



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr Adama Dieng

Date: 16 December 2004

ICTR-98-42-T
16-12-2004
(1158-1156)

The PROSECUTOR v. Elie NDAYAMBAJE
The PROSECUTOR v. Joseph KANYABASHI
The PROSECUTOR v. Pauline NYIRAMASUHUKO & Arsène Shalom NTAHOBALI
The PROSECUTOR v. Sylvain NSABIMANA & Alphonse NTEZIRYAYO
Joint Case No. ICTR-98-42-T

**DECISION ON THE PROSECUTOR'S MOTION FOR AN ORDER OF
DISCLOSURE OF CLOSED SESSION TRANSCRIPTS AND SEALED
PROSECUTION EXHIBITS PURSUANT TO RULES 69 AND 75**

Office of the Prosecutor

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Michel Marchand, Josette Santerre for Kanyabashi
Pierre Boulé, Claude Desrochers for Ndayambaje
William E. Taylor for Muvunyi

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JUDICIAL RECORDS ARCHIVES

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

SITTING as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa, (the "Chamber");

BEING SEIZED of the "Prosecutor's Request for An Order of Disclosure of Closed Session Transcripts and Sealed Prosecution Exhibits Pursuant to Rules 69 and 75 of the Rules of Procedure and Evidence," filed on 8 December 2004;

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules"), in particular Rules 68, 69 and 75 of the Rules;

NOW DECIDES the Motion solely on the basis of the written brief filed by the Prosecution, pursuant to Rule 73(A) of the Rules.

HAVING DELIBERATED

RECALLING the jurisprudence of the Tribunal on requests for the disclosure of closed session testimonies;¹

WHEREAS the Prosecution, pursuant to Rule 68 of the Rules requests the Chamber to vary any protective measure orders in place for one of its expert witnesses, Professor Guichaoua, and to order the Registry to make available to Trial Chamber III and the Defence in *the Prosecutor v. Muvunyi*, Case No. ICTR-00-55-I, the transcripts of Prosecution Guichaoua's testimony as well as the expert report and annexes which were offered in evidence;

WHEREAS the Chamber notes that parts of Professor Guichaoua's testimony were given in closed session and thus not to be found in the public domain;


WHEREAS the Chamber finds that protective orders were issued for Professor Guichaoua under Rule 75 of the Rules;

RECALLING that Rule 75(F)(ii) applies to "any disclosure obligation under the Rules," the Chamber is of the view that the Prosecution shall fulfil its disclosure obligations under the Rules notwithstanding applicable protective orders, and that upon such disclosure, the party receiving the materials is then bound *mutatis mutandis* by the terms of the applicable protective measures in accordance with the provisions of Rule 75(F);

WHEREAS the Chamber recalls that according to the jurisprudence of the Tribunal² Rule 75(F) is intended to create a mechanism for the routine disclosure of closed session testimony

¹ See *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-T, Decision on Joseph Nzirorera's Motion for Disclosure of Closed Session Testimony and Exhibits Received Under Seal, 5 June 2003; *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Motion By Nzirorera for Disclosure of Closed Session Testimony of Witness ZF, 11 November 2003; *Prosecutor v. Ntakirutimana*, Case No. ICTR-96-10-T, Decision on Release of Closed Session Transcript of Witness OO for Use in the Trial of *Bagosora et al.*, 16 February 2004; *Prosecutor v. Musema*, Case No. ICTR-96-13-T, Decision on Release of Closed Session Transcript of Witness AB for Use in the Trial of *Bagosora et al.*, 16 February 2004; *Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-T, Decision on Release of Closed Session Transcript of Witness KJ for Use in the Trial of *Bagosora et al.*, 17 February 2004; *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Release of Closed Session Transcript of Witness DY for Use in the Trial of *Bizimungu et al.*, 23 February 2004.

² *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-T, Decision on Disclosure of Transcripts and exhibits of Witness X, (TC) 3 June 2004 paras. 4 and 5; *Prosecutor v. Nyiramasuhuko et al.* Case No. ICTR-98-42-T,



without the need for Parties to make individualised applications to the Trial Chamber who granted the protective orders;

WHEREAS the Chamber notes that the Prosecution indicates that it has disclosure obligations under Rule 68;

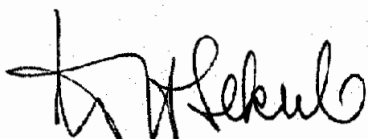
WHEREAS authorization to make disclosures under Rule 75(F) is automatic, the Chamber finds that there was no need for the Prosecution to make this application;

ACCORDINGLY the Prosecution request is dismissed.

FOR THE ABOVE REASONS, THE TRIBUNAL

DISMISSES the Prosecution request.

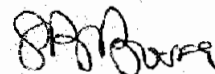
Arusha, 16 December 2004



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



Solomy Balungi Bossa
Judge

(Seal of the Tribunal)