



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
16-4-2010
(50876-50873)

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HM

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 16 April 2010

THE PROSECUTOR

v.

**Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

JUDICIAL RECORDS ARCHIVES
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**DECISION ON JOSEPH NZIRORERA'S MOTION FOR DISCLOSURE OF
WITNESS T MATERIAL**

Office of the Prosecution:
Don Webster
Saidou N'Dow
Sunkarie Ballah-Conteh
Takeh Sendze

Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Matthieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

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

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INTRODUCTION

1. Joseph Nzirorera moves for an order, directed to both the Prosecution and a State, indicated in a confidential annex to this order, for disclosure of all previously withheld material pertaining to Prosecution Witness T.¹ Previous decisions of this Chamber have authorized both the non-disclosure to the Defence and the maintenance under seal of factual material and *ex parte* submissions pertaining to Witness T on the grounds that disclosure to the Defence would be adverse to Witness T's fair trial rights in the ongoing trial proceedings in the national jurisdiction.² In a confidential annex to his motion, Nzirorera attached documents showing that the trial in the national jurisdiction has now ended.³ The Prosecution filed a reply leaving this matter to the discretion of the Chamber, noting that it is not opposed *per se* to Nzirorera's request but that it will continue to support the position taken by the government in question.⁴ In a Decision dated 28 January 2010, the Chamber invited the State to make submissions on the matter within 4 weeks of the date of the Decision.⁵ The Chamber did not receive any submissions from the State on this issue.

DELIBERATIONS

2. The Chamber recalls it has previously held that these materials "could be relevant to the assessment of the Prosecution witness in question" although the Chamber neither knew the contents of the documents nor did the Chamber make any pronouncements as to its admissibility as evidence.⁶ In a later decision, the Chamber ordered some materials which had been received by the Prosecution from the State disclosed to the Defence teams, but held that some of those documents were not subject to disclosure at that stage of the proceedings.⁷ The reason for the non-disclosure at that stage was that the documents contained information

¹ Joseph Nzirorera's Motion for Disclosure of Witness T Material, filed 7 December 2009.

² See *Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Decision on Defence Motion to Report a Certain State to the United Nations Security Council and on Prosecution Motions Under Rule 66(C) of the Rules, 15 February 2006 ("Decision on Prosecution Motions"); *Karemera et al.*, Decision on Motions to Disclose a Prosecution Witness Statement and to Unseal Confidential Documents, 25 October 2006, para. 9.

³ Confidential Annex to Joseph Nzirorera's Motion for Disclosure of Witness T Material, filed confidentially on 7 December 2009.

⁴ Prosecutor's Response to Joseph Nzirorera's Motion for Disclosure of Witness T Material, filed 11 December 2009.

⁵ *Karemera et al.*, Preliminary Order Concerning Joseph Nzirorera's Motion for Disclosure of Witness T Material, 28 January 2010.

⁶ *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Request the Cooperation of the Government of a State, 23 February 2005, para. 5.

⁷ *Karemera et al.*, Decision on Prosecution Motions, paras. 20, 23.

which may have violated the witness' fair trial rights; but the Decision did not discount the possibility that the documents could be disclosed at a later stage.⁸ However, there were some documents disclosed to the Prosecution by the State that the Chamber held could only be disclosed to the Defence with the consent of the State as outlined in Rule 70(B) of the Rules of Procedure and Evidence.⁹

3. In its 2006 submissions to the Chamber, the State authorities "emphasized its obligation and willingness to cooperate with the Tribunal" and stated that at that time disclosing all of the requested documents would be contrary to applicable domestic law and would "infringe on Witness T's right to a fair trial" in the national jurisdiction.¹⁰ Therefore, in principle all interested parties appear to be in agreement that this evidence may be disclosed after the completion of Witness T's trial in the national jurisdiction.

4. Now that the trial has been completed in the national jurisdiction, there has been no argument provided as to why these documents should not be disclosed to the Defence teams. Furthermore, the fair trial rights of the Accused warrant their access to materials which may impact credibility determinations of a prosecution witness as long as there are no special circumstances which warrant non-disclosure of that material. The State was invited to make submissions on whether these documents should be disclosed, and the government did not avail itself of the opportunity. As such, the Chamber can only conclude that, based on past representations to the Chamber, the State is not opposed to the general disclosure of the documents, which have not already been disclosed with its explicit consent.

FOR THESE REASONS, THE CHAMBER

I. ORDERS disclosure of all previously withheld material pertaining to Prosecution Witness T;

II. REQUESTS that the State, indicated in a confidential annex to this order, render the necessary assistance in order to provide full disclosure of the requested documents;

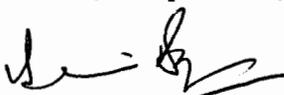
⁸ *Ibid.*

⁹ *Id.* at para. 23.

¹⁰ *Id.* at para. 10.

III. **REQUESTS** the Registrar to transmit the present Decision to the State, indicated in a confidential annex to this order, and inform the Chamber of any action taken in response thereto.

Arusha, 16 April 2010, done in English.



Dennis C. M. Byron
Presiding Judge



Gberdao Gustave Kam
Judge



Vagn Joensen
Judge

[Seal of the Tribunal]

