



ICTR-99-52-T  
25-05-2006  
(34992 - 34990)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

34992  
Ivan

**TRIAL CHAMBER I**

**Before:** Judge Erik Møse, presiding  
Judge Jai Ram Reddy  
Judge Sergei Alekseevich Egorov

**Registrar:** Adama Dieng

**Date:** 25 May 2006

**THE PROSECUTOR**

v.

**FERDINAND NAHIMANA  
JEAN-BOSCO BARAYAGWIZA  
HASSAN NGEZE**

*Case No. ICTR-99-52-T*

JUDICIAL ARCHIVES  
ICTR  
2006 MAY 25 P 5: 09

**DECISION ON DISCLOSURE OF SEALED EXHIBITS OF WITNESS DM-12**

**The Prosecution (*Zigiranyirazo*)**

Wallace Kapaya  
Charity Kagwi-Ndungu  
Sylver Ntukamazina  
Gina Butler  
Iskandar Ismail  
Jane Mukangira

**The Defence (*Zigiranyirazo*)**

John Philpot  
Peter Zaduk

*Ch*

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

**SITTING** as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

**BEING SEIZED OF** the Zigiranyirazo “Motion Requesting Closed Session Exhibits under Seal with Respect to Protected Witness DM-12”, etc., filed on 20 April 2006;

**CONSIDERING** the Prosecution Response, filed on 25 April 2006;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. The Defence of Protais Zigiranyirazo, currently being tried before Trial Chamber III, requests disclosure of the sealed exhibits associated with the testimony of Witness DM-12, who appeared as a Prosecution witness in the *Nahimana et al.* trial. The Defence avers that it has met with Witness DM-12 on numerous occasions, that he is willing to testify, and that he is likely to be called.<sup>1</sup> The sealed exhibits, it is said, are material to the Defence case. Both the Accused and his Defence team agree to be bound by the witness protection orders applicable to witness DM-12.<sup>2</sup>

2. The Prosecution opposes the motion, arguing that the Chamber has no jurisdiction over the request, as it is now the Appeals Chamber which is seized of the case

**DELIBERATIONS**

*(i) Jurisdiction*

3 Rule 75 (G) of the Rules of Procedure and Evidence provides that:

- (G) A party to the second proceedings seeking to rescind, vary or augment protective measures ordered in the first proceedings must apply:
  - (i) to any Chamber, however constituted, remaining seized of the first proceedings; or
  - (ii) if no Chamber remains seized of the first proceedings, to the Chamber seized of the second proceedings.

4. Notwithstanding the pending appeal from the Judgement, this Chamber does, in the present context, “remain seized” of the *Nahimana et al.* case. The word “remaining” suggests a continuation of proceedings that could refer only to the Trial Chamber. An appeal from a Judgement is based on enumerated grounds; matters not related to these grounds, or the hearing of evidence related thereto, are not within the jurisdiction of the Appeals Chamber. Issues of disclosure of testimony and exhibits before the original Trial Chamber have no link with the appeals proceedings; they are simply a continuation of the proceedings at the trial level.

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<sup>1</sup> Motion, paras. 5, 6 and 9

<sup>2</sup> Motion, para. 10.

*lh*

6 For the above reasons, the Chamber finds that it “remains seised” of the *Nahimana et al.* case and that, accordingly, it is the proper forum for the present request.

(ii) *Merits*

8. Article 19 of the Statute prescribes that hearings of the Tribunal shall be public unless otherwise ordered in accordance with the Rules. Acting under Article 21 of the Statute and Rule 75 (A) of the Rules, this Chamber issued a witness protection order for the benefit of *Nahimana et al.* witnesses which, among other things, authorizes non-disclosure to the public of any information which could be used to identify them.<sup>3</sup>

9. The purpose of placing exhibits under seal and hearing testimony in closed session is to conceal the identity of the protected witness from the public at large. Former Prosecution witness DM-12 has already disclosed to the Defence that he testified as a protected witness in *Nahimana et al.* Little if any witness protection purpose would therefore be served by denying the Zigiranyirazo Defence access to the sealed exhibits. Such disclosure also enhances trial fairness, in light of the Prosecution’s access to the same material.<sup>4</sup>

10. In the absence of submissions from the Prosecution concerning the content of the exhibits, the present order will be subject to a seven-day delay to give the Prosecution an opportunity to comment on whether any of the documents are susceptible of identifying any other protected witness, and to request a stay of the present order should that be the case.

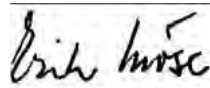
**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the motion;

**ORDERS** the Registry to disclose the sealed exhibits of Witness DM-12 to the Zigiranyirazo Defence on the seventh day from the date of this Decision;

**DECLARES** that the Zigiranyirazo Defence, including the Accused, is bound *mutatis mutandis* by the terms of the *Nahimana et al.* witness protection orders upon receipt of the confidential material.

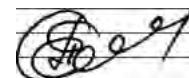
Arusha, 25 May 2006



Erik Møse  
Presiding Judge



Jai Ram Reddy  
Judge



Sergei Aleksceovich Egorov  
Judge

[Seal of the Tribunal]

<sup>3</sup> *Ngeze*, Decision on the Prosecutor’s Motion for Witness Protection (TC), 23 November 1999; *Nahimana et al.*, Oral Decision on the Prosecutor’s Oral Motion for Witness Protection (TC), 2 July 2001; *Nahimana et al.*, Decision on the Prosecutor’s Application to Add Witness X to its List of Witnesses and for Protective Measures (TC), 14 September 2001; *Nahimana et al.*, Decision on the Defence’s Motion for Witness Protection (TC), 25 February 2000.

<sup>4</sup> *Bagosora et al.*, Decision on Interlocutory Appeals of Decision on Witness Protection Orders (AC), 6 October 2005, paras. 44-46; *Bagosora et al.*, Decision on Zigiranyirazo Motion for Disclosure of Closed Session Testimony of DM-190 (TC), 16 May 2006, para. 5.