



UNITED NATIONS  
NATIONS UNIES

ICTR-00-56-T  
18-03-2005  
(18947-18943)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

18947  
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OR: ENG

**TRIAL CHAMBER II**

**Before:** Judge Asoka De Silva, Presiding  
Judge Taghrid Hikmet  
Judge Seon Ki Park

**Registrar:** Mr Adama Dieng

**Date:** 18 March 2005

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**The PROSECUTOR**  
v.  
**Augustin NDINDILYIMANA**

**Case No. ICTR-2000-56-T**

**DECISION ON DEFENCE REQUEST TO CONFIRM THAT WITNESS YAOC IS A  
POTENTIAL WITNESS FOR THE DEFENCE AND TO PROHIBIT THE  
PROSECUTION FROM CONTACTING HER**

**The Office of the Prosecutor:**

Mr Ciré Aly Bâ  
Ms Ifeoma Ojemeni Okali  
Mr Segun Jegede  
Mr Alphonse Van  
Mr Moussa Sefon  
Mr Tambaou Abubacarr  
Ms Faria Rekkas (Case Manager)  
Ms Anne Pauline Bodley (Case Manager)

**Counsel for the Accused:**

Mr Christopher Black  
Ms Tiphaine Dickson

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

**SITTING** as Trial Chamber II composed of Judge Asoka De Silva, Presiding, Judge Taghrid Hikmet, and Judge Seon Ki Park (the “Chamber”),

**BEING SEIZED** of the «*Requête confidentielle et en extrême urgence d’Augustin Nindiliyimana aux fins de prendre acte que le témoin YAOC est un témoin potentiel de la Défense et d’empêcher au Procureur tout contact ultérieur avec lui*» filed on 18 January 2005 (the «*Motion*»);<sup>1</sup>

**CONSIDERING** the

- i. «*Observations du Procureur sur la réponse de la Défense d’Augustin Nindiliyimana à la requête du 15 Décembre 2004 et sur la requête présentée par cette Défense aux fins de prendre acte que le témoin YAOC figure sur sa liste de témoins*» filed on 20 January 2005;<sup>2</sup>
- ii. «*Réplique d’Augustin Nindiliyimana à la réponse de la défense d’Augustin Nindiliyimana à la requête présentée par cette défense aux fins de prendre acte que le témoin YAOC figure sur sa liste de témoins*» filed on 27 January 2005;<sup>3</sup>
- iii. «*Réplique du procureur aux observations du conseil d’Augustin Nindiliyimana déposées le 27 janvier 2005*»<sup>4</sup> filed on 31 January 2005;
- iv. «*Réaction d’Augustin Nindiliyimana au document intitulé “Réplique du procureur aux observations du conseil d’Augustin Nindiliyimana déposées le 27 janvier 2005”* »<sup>5</sup> filed on 2 February 2005.

**NOTING** the Decision on Prosecution Motion to Vary its List of Witnesses of 11 February 2005 in the instant case,<sup>6</sup>

**CONSIDERING** the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”),

**NOW DECIDES** the Motion on the basis of the written briefs filed by the Parties pursuant to Rule 73(A) of the Rules.

<sup>1</sup> Unofficial translation: “Confidential and Extremely Urgent Defence Request to Confirm that Witness YAOC is a Potential Witness for the Defence and to Prohibit the Prosecution from Contacting Her”.

<sup>2</sup> Unofficial translation: “Observations of the Prosecution on the Response of the Defence to the Motion of 15 December 2004 and on the Motion Presented by the Defence to Confirm that Witness YAOC is on its List of Witnesses”.

<sup>3</sup> Unofficial translation: “Defence Reply to the Prosecution’s Observations on the Motion Presented by the Defence to Confirm that Witness YAOC is on its List of Witnesses”.

<sup>4</sup> Unofficial translation: “Prosecution Reply to the Observations of Defence Counsel filed on 27 January 2005”.

<sup>5</sup> Unofficial translation: “Defence Reply to Prosecution Reply to the Observations of Defence Counsel filed on 27 January 2005”.

<sup>6</sup> *The Prosecutor v. Augustin Nindiliyimana et al*, Case No. ICTR-2000-56-T, “Decision on Prosecution Motion to Vary its List of Witnesses,” 11 February 2005.



## PRELIMINARY MATTER

### *On the Number of Submissions of the Parties*

1. The Chamber acknowledges receipt of the «*Réplique du procureur aux observations du conseil d'Augustin Nindiliyimana déposées le 27 janvier 2005*» filed on 31 January, 2005, as well as the «*Réaction d'Augustin Nindiliyimana au document intitulé "Réplique du procureur aux observations du conseil d'Augustin Nindiliyimana déposées le 27 janvier 2005" »* filed on 2 February 2005.
2. The Chamber considers that it is not in the interest of judicial economy when Parties file a high number of consecutive submissions. The Chamber considers that the Parties should refrain from such practice in future and be mindful of filing clear and concise pleadings and limit themselves to the filing of motion, response, reply and in exceptional situations, a rejoinder. The Chamber decides to limit its considerations of the pleadings to the first three submissions filed and will not consider the «*Réplique du procureur aux observations du conseil d'Augustin Nindiliyimana déposées le 27 janvier 2005*» or the «*Réaction d'Augustin Nindiliyimana au document intitulé "Réplique du procureur aux observations du conseil d'Augustin Nindiliyimana déposées le 27 janvier 2005" »*.

## SUBMISSIONS OF THE PARTIES

### **The Defence**

1. The Defence states that in 2002, Witness YAOC was entered on its list of potential Defence witnesses.
2. The Defence submits that during proceedings on 29 September 2004 when Prosecution Witness GFS was testifying, the fact that Witness YAOC would come to testify on behalf of the Defence was made known to the Chamber. The Defence adds that the Chamber accepted that the witness could be called by the Defence and thereby authorized the Defence to call Witness YAOC.
3. The Defence argues that it would be contrary to the Decisions of this Chamber if the Prosecution took advantage of the fact that it calls witnesses first and used the identity of a potential Defence witness disclosed during proceedings to transform that witness into a Prosecution witness through fraudulent means.
4. The Defence further argues that such behaviour by the Prosecution would be both unethical and unfair.
5. The Defence refers to the Tribunal's Decision of 19 March 2004 concerning the Prosecution's request to modify and extend protective measures for victims and witnesses. In that Decision, the Defence was ordered to obtain the Chamber's written permission and to notify the Prosecution prior to contacting a witness for the Prosecution whose identity is known by the Defence.
6. The Defence argues that in accordance with the principles of fairness and equality between the Parties, the Decision of 19 March 2004 should apply in the present case



to prohibit the Prosecution from contacting Witness YAOC, unless it obtains the permission of this Chamber and Defence counsel is present.

7. The Defence prays the Chamber to grant the Motion, confirm that Witness YAOC is a Defence witness, forbid the Prosecution from contacting the Witness without leave from the Chamber and without Defence counsel being present, order some protective measures for the Witness pending a Motion for protective measures for Defence witnesses and warn the Prosecution against fraudulent practice.

### Prosecution Response

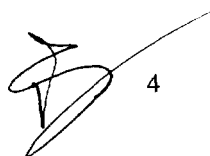
8. The Prosecution asserts that it met with Witness ATZ (Witness YAOC for the Defence) on 7-9 September 2004 in Yaoundé and therefore rejects the Defence's claim that its intention to call the witness was a reaction to remarks made during the 29 September 2004 proceedings. The Prosecution refers to Annex 1 of its 15 December 2004 Motion.
9. The Prosecution states that the Defence has not yet had to file its list of witnesses pursuant to Rule 73 *ter* and that the Defence has only filed a letter from the Witness whereas the Prosecution has a statement from that witness indicating a willingness to testify against the Accused
10. The Prosecution notes that, while its witnesses are protected by an Order of the Trial Chamber dated 19 March 2004 and amended 3 November 2004, the Defence does not, at this time, have the benefit of a similar Order.

### The Defence Reply

11. The Defence questions the truthfulness and good faith of the Prosecution with respect to the date on which the interview and the statement were allegedly made by Witness YAOC. The Defence concludes that the 14 January 2004 statement should be excluded by the Chamber as it has been fabricated by the Prosecution.
12. The Defence asserts that the Prosecution's reliance on the Trial Chamber's Orders of 12 March 2004 and 3 November 2004 on the protection of Prosecution witnesses is groundless, as Witness YAOC has not been declared a Prosecution witness by the Trial Chamber and is therefore not subject to the Orders.

### HAVING DELIBERATED

13. The Chamber recalls its "Decision on Prosecution Motion to Vary its List of Witnesses" of 11 February 2005 in which the Prosecution was granted leave to amend its witness list to include, *inter alia*, Witness ATZ whom the Defence refers to as Witness YAOC in its submissions.
14. The Chamber recalls its Decision of 19 March 2004, as amended by its Decision of 3 November 2004, ordering protective measures for Prosecution witnesses.
15. The Chamber considers that, as Witness ATZ (YAOC for the Defence) has been added to the Prosecution's list of witnesses, the Defence must respect the terms of the



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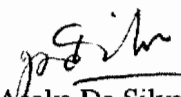
Chamber's Orders concerning protective measures for Prosecution witnesses as they were laid out in this Trial Chamber's decisions of 19 March 2004 and 3 November 2004. Therefore, the Chamber dismisses the Defence Motion for being moot.

16. Finally, the Chamber reminds the Parties of their obligation to use respectful language in their submissions.

**FOR THE FOREGOING REASONS,**

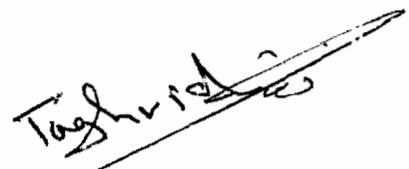
**THE TRIBUNAL DISMISSES** the Defence Motion in all respects.

Arusha, 18 March 2005

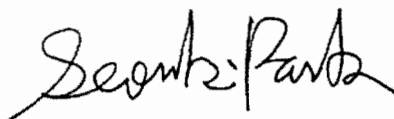


Asoka De Silva

Presiding Judge



Taghrid Hikmet



Seon Ki Park

Judge