



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
(27-09-2006)
(23043 - 23041)

23043
Muana

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 27 September 2006

2006 SEP 27 10:32:23
JUDICIAL RECORDS/ARCHIVES
UNICTR

The PROSECUTOR
v.
Augustin BIZIMUNGU
Augustin NDINDILYIMANA
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

**DECISION ON NSENGIYUMVA'S EXTREMELY URGENT AND CONFIDENTIAL
MOTION FOR DISCLOSURE OF CLOSED SESSION TESTIMONY OF WITNESS
DO AND HIS UNREDACTED STATEMENTS AND EXHIBITS**

Office of the Prosecutor:

Mr Ciré Aly Bâ
Mr Moussa Sefon
Mr Segun Jegede
Mr Abubacarr Tambadou
Mr. Lloyd Strickland
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 Ndingiliyimana**
Mr Charles Taku and Mr Hamuli Rety for **François-Xavier Nzuwonemeye**
Mr Fabien Segatwa and Mr Seydou Doumbia for **Innocent Sagahutu**

Counsel for Anatole Nsengiyumva:

Mr. Kennedy Ogetto
Mr. Gershom Bw'Omanwa

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 "Extremely Urgent Confidential Motion for Disclosure of Closed Session Testimony of Witness DO and his Unredacted Statements and Exhibits in *Prosecutor v. Ndindiliyimana* (ICTR-00-56-T)" filed by the Defence for Anatole Nsengiyumva on 11 September 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 DO, 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. In two recent decisions, the Chamber 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."¹ The Chamber further held that this standard can be met by showing that there is a factual nexus between the two cases.²
4. Nsengiyumva wishes to have access to the said material in order to prepare his defence. He submits that the testimony of Witness DO is exculpatory in nature since Witness DO recants himself in his testimony in the Military II case from what he said in the Military I case.
5. The Chamber notes that Witness DO testified in both the Military I case and the present case on the same issues. The Chamber is therefore satisfied that a sufficient factual nexus between the two cases is established.

¹ *Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-00-56-T, 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, 23 August 2006, para. 3; Decision on Nyiramasuhuko's Extremely Urgent Motion for Disclosure of Closed Session Transcripts of Witness ANL/CJ, 30 August 2006, para. 2.

² *Ibid.*

 2

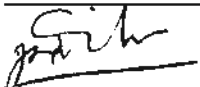
FOR THE ABOVE REASONS, THE CHAMBER

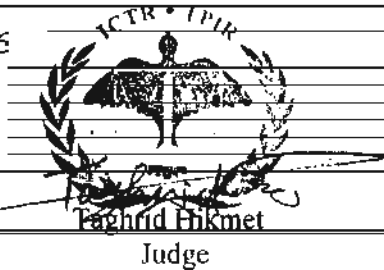
GRANTS the Motion:

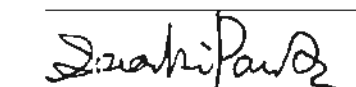
ORDERS the Prosecution and the Registry to transmit to the Ndingiyimana Defence the closed session transcripts of Witness DO's testimony, his unredacted statements and any exhibit filed under seal during his testimony before this Chamber;

DECLARES that the Ndingiyimana 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 case.³

Arusha, 27 September 2006


Asoka de Silva
Presiding Judge




Seon Ki Park
Judge

[Seal of the Tribunal]

³ 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, Augustin Ndingiyimana, 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.