

1. I have had the benefit of reading the reasons of my learned brothers Hon. Justice Itoe and Hon. Justice Thompson in relation to the matter raised by the Defence in their Application in item (v) requesting the disclosure of the assistance offered and given to General Tarnue by Dr. White and other investigators from the Office of the Prosecutor. As already stated in the Decision of Trial Chamber I, I am in agreement and concur with their reasons and findings on all of the issues raised and disposed of in that Decision with the exception of this Defence issue for the reasons discussed below.

2. The Defence asserts that the evidence concerning the assistance provided by Dr. White to General Tarnue in terms of his relocation or asylum claim is exculpatory in that it may impact on the Court's assessment of the credibility of General Tarnue, a witness for the Prosecution. The Prosecution asserts that there is no evidentiary basis to support granting this relief in the evidence relating to these topics elicited before the Court. I note, however, that although the details of the assistance he might have received were not always clear during his testimony, there is *prima facie* evidence when considering General Tarnue's evidence that he would have received some assistance in various forms from the Prosecution as to his relocation and that of his family and as to his asylum claim.

3. With regard to whether the Prosecution is in possession of this information, I am mindful that the Defence is requesting disclosure of information relating to assistance given by persons who are part of the Office of the Prosecutor. Based upon the evidence, it would appear that Dr. White who is part of the Office of the Prosecutor would be a source of information as to what role the Prosecution had in the relocation and the asylum claim of General Tarnue. Undoubtedly with this in mind, the Prosecution asserts that the Defence can call other witnesses should it choose to do so. While this may be the case, this fact does not excuse the Prosecution from its obligations to disclose any exculpatory evidence in its possession.

4. As clearly stated in Rule 68, exculpatory evidence includes evidence known to the Prosecutor that may tend to affect the credibility of a Prosecution witness. Obviously, any evidence relating to matters or information which may affect the motivation of a witness to provide evidence is, in my opinion, relevant to assessing the witness' credibility. I am cognisant of the practice of the Prosecution to disclose to the Defence information relating to the funds that have been disbursed to Prosecution witnesses, either directly or through the payment of certain expenses, on this same basis.

Such information is not of a nature that substantially differs from the information now sought by the Defence in point (v) of this Application.

5. I certainly recognise the need of the Prosecution to ensure the safety and security of Prosecution witnesses which may involve the relocation of witnesses to countries outside of their home country. This being said, relocation of a witness and his or her family to a foreign country may also be seen as a benefit, or an economic or security advantage by that witness and can certainly be said to be of such a nature that it could affect the motivation of a witness to give evidence and, hence, could impact on the credibility of this witness.

6. As a result, I am satisfied that information regarding the fact that a relocation has occurred and, in general, the conditions of that relocation such as permanency or temporary nature of the relocation or whether it entails other benefits may affect the credibility of a witness' testimony. Similarly, any assistance provided by the Prosecution in the asylum claim of a witness may also be considered as possibly affecting the credibility of a witness and be evidence known to the Prosecution as envisaged by Rule 68. Furthermore, I find considering my aforementioned comments that such evidence would constitute a *prima facie* case which, in the words of the Trial Chamber of the International Tribunal for the Former Yugoslavia in the *Blaskic* case, "would make probable the exculpatory nature of the materials sought."¹

7. Consequently, I would find that the Prosecution is required to disclose any evidence within its possession relating to assistance given by the Prosecution or its agents to General Tarnue regarding the fact that a relocation has occurred and, in general, the conditions of that relocation, more specifically whether the relocation is permanent or temporary and the extent of the benefits associated to the relocation and particularly whether any form of assistance, financial or otherwise, may have been provided to him and/or his family regarding his asylum claim.

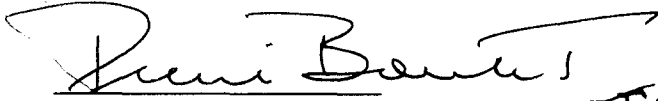
FOR ALL THE ABOVE REASONS,

8. In light of the submissions made and giving due consideration of the applicable jurisprudence, I would grant the Defence request for disclosure under point (v) and order the

¹ *Prosecutor v. Blaskic*, IT-95-14, *Decision on the Production of Discovery Materials*, 27 January 1997, para. 49.

Prosecution pursuant to Rule 68 any information in any form relating to “[w]hat assistance was offered and given to General Tarnue by Dr White and/or any other investigator.”

Done at Freetown, Sierra Leone, this 2nd day of May 2005



Hon. Justice Pierre Boutet



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