr

Judge

