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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 30 August 2006

ICTR-00-56-1
31-08-2006
(22757-22755)

The PROSECUTOR

v.

Augustin BIZIMUNGU
Augustin NDINDILYIMANA
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU

Case No. ICTR-00-56-T

**DECISION ON NYIRAMASUHUKO'S EXTREMELY URGENT MOTION FOR
DISCLOSURE OF CLOSED SESSION TRANSCRIPTS OF WITNESS ANL/CJ**

Office of the Prosecutor:

Mr Ciré Aly Bâ
Mr Moussa Sefon
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

JUDICIAL RECORDS/ARCHIVES
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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 SEISED OF the "*Requête d'extrême urgence de Pauline Nyiramasuhuko aux fins d'obtenir les comptes rendus d'audience à huis-clos du témoin ANL/CJ (sic)*"¹, filed on 23 August 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 Nyiramasuhuko pursuant to Rule 73(A) of the Rules.

1. Pauline Nyiramasuhuko, an Accused in the *Butare*² case, requests disclosure of the closed session transcripts in respect of protected Witness ANL/CJ, who testified for the Prosecution in the present case on 28 June 2006. The Motion is brought pursuant to Rule 75 (G)(i).

2. The Chamber recalls its Decision of 23 August 2006 where it held 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."³ The Chamber further held that this standard can be met by showing that there is a factual nexus between the two cases.⁴

3. Nyiramasuhuko wishes to have access to the closed session transcripts of Witness ANL/CJ in order to prepare for cross-examination of unprotected Defence Witness Charles Karemano in the *Butare* case. She submits that both testimonies relate to the circumstances of the death of the same person in April 1994.

4. The Chamber is satisfied that the issue raised by the Nyiramasuhuko Defence establishes a sufficient factual nexus between the *Butare* case and the present case.

5. The Chamber, however, would like to note that the context of Prosecution Witness ANL/CJ's testimony should not have been known to the Defence for Nyiramasuhuko or anyone else outside the courtroom since the entire testimony of Witness ANL/CJ was given in closed session. At this stage, the Chamber wishes to underscore the importance of witness protection measures and reminds all parties to duly comply with the Chamber's orders in this respect.⁵

¹ Nyiramasuhuko's Extremely Urgent Motion to Obtain the Closed Session Transcripts of Witness ANL/CJ (Unofficial Translation).

² The Prosecutor v. Pauline Nyiramasuhuko et al., Case No. ICTR-97-21-T, Joint Case No. ICTR-98-42-T.

³ *The Prosecutor v. Augustin Bizimungu, Augustin Ndingiyimana, François-Xavier Nzuwonemeye, Innocent Sagahutu*, ICTR-00-56-I, "Decision on Nsengiyumva's Extremely Urgent and Confidential Motion for Disclosure of Closed Session Testimony of Witness OX and Witness' Unredacted Statements and Exhibits", 23 August 2006, para. 3 (with further references).

⁴ *Ibid.*

⁵ *The Prosecutor v. Augustin Ndingiyimana, Innocent Sagahutu, François-Xavier Nzuwonemeye*, ICTR-2000-56-I, Order for Protective Measures for Witnesses, 12 July 2001; *Le Procureur contre Augustin Bizimungu*,

FOR THE ABOVE REASONS, THE CHAMBER

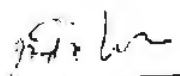
GRANTS the Motion;

ORDERS the Prosecution and the Registry to transmit to the Nyiramasuhuko Defence the closed session transcripts of Witness ANL/CJ's testimony before this Chamber;

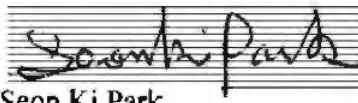
ORDERS that the Nyiramasuhuko Defence and the Accused shall be bound *mutatis mutandis*, upon receipt of the confidential material, by the terms of the above mentioned witness protection orders in the present case.⁶

Arusha, 30 August 2006




Asoka de Silva
Presiding Judge


Taghfid Hikmet
Judge


Seon Ki Park
Judge

[Seal of the Tribunal]

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 Victimes et des Témoins, 19 March 2004.

⁶ *Ibid*