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07-04-2011  
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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

6796  
AM

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Solomy Balungi Bossa, Presiding  
Bakhtiyar Tuzmukhamedov  
Mparany Rajohnson

**Registrar:** Adama Dieng

**Date:** 7 April 2011

**THE PROSECUTOR**

v.

**Callixte NZABONIMANA**  
*Case No. ICTR-98-44D-T*

Handwritten signature and date: 07/04/2011

**DECISION ON "CALLIXTE NZABONIMANA'S MOTION FOR SUMMON OF OTP  
INVESTIGATORS ADAMOUM ALLAGOUMA AND ALMAHAMOUD SIDIBE,  
SOUS-PRÉFET MS. IMMACULÉE MUKAMASABO"**  
*(Rule 98 of the Rules of Procedure and Evidence)*

**Office of the Prosecutor**  
Paul Ng'arua  
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**Defence Counsel**  
Vincent Courcelle-Labrousse  
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## INTRODUCTION

1. Defence Witness Jean Marie Vianney Mporanzi testified before the Trial Chamber in the instant proceedings on 25, 26, 27 and 31 May 2010. During his testimony he alleged that when he was interviewed by investigators from the Office of the Prosecutor ("OTP") of the Tribunal in 1998 in Gitarama *préfecture*, certain monies were disbursed to him through the intermediary of the local government by a *sous-préfet* named "Marguerite".<sup>1</sup>
2. On 10 August 2010, the Prosecution filed a motion seeking to admit an "affidavit" by OTP Chief of Investigations Alfred Kwende and a "declaration" by Marguerite Mukansanga, a *sous-préfet* in Gitarama *préfecture* at the time of Mr. Mporanzi's interview in 1998.<sup>2</sup> Both declarants strenuously denied the allegations raised by Mr. Mporanzi during his testimony. However, the Trial Chamber denied the motion in a decision issued on 16 September 2010.<sup>3</sup>
3. On 21 January 2011, the Prosecution filed a motion seeking to recall Mr. Mporanzi for further cross-examination regarding the alleged disbursements.<sup>4</sup> In support of its motion, the Prosecution attached "affidavits" from Prosecution investigators Adamou Allagouma and Almahamoud Sidibe, as well as the previously-submitted "declaration" of Marguerite Mukansanga, all denying that any disbursements were made to prospective OTP witnesses through Rwandan officials. On 14 February 2011, the Trial Chamber granted the motion.<sup>5</sup>
4. On 2 March 2011, the Defence filed a motion seeking disclosure of records pertaining to disbursements paid to Mr. Mporanzi when he was interviewed by OTP Investigators in 1998.<sup>6</sup> On 28 March 2011, the Prosecution disclosed to the Defence several documents outlining, *inter alia*, the transfer of 245,000 Rwandese Francs between Prosecution Investigator Adamou Allagouma; Immaculée Mukamasabo, a *sous-préfet* of Gitarama *préfecture*; and the Finance Section of the Tribunal.

<sup>1</sup> See generally, Transcript of Trial Proceedings (English), 25-27 and 31 May 2010 ("Transcript").

<sup>2</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor's Motion for admission of Marguerite Mukansanga and Alfred Kwende's affidavits pertaining to the testimony of Jean-Marie Mporanzi, 10 August 2010.

<sup>3</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on Prosecutor's Motion for the Admission of Marguerite Mukansanga and Alfred Kwende's Affidavits Pertaining to the Testimony of Jean Vianney Mporanzi, 16 September 2010.

<sup>4</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor's Motion for the Recall of Defence Witness Jean-Marie Vianney Mporanzi, 21 January 2011.

<sup>5</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on Prosecutor's Motion for the Recall of Defence Witness Jean-Marie Vianney Mporanzi, 14 February 2011.

<sup>6</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana's Urgent Motion for Inspection and Disclosure of Evidence Pertaining to Mr. Mporanzi's Recall, 2 March 2011.

5. On 29 March 2011, the Defence filed a motion seeking reconsideration of the Chamber's decision to recall Mr. Mporanzi,<sup>7</sup> to which the Prosecution did not object.<sup>8</sup> The motion was declared moot in an oral decision issued by the Trial Chamber on 4 April 2011 and Mr. Mporanzi was excused from the Tribunal prior to the commencement of his recall testimony.
6. On 1 April 2011, the Defence filed the instant motion in which it seeks to summon OTP Investigators Adamou Allagouma and Almahamoud Sidibe, as well as Ms. Immaculée Mukamasabo, for the purpose of testifying as to further particulars of the financial arrangements exposed by the documents disclosed by the Prosecution ("Motion").<sup>9</sup>
7. On 5 April 2011, the Prosecution filed a response to the Defence Motion ("Response").<sup>10</sup>
8. On 6 April 2011, the Defence filed a reply to the Prosecution Response ("Reply").<sup>11</sup>

#### SUBMISSIONS OF THE PARTIES

##### *Motion*

9. The Defence moves the Trial Chamber to summon Messrs. Allagouma and Sidibe and Ms. Mukamasabo by way of Rule 98 of the Rules of Procedure and Evidence ("Rules") so that they may testify before the Chamber in the present proceedings in order "to be examined on [the disclosed documents] to determine if there exists grounds to obtain the exclusion of evidence under Rule 95 of the RPE".<sup>12</sup> The Defence contends that the documents "demonstrate not only that Mporanzi did say the truth but that two OTP investigators blatantly lied before the Chamber".<sup>13</sup> The Defence further avers that "[t]he only possible

<sup>7</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Callixte Nzabonimana's Motion for Reconsideration of the "Decision on Prosecutor's Motion for the recall of Defence witness Jean-Marie Vianney Mporanzi" issued on 14 February 2011 and admission of documents, 29 March 2011

<sup>8</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor's Response to Callixte Nzabonimana's Motion for Reconsideration of the "Decision on Prosecutor's Motion for the Recall of Defence Witness Jean-Marie Vianney Mporanzi" issued on 14 February 2011 and Admission of Documents, 31 March 2011.

<sup>9</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Callixte Nzabonimana's Motion for summon of OTP Investigators Adamou Allagouma and Almahamoud Sidibe, *sous-préfet* Ms. Immaculée Mukamasabo, 1 April 2011.

<sup>10</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor's Response to Defence Motion for Summon of OTP Investigator [sic] Adamou Allagouma and Almahamoud Sidibe and Sous-Prefect Ms. Immaculee Mukamasabo, 5 April 2011.

<sup>11</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Callixte Nzabonimana's Reply to "Prosecutor's Response to Defence Motion for summon of OTP Investigators Adamou Allagouma and Almahamoud Sidibe, *sous-préfet* Ms. Immaculée Mukamasabo", 6 April 2011.

<sup>12</sup> Motion, paras. 5, 18.

<sup>13</sup> Motion, paras. 2, 48.

inference to draw from this situation is that there is a convergence of interest and authority between the Office of the Prosecutor of the ICTR and the Rwandese authorities".<sup>14</sup>

10. The Defence underscores the gravity of its recent revelations by recalling past pronouncements by the Prosecution and the Trial Chamber to the effect that Mr. Mporanzi's testimony raised serious issues that go to the heart of the integrity of the OTP and the Tribunal generally.<sup>15</sup> To this end, the Defence submits that the records not only corroborate Mr. Mporanzi's testimony but "also demonstrate that other Prosecution Witnesses have been 'indemnified' by Rwandan authorities on behalf of the ICTR".<sup>16</sup>

11. Consequently, argues the Defence, the "resort to Rwandan authorities to distribute money to witnesses... in the course of the investigations on Nzabonimana"<sup>17</sup> raises the spectre that the 245,000 Rwandese Francs disbursed from Mr. Allagoumu to Ms. Mukamasabo were used to provide a number of prospective Prosecution witnesses with illicit and lucrative financial incentives to testify against the Accused. Arguing that this arrangement "for the 'treatment' of witnesses in the Nzabonimana case raises serious questions about the integrity of these proceedings",<sup>18</sup> the Defence asserts that it "is in right [sic] to know **how** the investigators came to meet Ms. Immaculée Mukamasabi, **how** the 245,000 Rwandese Francs were distributed, **to whom** they as [sic] distributed and **to cover** what expenses".<sup>19</sup> For all the above reasons, the Defence maintains that it "has a reasonable belief that the prospective witnesses can materially assist in the presentation of its case".<sup>20</sup>

### Response

12. The Prosecution commences its Response by conceding that "[t]he Finance documents... show that it may be reasonable to believe that Mr. Mporanzi may have been right when he said that he received his disbursement through the *sous-prefect's* [sic] office in Gitarama".<sup>21</sup> However, the Prosecution takes umbrage at what it describes as the Defence's "mischaracterisation" of the disbursements as necessarily raising serious concerns regarding a "convergence of interest and authority" between the OTP and Rwandese officials,

<sup>14</sup> Motion, para. 4.

<sup>15</sup> Motion, paras. 24-35.

<sup>16</sup> Motion, para. 39.

<sup>17</sup> Motion, para. 41.

<sup>18</sup> Motion, paras. 40-42, 45-48.

<sup>19</sup> Motion, para. 44. (emphasis in original)

<sup>20</sup> Motion, para. 49.

<sup>21</sup> Response, para. 3.

involving a scheme whereby prospective Prosecution witnesses received "compensation" in exchange for the provision of their statements.<sup>22</sup> Rather, the Prosecution likens its "cooperation" with Rwanda to the cooperation the Defence itself has sought throughout these proceedings from the government of France in support of the Accused's alibi.<sup>23</sup>

13. The Prosecution further argues that because the original purpose for the recall of Mr. Mporanzi—to assess his credibility and determine whether he lied about receiving money in 1998 in Gitarama from a *sous-préfet* named "Marguerite"—"has now been rendered moot by the admission of the said Financial records disclosed by the Prosecutor on 28<sup>th</sup> March 2011... there is no need for any further additional evidence in this matter".<sup>24</sup> Moreover, the Prosecution submits that the reason for the disbursement of 2,000 Rwandese Francs to Mr. Mporanzi by the *sous-préfet* "is clear": namely, it was used for the legitimate purpose of reimbursing travel and other related expenses and "there is nothing to suggest that the money was an inducement to give his statement".<sup>25</sup> Therefore, the fact that "other witnesses... may have taken their disbursement from the same *sous-préfet* [sic] does not advance any fair trial issues".<sup>26</sup> The Prosecution contends that any further inquiries into alleged impropriety on the part of the OTP should be conducted via the Contempt provisions of Rule 77, rather than through "the guise of additional evidence".<sup>27</sup>

#### Reply

14. As a preliminary matter, the Defence remarks that the Prosecution Response was filed confidentially. The Defence posits that there is no justification for a confidential filing and therefore requests that the Trial Chamber re-classify the pleading as a public document.<sup>28</sup>
15. As to the substance of the Prosecution Response, the Defence rejects the Prosecution's argument that the issues raised by the disclosure of the financial receipts is limited to the credibility of Mr. Mporanzi as a witness. To this end, the Defence: 1) recalls prior Prosecution assertions as to the importance of the matter; 2) reasons that the Prosecution's invitation to deal with the matter by way of an *amicus curiae* investigation belies a tacit admission of the importance of the issues raised, and 3) reproduces an overview of the

<sup>22</sup> Response, paras. 4-5.

<sup>23</sup> Response, paras. 34-35.

<sup>24</sup> Response, paras. 8-9, 25.

<sup>25</sup> Response, paras. 24, 26-32.

<sup>26</sup> Response, para. 38.

<sup>27</sup> Response, para. 36.

<sup>28</sup> Reply, paras. 4-5.

documents that have come to light, as well as a timeline of the various events in question while concluding that "[i]t is readily apparent from these documents and the sequence of events that there is much more at stake than the credibility of Mporanzi".<sup>29</sup>

16. Delving more specifically into the issues raised by the documents and the events that have been recently revealed, the Defence: 1) recalls that contrary to the statement of Alfred Kwende which asserted that all disbursements to Prosecution witnesses are supported by "well accounted returns accompanied by documented records", the Prosecution has still not disclosed the actual receipts of the money paid to Mr. Mporanzi; 2) claims that "it is clear from the documents received not only that the identity of OTP witnesses was communicated to the Rwandan authorities but also that they played a role in the Nzabonimana investigations"; 3) noting that investigators Allagouma and Sidibe were rehired by the OTP shortly after Mporanzi's testimony and only a few months prior to providing their statements negating his testimonial claims, submits that summoning these investigators "will allow the parties in this case to know if the [rehiring] of these two investigators at that period of time was mere coincidence, or whether there exist [sic] a link between that [rehiring] and the testimony of Mporanzi".<sup>30</sup>

17. The Defence also rejects the Prosecution explanation that it was inherently obvious that the 245,000 Rwandese Francs conveyed to *Sous-Préfet* Mukamasabo was for reimbursing routine accommodation and transportation encumbrances borne by witnesses. The Defence notes that "[t]he documents contain absolutely no information as to the number of witnesses that were so treated, neither do they contain information as to what exactly is meant by "treatment".<sup>31</sup> The Defence further expresses its disbelief at the Prosecution's attempt to analogise its situation as "a simple matter of state cooperation" akin to the negotiations currently undergoing between the Defence and France with respect to the Accused's alibi.<sup>32</sup> Finally, the Defence disagrees with the proposition that the appointment of an *amicus curiae* is the more appropriate means of dealing with the issues raised by the financial documents, since "[t]he issues here have direct consequences on the evidence that was heard by this Trial Chamber, and therefore should be pursued directly within the *Nzabonimana* case".<sup>33</sup>

<sup>29</sup> Reply, paras. 9-15.

<sup>30</sup> Reply, paras. 16-21.

<sup>31</sup> Reply, paras. 22-31.

<sup>32</sup> Reply, paras. 32-26.

<sup>33</sup> Reply, paras. 37-38.

## DELIBERATIONS

### *Applicable Law*

18. Rule 98 provides that

A Trial Chamber may *proprio motu* order either party to produce additional evidence. It may itself summon witnesses and order their attendance.

As the ICTY has very recently remarked after conducting a comprehensive review of ICTR jurisprudence in *Karadžić*, "Rule 98... is concerned with the production of 'additional' evidence at the instigation of the Chamber, either through an order to the parties to produce that evidence, or through its own summoning of witnesses... The Chamber's decision to make use of Rule 98 is a discretionary one, depending on all the relevant circumstances".<sup>34</sup>

### *Analysis*

19. The crux of the present Defence request may be divided into three separate but closely interrelated allegations of malfeasance against the Prosecution: 1) that it has provided lucrative financial incentives to potential Prosecution witnesses in order to secure their testimony against the Accused, thus compromising the credibility of said witnesses; 2) that it has engaged in the unethical practice of distributing such incentives through the intermediary of Rwandan government officials, which evinces an inappropriate degree of "convergence of interest and authority"<sup>35</sup> between the OTP and the government of Rwanda; and 3) that Prosecution investigators, when challenged on the issue of this illicit remuneration scheme, "perjured themselves in their affidavits in which they categorically stated that no funds were transferred to Rwandan authorities".<sup>36</sup> The present analysis shall address in turn whether any of these allegations warrant a summons of Messrs. Allagouma and Sidibe and Ms. Mukamasabo to testify in the instant proceedings pursuant to Rule 98.

### The Disbursement of Funds to Prospective Prosecution Witnesses

20. The lynchpin of the Defence's argument is that Mr. Mporanzi's testimony that he received 2,000 Rwandese Francs as an ostensible meal and travel stipend after meeting with OTP investigators in Gitarama in 1998 ought to be read in conjunction with the recently disclosed financial records of the OTP showing a transfer of 245,000 Rwandese Francs from Prosecution Investigator Allagouma to Gitarama *Sous-Préfet* Mukamasabo on the same day as Mporanzi's interview, thus allowing for the inference that a number of prospective

<sup>34</sup> *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on the Accused's Motion for Order to Obtain Witness Statements and Testimony from National Courts, 12 January 2011, para. 9.

<sup>35</sup> Motion, para. 4.

<sup>36</sup> Motion, para. 48.

Prosecution witnesses who were interviewed in the case against Nzabonimana around that same time and often by the same investigator were given inordinately generous "indemnifications" for their "treatment".

21. Citing a report released by the Food and Agriculture Organization of the United States ("FAO") dated 16 February 1998,<sup>37</sup> the Defence suggests that "the average salary of a Rwandan person in 1998 was 336 Rwandese Francs per month".<sup>38</sup> According to this statistic, if Mr. Mporanzi had been paid 2,000 Rwandese Francs for expenses related to his interview it would be equivalent to what the average Rwandan at that time would earn in nearly six months. However, this line of reasoning is problematic, since the Defence has fundamentally misstated the information contained in the Report, which clearly states that the average daily (not monthly) salary in Rwanda in 1998 was 336 Rwandese Francs.<sup>39</sup> Consequently, the Trial Chamber notes that while Mporanzi himself may have been "positively surprised by [the] generosity"<sup>40</sup> of having been compensated 2,000 Rwandese Francs for his travel and meal expenses, the Trial Chamber does not consider such a sum to be so inordinate as to support the Defence's insinuation of impropriety, without more.

22. Finally, and in light of the above analysis, the Trial Chamber finds the Defence contention that "[b]ased on a simple math equation, 245,000 Rwandese Francs could have 'hired' 23 persons for one month"<sup>41</sup> to be purely speculative. For these reasons, having considered all the relevant circumstances, the Chamber concludes that the Defence has not established a *prima facie* case supporting its contention that the Prosecution bribed its witnesses that would warrant the discretionary exercise of Rule 98.

#### The Cooperation between the OTP and the Government of Rwanda

23. The Trial Chamber recalls and reiterates its pronouncement of 27 May 2010 "that the alleged facilitation of reimbursement of travel and related expenses borne by Prosecution witnesses by Rwandan authorities... is a crucial issue that goes to the heart of not only the

<sup>37</sup> "RAPPORT SPECIAL: MISSION FAO/PAM D'EVALUATION DES RECOLTES ET DES DISPONIBILITES ALIMENTAIRES AU RWANDA", 16 février 1998, <http://www.fao.org/docrep/004/w7902f/w7902f00.htm> ("Special Report").

<sup>38</sup> Motion, para. 42.

<sup>39</sup> Special Report, section 5.1: "Pendant la première moitié de janvier 1998, le salaire journalier moyen était de 336 francs rwandais (soit un peu plus de 1 dollar E.-U.), l'écart entre les différentes préfectures étant de 200 à 500 francs rwandais." (emphasis added)

<sup>40</sup> Transcript, 26 May 2010, p. 58 ll. 28-30.

<sup>41</sup> Motion, para. 42.



Defence case, but the integrity of the Office of the Prosecutor of this Tribunal."<sup>42</sup> However, the Trial Chamber considers that the Defence has had adequate opportunity to ventilate this issue as it pertains to its case throughout the course of the present proceedings.

24. Moreover, as to whether the apparent cooperation between the Prosecution and the government of Rwanda in the instant proceedings amounts to outright collusion that would qualify as Contempt of the Tribunal, the Trial Chamber considers that there are specific mechanisms envisaged by Rule 77 that are more germane to consideration of such issues. Indeed, the Chamber notes the Prosecution's implicit invitation to the Defence to file a motion in this regard.<sup>43</sup> Therefore, the Chamber declines to exercise its discretion under Rule 98 to have this ancillary issue be examined in the course of the Nzabonimana trial.

The Alleged Perjury of Prosecution Investigators Adamou Allagouma and Almahamoud Sidibe

25. In a similar vein to the matter disposed of immediately above, the Trial Chamber finds that the Defence's allegations of perjury against Prosecution Investigators Allagouma and Sidibe to be ancillary to the determination of the guilt or innocence of the Accused as alleged in the Indictment filed by the Prosecution in these proceedings. Consequently, the Chamber concludes that any further pursuit of this issue would more appropriately be addressed under Rules 77 and/or 91. The Chamber thus again declines to exercise its discretion under Rule 98 to have the persons sought by the Defence testify in the present proceedings.


**FOR THESE REASONS, THE TRIAL CHAMBER**

**DENIES** the Motion.

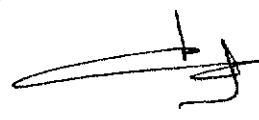
Arusha, 7 April 2011, done in English.

  
Solomy Balungi Bossa

Presiding Judge

  
Bakhtiyar Tuzmukhamedov

Judge



Mparany Rajohnson

Judge



<sup>42</sup> Transcript, p. 1, ll. 29-33.

<sup>43</sup> Response, para. 36.