



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICR-99-52-7
22-03-2004
(34970-34968)

34970
S. Musesa

OR: ENG

TRIAL CHAMBER I

Before: Judge Erik Møse

Registrar: Adama Dieng

Date: 22 March 2004

THE PROSECUTOR

v.

FERDINAND NAHIMANA
JEAN-BOSCO BARAYAGWIZA
HASSAN NGEZE
Case No. ICTR-99-52-T

DECISION ON DISCLOSURE OF CLOSED SESSION TESTIMONY AND SEALED
EXHIBITS OF WITNESS X

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("the Tribunal"),

SITTING as Trial Chamber I, composed of Judge Erik Møse, designated by the Trial Chamber, pursuant to Rule 73 of the Rules of Procedure and Evidence of the Tribunal ("the Rules");

BEING SEIZED OF the "Prosecutor's Motion Seeking an Order for the "Disclosure of Sealed Excerpts (Closed Session) Transcripts and Exhibits Received Under Seal for Prosecution Witness X", filed on 17 March 2004;

HEREBY DECIDES the motion.

1. The Prosecution in the case of *Prosecutor v. Bagosora et al.* requests disclosure of transcripts of closed session testimony of protected Witness X who appeared at the trial of *Prosecutor v. Nahimana et al.* The references in the motion to Trial Chamber II are erroneous as both are Trial Chamber I cases. Witness X is scheduled to testify as a Prosecution witness in the trial of *Bagosora et al.* The Prosecution seeks the disclosure of the material to the Defence, so as to facilitate the process of disclosure and expedite the appearance of the witness. The Defence in both *Bagosora* and *Nahimana* have not responded to the motion, which has been brought by the Prosecution in respect of one of its own witnesses, and for the benefit of the Defence in *Bagosora et al.*
2. The relief requested requires modification of the *Nahimana* witness protection decision of 14 September 2001, relating to Witness X, in order to permit disclosure of the information to the Defence. The Trial Chamber has ongoing authority to review and modify its own decisions where appropriate. The Defence has a legitimate need for the protected material, which may be relevant to the witness's credibility. The Chamber follows past decisions in finding that the protected material requested may be disclosed, provided that the party to whom it is to be disclosed agrees to be bound by the terms of the witness protection decision.¹ Any Defence team in *Bagosora et al.* which expressly undertakes in writing filed with the Registry, on behalf of itself and the Accused represented, to be bound by the *Nahimana* witness protection order shall be given the protected material of Witness X.
3. Upon receipt of the written undertaking described above, the Chamber authorizes the Registry to transmit the closed session transcripts of Witness X's testimony, and any exhibits filed under seal therewith, to the Defence in *Bagosora et al.*

¹ *Nahimana et al.*, Decision on Joseph Nzirorera's Motion for Disclosure of Closed Session Testimony and Exhibits Received Under Seal (TC), 5 June 2003; *Niyitegeka*, Decision on the Defence Motion for Release of Closed Session Transcript of Witness KJ (TC), 23 June 2003; *Kajelijeli*, Decision on Joseph Nzirorera's Motion for Disclosure of Closed Session Testimony and Exhibits Received Under Seal (TC), 7 October 2003; *Bagosora et al.*, Decision on Motion By Nzirorera for Disclosure of Closed Session Testimony of Witness ZF (TC), 11 November 2003; *Niyitegeka*, Decision on Release of Closed Session Transcript of Witness KJ for Use in the Trial of *Bagosora et al.* (TC), 17 February 2004; *Ntakirutimana*, Decision on Release of Closed Session Transcript of Witness OO for Use in the Trial of *Bagosora et al.* (TC), 17 February 2004; *Musema*, Decision on Release of Closed Session Transcript of Witness AB for Use in the Trial of *Bagosora et al.* (TC), 18 February 2004.

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FOR THE ABOVE REASONS, THE CHAMBER

DECIDES that the transcripts of the closed session trial testimony of Witness X in *Nahimana et al.*, and exhibits filed under seal therewith, shall be made available to any Defence team in the case of *Bagosora et al.* which undertakes in writing filed with the Registry, on behalf of itself and the Accused represented, to be bound by the witness protection decision of 14 September 2001;

ORDERS that any person or party in receipt of such closed session testimony and exhibits filed under seal therewith shall be bound *mutatis mutandis* by the witness protection decision of 14 September 2001;

ORDERS the Registry to carry out the terms of this Decision, and otherwise to continue to enforce the terms of the witness protection decision of 14 September 2001.

Arusha, 22 March 2004

Erik Møse

Erik Møse
Judge

[Seal of the Tribunal]

