



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
13-10-2011
(54401-54399)

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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
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 13 October 2011

THE PROSECUTION

v.

**Édouard KAREMERA and
Matthieu NGIRUMPATSE**

Case No. ICTR-98-44-T

UNICTR
JUDICIAL RECORDS/ARCHIVES
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**ORDER CONCERNING CONFIDENTIAL PROSECUTION DISCLOSURE OF
RULE 68(A) MATERIAL**

Rule 68(A) of the Rules of Procedure and Evidence

Office of the Prosecution:

Don Webster
Maria Wilson
Takeh Sendze
Sunkarie Ballah-Conteh

Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Matthieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

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INTRODUCTION

1. On 30 September 2011, Trial Chamber II delivered its judgement in *Bizimungu et al.*, where it refused to consider an 18 April meeting at Murambi, Gitarama, as a basis for conviction because the Prosecution had failed to timely disclose exculpatory material regarding the meeting from the *Nzabonimana* case to the Defence.
2. On 11 October 2011, nine months after the close of the evidence in this case, the Prosecution filed the entire bundle of disclosures from *Nzabonimana* that were at issue in *Bizimungu et al.*, asserting that it was "potential Rule 68 material".¹ Claiming generally that the issues surrounding the late disclosures from *Nzabonimana* have no bearing upon the evidence in this case, it invited the Defence to review the materials "so that any further discussion of this crucial meeting reflects careful consideration of all available documentation."²

DELIBERATION

3. Rule 68(A) imposes an obligation on the Prosecution to disclose to the Defence, as soon as practicable, any material which, in the actual knowledge of the Prosecution, may suggest the innocence or mitigate the guilt of an accused, or affect the credibility of the evidence led by the Prosecution in that particular case. As a rule of disclosure rather than of admissibility of evidence, Rule 68 imposes a categorical obligation to disclose any document or witness statement that contains exculpatory material.³
4. The determination of which materials are subject to disclosure under this provision is a fact-based inquiry made by the Prosecution.⁴
5. Rather than identify the materials that are exculpatory under Rule 68(A) and not disclosed to the Defence, the Prosecution has merely stated that "many of these materials were already previously disclosed in *Karemera et al.* or have no relevance to our trial, as they only concern Jerome Bicamumpaka or Callixte Nzabonimana".⁵ This statement falls well below the obligations imposed upon the Prosecution by Rule 68(A).
6. Therefore, the Chamber orders the Prosecution to specifically identify the documents from the Disclosure that are exculpatory under Rule 68(A) and not previously disclosed to the

¹ Disclosure of Potential R68 Material from *Nzabonimana* Trial, filed confidentially on 11 October 2011, ("Disclosure").

² Disclosure, para. 6.

³ *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-AR73.13, ("*Karemera et al.*"), Decision on "Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion"(AC), 14 May 2008, para. 12.

⁴ *Karemera et al.*, Case No. ICTR-98-44-AR73.6, Decision on Joseph Nzirorera's Interlocutory Appeal (AC), 28 April 2006, para. 16.

⁵ Disclosure, para. 6.

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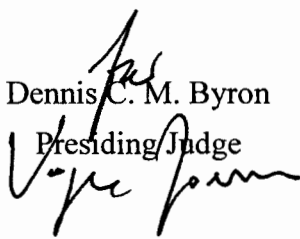
Defence. The Defence will rely on its comparison of this submission and its own records of what it has received to decide whether it disagrees with the Prosecution's assessment.

FOR THE ABOVE REASONS, THE CHAMBER

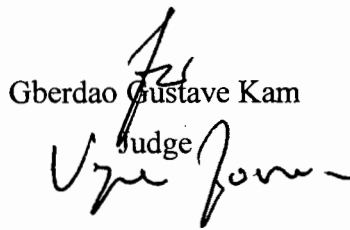
- I. ORDERS** the Prosecution to file a list that specifically identifies the documents from the Disclosure that are exculpatory under Rule 68(A) and not previously disclosed to the Defence, by 19 October 2011;
- II. ORDERS** the Defence to file its submissions on the matter, if any by 31 October; and
- III. INFORMS** the Prosecution that it does not have the right to reply to the response(s) of the Defence.

Arusha, 17 June 2011, done in English.

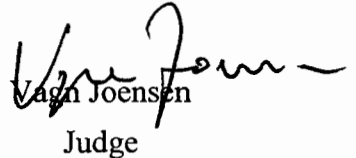
Dennis C. M. Byron
Presiding Judge



Gberdao Gustave Kam
Judge



Vagn Joensen
Judge



[Seal of the Tribunal]

