

ICTR-2000-60-I
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United Nations
Nations Unies

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Winston C. Matanzima Maqutu
Judge Arlette Ramaroson

Registrar: Adama Dieng

Date: 28 March 2003

The PROSECUTOR

v.

Paul BISENGIMANA

Case No. ICTR-2000-60-I

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**DECISION ON BISENGIMANA'S MOTION FOR DISCLOSURE OF MATERIALS
(RULE 66(A)(i))**

Office of the Prosecutor
Charles Adeogun-Phillips
Wallace Kapaya
Renifa Madenga

Counsel for the Accused
Catherine D. Mabile

AMS

Prosecutor v. Paul Bisengimana (Case No. ICTR-2000-60-I)

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),

SITTING as Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Winston C. Matanzima Maqutu and Judge Arlette Ramarosan (the “Chamber”);

BEING SEIZED of:

- i. The Defence “Motion for Disclosure of Materials by the Prosecutor (Rule 66(A)(i) of the Rules of Procedure and Evidence)” filed on 30 December 2002 (the “Defence Motion”)¹;
- ii. The “Prosecutor’s Response to the Defence Motion for Disclosure of Materials by the Prosecutor – Rule 66(A)(i) of the Rules of Procedure and Evidence” filed on 31 January 2003 (the “Prosecution Response”);
- iii. The Defence “*Réplique à la réponse du Procureur à la requête de la défense aux fins de production de pièces par le Procureur – Article 66(A)(i) du Règlement de Procédure et de Preuve*” filed on 6 March 2003 (the “Defence Reply”);

NOTING the “Prosecutor’s Motion for Protective Measures for Victims and Witnesses” filed on 23 July 2002 (the “Prosecution Motion for Protective Measures”);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), particularly Rule 66(A);

NOW CONSIDERS the matter solely on the basis of the written briefs of the Parties, pursuant to Rule 73(A) of the Rules.

SUBMISSIONS OF THE PARTIES

1. The Defence submits that it have not yet received redacted copies of Prosecution witness statements, as was claimed by the Prosecution in the Prosecution Motion for Protective Measures.
2. The Prosecution admits that this claim to have begun disclosing redacted witness statements was erroneous. However, it argues that according to the Rules it is fulfilling its disclosure obligations and will continue to do so.
3. The Defence submits that the disclosure of supporting material on 16 April and 19 June 2002 by the Prosecution does not suffice with respect to complying with disclosure obligations pursuant to Rule 66(A)(i). The Defence recalls that the Prosecution admits that no redacted statement was disclosed to the Defence.
4. The Defence argues that immediate disclosure of the redacted witness statements would not be a threat to the anonymity of the Prosecution Witnesses, and would be in the

¹ Original Motion filed in French, English translation filed on 27 January 2003.

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interests of the good administration of justice. It claims that it is contrary to Rule 66 (A)(i), fairness and the good administration of justice that the Prosecution choose the opportune moment to disclose materials and witness statements (*pièces et témoignages*) at their discretion.

5. The Defence cites a Decision of Trial Chamber II (as it was then constituted) of 27 November 1997 in support of its Motion². It argues that the Decision supports its contention that failure by the Prosecution to disclose to the Defence Witness Statements constitutes a violation of Rule 66(A)(i) of the Rules, and also that the fact that the Prosecution has introduced a Motion for Protection of Witnesses does not relieve it of its obligation of disclosure. It also quotes this Decision as supporting the position that a pending Motion before the Chamber does not relieve the Prosecution of its "other obligations".

DELIBERATIONS

6. The Chamber notes that pursuant to Rule 66(A)(i) the deadline for disclosure to the Defence of supporting material, which accompanied the indictment when confirmation was sought, as well as all prior statements obtained by the Prosecution for the Accused, has passed.
7. The Chamber observes that since no date has yet been set for Trial of the Accused, the 60-day deadline contained in Rules 66(A)(ii) for disclosure of statements of witnesses that the Prosecution intends to call at trial has not yet passed.
8. The Decision by Trial Chamber II (as it was then composed) of 27 November 1997 which the Defence cites in support of its submissions can be clearly distinguished from the present case, as it was based upon a different set of circumstances, in particular the fact that the date for trial of Theoneste Bagosora had been set, and had not yet been revised at the relevant deadline for disclosure, resulting in a declaration by the Chamber that the Prosecution had failed to meet its disclosure obligations.
9. Whilst not a strict requirement of the Rules, this Chamber has consistently followed a practice whereby early disclosure of redacted witness statements is encouraged³. The Chamber reminds the Parties that the obligation of disclosure is an ongoing one, and the deadline within Rule 66(A)(ii) is to be interpreted as a final date for disclosure, with the expectation that Counsel will make disclosure prior to this date if possible. Thus the Prosecution is urged to make disclosure of witness statements, redacted if necessary, as soon as it is practicable to do so.

² Prosecutor v. Bagosora, *Decision on the Motion by the Defence Counsel for Disclosure*, 27 November 1997.

³ Prosecutor v. Nyiramasuhuko, *Decision on Defence Motion for Disclosure of Evidence*, 1 November 2000; See paragraph 39 of this Decision for a summary of previous jurisprudence.

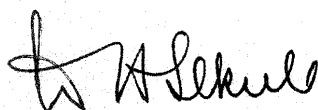
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Prosecutor v. Paul Bisengimana (Case No. ICTR-2000-60-I)

FOR THE ABOVE REASONS, THE TRIBUNAL

DENIES the Defence Motion.

Arusha, 28 March 2003



William H. Sekule
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramaroson
Judge

[Seal of the Tribunal]

