International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
29-08-2006
(29228-29226)

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S. Musa

UNITED NATIONS
NATIONS UNIES

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 29 August 2006

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

DECISION ON DISCLOSURE OF CLOSED SESSION TESTIMONY OF BDR-1 AND LK-2

The Prosecution
Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid

The Defence
Raphaël Constant
Allison Turner
Paul Skolnik
Frédéric Hivon
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

29227

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 "Requête de la défense du Dr. Casmir Bizimungu en communication des audiences à huit clos et des exhibits des témoins protégés de la défense BDR1 et LK2", filed by the Bizimungu Defence on 10 July 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence of Casimir Bizimungu, currently being tried before Trial Chamber II, requests the disclosure of closed session transcripts and sealed exhibits pertaining to the testimony of Witnesses BDR-1 and LK-2. They appeared for the Nsengiyumva Defence in the *Bagosora et al.* trial on 14 and 15 April 2005 and 19, 20 and 21 April 2005, respectively.[1] The request is based on Rule 75 (G) of the Rules of Procedure and Evidence.

2. The Bizimungu Defence submits that the two witnesses revealed that they testified before this Chamber in the *Bagosora et al.* case and have given their consent to disclosure of any confidential material arising therefrom.[2] The confidential information is said to be necessary to decide whether to call these witnesses and, if need be, in the preparation and presentation of their testimony.[3] The Defence agrees to comply with the relevant Defence witness protection orders issued in *Bagosora et al.*[4]

DELIBERATIONS

3. In accordance with Article 21 of the Statute and Rule 75, the Chamber issued witness protection orders in the *Bagosora et al.* trial which authorizes non-disclosure to the public of any information that could be used to identify them.[5] Portions of the testimony of Witnesses BDR-1 and LK-2 were so categorized and were, accordingly, held in closed session.[6] Rule 75 (G) permits any party to a proceeding seeking to vary protective measures ordered in a different proceeding to apply to the Chamber "seised of the first proceeding."

4. Witnesses BDR-1 and LK-2 have revealed to the Bizimungu Defence their status as protected witnesses in this case, and have furthermore apparently consented to the disclosure of the protected information. In these circumstances, no witness protection purpose would be

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[1] Motion, para. 7.
[2] Motion, paras. 13-14.
[3] Motion, paras. 15-16.
[4] Motion, para. 19.
[5] *Bagosora et al.*, Decision on Ntabakuze Motion for Protection of Witnesses (TC) 15 March 2004, paras. 1-9. The *Bagosora et al.* Decision on Motion to Harmonize and Amend Witness Protection Orders (TC), 1 June 2005, para. 22, superseded the 15 March 2004 Nsengiyumva witness protection decision and replaced it, *mutatis mutandis*, with the Decision on Ntabakuze Motion for Protection of Witnesses (TC) 15 March 2004). *See also Bagosora et al.*, Decision Amending Defence Witness Protection Orders (TC), 2 December 2005 (modifying all previous witness protection orders in *Bagosora et al.* case to take into account Prosecution's discretion to access confidential information).
[6] For Witness BDR-1: T. 14 April 2005 pp. 62-81; 15 April 2005 pp. 31-40. For Witness LK-2: T. 19 April 2006 pp. 1-8.

served by denying the Defence access to the witnesses' confidential testimony. Indeed, since any person within the Office of the Prosecution may be designated to have access to protected information in any case before this Tribunal, such disclosure enhances trial fairness.[7] The Defence should not be denied similar access in respect of witnesses who have revealed their status.[8]

5. The Bizimungu Defence and the Accused Bizimungu shall be bound, *mutatis mutandis*, by the terms of the witness protection orders for Nsengiyumva Defence witnesses in respect of Witnesses BDR-1 and LK-2.[9]

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the motion;

ORDERS the Registry to disclose the closed session transcripts and sealed exhibits of Witnesses BDR-1 and LK-2 to the Bizimungu Defence;

ORDERS that the Bizimungu Defence, including the Accused, is bound *mutatis mutatis* by the terms of the Nsengiyumva Defence Witness Protection Orders in respect of Witnesses BDR-1 and LK-2.

Arusha, 29 August 2006

Erik Møse	p.p. Jai Ram Reddy	Sergei Alekseevich Egorov
Presiding Judge	Judge	Judge

[Seal of the Tribunal]

[7] *Bagosora et al.*, Decision on Interlocutory Appeals of Decisions on Witness Protection Orders (AC), 6 October 2005, at paras. 44-46.

[8] *Bagosora et al.*, Decision on Disclosure of Sealed Exhibits of Witness DM-12 (TC), 25 May 2006, para. 9; *Bagosora et al.*, Decision on Nzirorera Request for Access to Protected Material, 19 May 2006, para. 3. *See also Bagosora et al.*, Decision on Zigiranyirazo Motion for Disclosure of Closed Session Testimony of DM-190 (TC), 16 May 2006, para. 5; *Rwamakuba*, Decision on Bagosora Motion for Disclosure of Closed Session Testimony of Defence Witness 3/13 (TC), 24 February 2006, para. 5.

[9] Above, note 5.