

ICTR-00-56-T
23-08-2006
(22751-22749)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER II

Before: Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 23 August 2006

The PROSECUTOR

v.

Augustin BIZIMUNGU

Augustin NDINDILYIMANA

François-Xavier NZUWONEMEYE

Innocent SAGAHUTU

Case No. ICTR-00-56-T

JUDICIAL DEPARTMENT
2006
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**DECISION ON NSENGIYUMVA'S EXTREMELY URGENT AND CONFIDENTIAL
MOTION FOR DISCLOSURE OF CLOSED SESSION TESTIMONY OF WITNESS
OX AND THE WITNESS' UNREDACTED STATEMENTS AND EXHIBITS**

Office of the Prosecutor:

Mr Ciré Aly Bâ

Mr Moussa Sefou

Mr Segun Jegede

Mr. Lloyd Strickland

Mr Abubacarr Tambadou

Ms Felistas Mushi

Ms Faria Rekkas

Ms Anne Pauline Bodley

Counsel for the Defence:

Mr Gilles St-Laurent and Mr Ronnie MacDonald for Augustin Bizimungu

Mr Christopher Black and Mr Patrick De Wolf for Augustin Ndindiliyimana

Mr Charles Taku and Mr Hamuli Rety for François-Xavier Nzuwonemeye

Mr Fabien Segatwa and Mr Seydou Doumbia for Innocent Sagahutu

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

SITTING as Trial Chamber II, composed of Judge Seon Ki Park (the “Chamber”);

BEING SEISED OF the “Extremely Urgent Confidential Motion for Disclosure of Closed Session Testimony of Witness OX and Witness Unredacted Statements and Exhibits in *Prosecutor v. Ndingiyimana* (ICTR-00-56-T)” filed by the Defence for Anatole Nsengiyumva on 28 July 2006 (the “Motion”);

CONSIDERING the Statute of the Tribunal (the “Statute”), and the Rules of Procedure and Evidence (the “Rules”), in particular Rule 74(F)(i) of the Rules;

NOTING that the Prosecution has not filed a response;

HEREBY DECIDES the Motion on the basis of the written submissions filed by the Defence for Nsengiyumva pursuant to Rule 73(A) of the Rules.

1. Anatole Nsengiyumva, an Accused in the trial of *The Prosecutor v. Bagosora et al.* (also known as the Military I case), requests disclosure of the closed session transcripts, unredacted statements and exhibits in respect of protected Witness OX, who testified for the Prosecution in the present case. The Motion is brought pursuant to Rule 75 (G)(i)
2. The Chamber notes Rule 75(F)(i) which provides that once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal, such protective measures shall continue to have effect in any other proceedings before the Tribunal unless and until they are rescinded, varied or augmented in accordance with the procedure set out in the Rules.
3. The Chamber further notes that confidential *inter partes* material may be disclosed to a party in another case provided that the applicant demonstrates that it “is likely to assist that applicant’s case materially, or [...] there is a good chance that it would.” This standard can be met by showing that there is a factual nexus between the two cases.¹
4. Nsengiyumva wishes to have access to the said material in order to prepare his defence. He submits that the testimony of Witness OX contradicts the testimony of several witnesses, who appeared as Prosecution witnesses in the Military I case. For instance, one witness in the Military I case maintained that he had stayed home between 7 and 13 April 1994, whereas Witness OX places him at an alleged meeting in the bus park in Gisenyi. Nsengiyumva therefore submits that it would be of interest not only to the Defence but also to the Trial Chamber in the Military I case to evaluate the testimony of the said witness in the context of other testimonies on related matters.
5. The Chamber is satisfied that the issues raised by the Nsengiyumva defence establish a sufficient factual nexus between the Military I case and the present case.

¹ *Blagojević and Jokić*, IT-02-60-A, Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Material in the *Blagojević and Jokić* Case, 18 January 2006, para. 4; *Prosecutor v. Galić*, IT-98-29-A, Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Material in the *Galić* Case, 16 February 2006, para. 3 (with further references). See also *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Nzirorera Request for Access to Protected Material, 19 May 2006, para. 2.

FOR THE ABOVE REASONS, THE CHAMBER

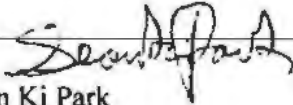
GRANTS the Motion;

ORDERS the Prosecution and the Registry to transmit to the Nsengiyumva Defence the closed session transcripts of Witness OX's testimony, his unredacted statements and any exhibit filed under seal during his testimony before this Chamber;

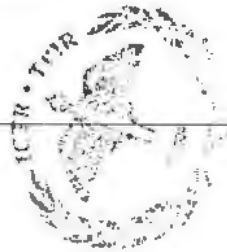
DECLARES that the Nsengiyumva Defence and the Accused shall be bound *mutatis mutandis*, upon receipt of the confidential material, by the terms of the witness protection orders issued in the present case²;

ORDERS the Nsengiyumva Defence and the Accused not to disclose the closed session transcripts, unredacted statements or exhibits under seal, or any other potentially identifying information about the witness, to any third parties, including other Defence teams and witnesses at this Tribunal.

Arusha, 23 August 2006



Seon Ki Park
Judge



[Seal of the Tribunal]

² *The Prosecutor v. Augustin Ndindiliyimana, Innocent Sagahutu, François-Xavier Nzuwonemeye*, ICTR-2000-56-I, Order for Protective Measures for Witnesses, 12 July 2001; *Le Procureur contre Augustin Bizimungu, Augustin Ndindiliyimana, Innocent Sagahutu, François-Xavier Nzuwonemeye*, Affaire No. ICTR-2000-56-I, Décision sur la Requête du Procureur aux Fins de Modification et d'Extension des Mesures de Protection des Victims et des Témoins, 19 March 2004.