



ICTR-98-41-T
01-11-2005

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

(25873-25871)

25873
1494

TRIAL CHAMBER I

Before: Judge Erik Møse

Registrar: Adama Dieng

Date: 31 October 2005

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

2005 NOV - 1 P 12:04
ICTR

**DECISION ON NZUWONEMEYE REQUEST FOR DISCLOSURE
OF IDENTIFYING INFORMATION OF WITNESS XXO AND
AUTHORIZATION TO INTERVIEW HIM**

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid

The Defence in *Ndindiliyimana et al.*

Charles Taku
Coralie Colson
Tharcisse Gatarama

6 m

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA,

SITTING as Trial Chamber I, composed of Judge Erik Møse, designated by the Chamber in accordance with Rule 73 (A) of the Rules of Procedure and Evidence (“the Rules”);

BEING SEIZED OF a “Motion for Disclosure of Identifying Information of Witness XXO and Authorization to Interview a Protected Witness”, filed by the Defence of François-Xavier Nzuwonemeye on 11 October 2005, in connection with the case of *Prosecutor v. Nindiliyimana et al.*;

CONSIDERING the oral submissions made by the Prosecution on 20 October 2005 in the case of *Prosecutor v. Bagosora et al.*;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence for Nzuwonemeye, an accused in the case of *Prosecutor v. Nindiliyimana et al.*, requests that it be given the identifying information and any unredacted statements of Witness XXO, who appeared in the *Prosecutor v. Bagosora et al.* case.¹ It also requests authorization to contact and interview this witness. Relying on transcripts from hearings in this case, the Defence argues that Witness XXO is in possession of evidence which exculpates the Accused in respect of the murder of former Prime Minister Agathe Uwilingiyimana.

2. The Prosecution argues that the Defence has failed to demonstrate that the information is exculpatory.² In the Prosecution’s view, the appropriate procedure for contacting Prosecution witnesses is to have such requests forwarded through the Registry. If the witness consents to the interview, then the issue of disclosure of the witness’ identity, whereabouts and prior statements is resolved; only if the witness does not consent should the Chamber address the merits of the request.³

DELIBERATIONS

3. Rule 68 (A) provides that:

The Prosecutor shall, as soon as practicable, disclose to the Defence any material, which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence.

4. An accused requesting an order for disclosure under Rule 68 must (i) identify the material with particularity and (ii) make a *prima facie* showing that the material may, in fact, suggest the innocence or mitigate the guilt of the accused, or affect the credibility of the

¹ The Nzuwonemeye Defence made an oral request to have certain portions of the transcript in this case admitted as evidence in the Accused’s case on 14 September 2005, but Trial Chamber II denied the request. On 19 September 2005, the Nzuwonemeye Defence filed a motion for reconsideration, but Trial Chamber II again denied the request in a decision dated 10 October 2005. In its decision, Trial Chamber II directed the Defence to address Trial Chamber I for authorization to interview protected Witness XXO. In accordance with that decision, the Nzuwonemeye Defence has filed the present motion.

² *Bagosora et al.*, T. 20 October 2005 p. 23.

³ *Bagosora et al.*, T. 20 October 2005 pp. 23-24.

25871

prosecution's evidence.⁴ The Nzuwonemeye Defence has described the evidence with sufficient particularity: it seeks the identifying information and any unredacted statements of Witness XXO. Having reviewed the submissions in the *Ndindiliyimana et al.* trial to which reference is made in the motion, the Chamber is satisfied that a *prima facie* showing has been made that the statements may contain exculpatory information. It follows that the identity of the source of the information is also exculpatory information.⁵

5. The designation and control of protected witness information in the *Bagosora* case is governed by the witness protection order of 29 November 2001, attached hereto as Annex A.⁶ The Chamber recalls that Rule 75 (F)(i) provides that, once protective measures have been ordered in respect of a victim or witness in any proceeding before the Tribunal, such protective measures automatically bind any party in receipt of the protected information.⁷

6. The Chamber's normal practice, in conformity with the provisions set out by the witness protection order itself, is that requests to interview witnesses of an opposing party are channelled through the Registry. The Chamber therefore directs the Registrar to forward the request of the Nzuwonemeye Defence to Witness XXO and to facilitate an interview if the witness consents.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS THE MOTION by ordering the Prosecution to produce all unredacted versions of Witness XXO's statement(s);

DECLARES that the parties in receipt of the information are bound *mutatis mutandis* by the witness protection decision of 29 November 2001 in the *Bagosora* case;

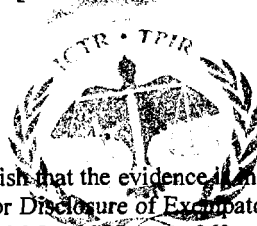
ORDERS the Registry to forward the request of the Nzuwonemeye Defence to Witness XXO and to facilitate an interview if the witness consents to be interviewed;

Arusha, 31 October 2005



Erik Møse
Presiding Judge

[Seal of the Tribunal]



⁴ If disputed, the defence must also establish that the evidence is in the possession of the Prosecution. *Karemera et al.*, Decision on the Defence Motion for Disclosure of Exculpatory Evidence (TC), 7 October 2003, paras. 9, 11. See also *Kajelijeli*, Judgement (AC), 23 May 2005, para. 262.

⁵ *Bagosora et al.*, Decision on Motion for Disclosure under Rule 68 (TC), 1 March 2004, para. 6 (finding that the identity of a witness is inextricably connected with the substance of his or her statement).

⁶ *Bagosora et al.*, Decision on the Prosecution Motion for Harmonisation and Modification of Protective Measures for Witnesses (TC), 29 November 2001.

⁷ *Muvunyi*, Decision on Tharcisse Muvunyi's Motions for Disclosure of Exculpatory and Other Relevant Material and for Relief Pursuant to Rules 66 and 5 of the Rules (TC), 9 February 2005, para. 12.