



ICTR-98-44-T  
3-11-2007  
(31834 - 31830)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

31834  
mm

OR: ENG

TRIAL CHAMBER III

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 2 November 2007

JUDICIAL ARCHIVES  
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THE PROSECUTOR

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA

Case No. ICTR-98-44-T

CONFIDENTIAL

DECISION ON THE PROSECUTOR'S MOTION TO BE RELIEVED OF THE  
OBLIGATION TO DISCLOSE THE IDENTITIES OF CERTAIN WITNESSES

*Rules 68 (A), (C) and (D) of the Rules of Procedure and Evidence*

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**Defence Counsel for Mathieu Ngirumpatse**  
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**Defence Counsel for Joseph Nzirorera**  
Peter Robinson and Patrick Nimy Mayidika  
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Deo Mbutu

SRV

## INTRODUCTION

1. On 20 October 2006, during the presentation of the Prosecution's case, the Prosecutor filed a Confidential Motion pursuant to Rule 68 (D) of the Rules on Procedure and Evidence ("Rules") to be relieved of the obligation to disclose unredacted statements from two witnesses<sup>1</sup> who had given confidential information about war crimes allegedly committed by RPF troops.<sup>2</sup> Appended to the Motion were the redacted statements that were disclosed to the Defence on 29 September 2006. The Prosecutor indicated that he, when summoned to do so, would hand-deliver to the Chamber sitting *in camera* copies of the unredacted statements. On 7 December 2006, the Prosecutor filed a Confidential Supplemental Motion for the Motion to include three more witness statements.<sup>3</sup> The Chamber has obtained the redacted versions of the statements as disclosed to the Defence.

2. The Defence for Nzirorera requested the Chamber to defer its ruling to allow the Parties to negotiate a solution. On 24 May 2007, the Defence for Nzirorera informed the Chamber that the negotiations had been fruitless and requested that the Prosecutor's Motions be denied.

## DELIBERATIONS

*Applicable law*

3. Rule 68 (C), read with Rules 68 (A) and 70 (B), provides that the Prosecutor, when receiving information that has been provided on a confidential basis and which may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence, "shall take reasonable steps [...] to obtain the consent of the provider to disclosure of that material, or the fact of its existence, to the accused". Rule 68 (D) further provides that if the disclosure of the material *inter alia* "may prejudice further ongoing investigations, or for any other reason may be contrary to the public interest", the Prosecutor "shall apply to the Chamber sitting *in camera* to be relieved" of his obligation to disclose the material and "shall provide the Trial Chamber (but only the Trial Chamber) with the information that is sought to

<sup>1</sup> Both witnesses are identified by the ERN#s that appear on the first pages of their recorded statements.

<sup>2</sup> Prosecutor's Motion to be Relieved of the Obligation to Disclose the Identities of Certain Witnesses pursuant to Rules 68(A), (C) and (D) - Filed CONFIDENTIAL, filed 20 October 2006.

<sup>3</sup> Supplemental Prosecutor's Motion to be Relieved of the Obligation to Disclose the Identities of Certain Witnesses pursuant to Rules 68(A), (C) and (D) - Filed CONFIDENTIAL, filed 07 December 2006.

be kept confidential." Rule 39 (ii) further provides that during investigations, the Prosecutor shall take "special measures to provide for the safety of potential witnesses and informants".

4. The Prosecutor submits in his original Motion that the Office of the Prosecutor ("OTP") has endeavoured to contact the two witnesses, identified as R0022 and R0289, in order to obtain permission to reveal their identities to the Defence or to provide them with information enabling them to contact the Defence, should they wish so. However, the OTP only succeeded in getting in contact with R0022 who did not want his identity to be revealed to the Defence or to have any contact with the Defence. With regards to R0289, the Prosecution has made repeated efforts to contact the Witness, but without success; however, the efforts in this regard are ongoing.

5. The Prosecutor submits that it would be inappropriate to disclose information identifying the Witnesses before reasonable steps have been taken to obtain their consent. The Prosecutor further submits that disclosure of identifying information would prejudice further or ongoing investigations and may be contrary to the public interest, even if it would not be possible to contact the Witnesses or obtain their consent.

6. The Chamber is satisfied that the OTP has taken reasonable steps to contact the Witnesses and obtain their consent to reveal their identifying information to the Defence. Taking into account that the Motions were filed in October and December 2006, the Chamber concludes that the Prosecutor has fulfilled his obligations pursuant to Rule 68 (C).

7. When deciding whether to relieve the Prosecutor of his obligation under Rule 68 (A) to disclose unredacted witness statements revealing identifying information, the Chamber must balance the rights of the Accused, the need for protection of victims and informants, and the interest of the Prosecution and the Public that investigations be carried out efficiently.

8. Trial Chamber III has previously ruled that Rule 68 (A) mandates the disclosure of identifying information with respect to Prosecution witnesses, when their identity is inextricably connected with the substance of the statements, and that the Prosecutor's obligation pursuant to Rule 39 to take special measures to provide for the safety of potential witnesses and informants, including requesting such orders as may be necessary from a Trial Chamber or a Judge, cannot not constitute, as such, an impediment to disclosure of

identifying information with respect to Prosecution witnesses.<sup>4</sup> The Chamber maintains this ruling.

9. On the basis of the content of the witness statements in question, as shown in the redacted versions of their statements, the Chamber finds that the identity of the Witnesses is inextricably connected with the substance of their statements, so that also the information identifying the Witnesses must be disclosed to the Defence pursuant to Rule 68 (A).

10. The Chamber accepts the Prosecutor's submission that the statements in question contain sensitive information, which could affect the security of the Witnesses, making it necessary to order adequate measures to protect them.

11. Therefore, as this Chamber has observed in previous rulings, the Defence and the Accused should be requested not to disseminate to the public and media any of their identifying information and that should the individuals agree to an interview with the Defence, after notifying the Prosecution, the Witnesses and Victims Support Section of the Tribunal (WVSS) shall take all necessary arrangements to facilitate the interview.<sup>5</sup>

#### FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

- I. DENIES the Prosecutor's Motions pursuant to Rule 68 of the Rules of Procedure and Evidence to be relieved of the obligation to disclose the identity of certain witnesses.
- II. ORDERS the Prosecutor to disclose to the Defence unredacted copies of the witness statements in question.
- III. ORDERS that the Defence for each Accused and the Accused persons shall not share, reveal or discuss, directly or indirectly, any documents or any information contained in any documents, or any other information which could reveal or lead to the identification of any person whose statement shall be disclosed pursuant to this

<sup>4</sup> *Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva ("Bagosora et al.")* (Case No. ICTR-98-41-T), Decision on Disclosure of Identity of Prosecution Informant (TC), 24 May 2006, para. 5; *Karemura et al.*, Decision on Joseph Nzirorera's Motion to Compel Inspection and Disclosure (TC), 5 July 2005, para. 18; *Karemura et al.*, Scheduling Order (TC), 30 March 2006, para. 20.

<sup>5</sup> *Karemura et al.*, Decision on the Prosecutor's Application Pursuant to Rules 39, 68 And 75 of the Rules of Procedure and Evidence for an Order for Conditional Disclosure of Witness Statements and Other Documents Pursuant to Rule 68(A), TC III - Rules 68(A) And 75 of the Rules of Procedure and Evidence, 4 July 2006, paras. 8 and 9

Decision, to any person or entity other than the Accused, assigned Counsel or other persons working on the Defence team;

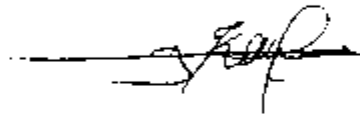
- IV. **ORDERS** that the Defence for each Accused shall notify the Prosecution in writing, on reasonable notice, and the Witnesses and Victims Support Section of the Tribunal (WVSS) if it wishes to contact any person who submitted a statement to the Prosecution related to the RPF material or a Credibility Statement, who are not subject to a Trial Chamber's protective orders. Should the person concerned agree to the interview, WVSS shall immediately undertake all necessary arrangements to facilitate the interview.

Arusha, 02 November 2007, done in English.



Dennis C. M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge



Vagn Joensen

Judge

[Seal of the Tribunal]

