



UNITED NATIONS
KARUGA CHAMBER

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1GA-00-55A-T

23-03-2007

(4224-4222)

TRIAL CHAMBER II

OR: ENG

Before: Judge Asoka de Silva, Presiding
sitting as a single Judge pursuant to rule 75(11) of the Rules

Registrar: Mr Adama Dieng

Date: 23 March 2007

The PROSECUTOR

v.

THARCISSE MUVUNYI

CASE NO. ICTR-00-55

JUDICIAL RECORDS ARCHIVES
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**DECISION ON THE PROSECUTOR'S MOTION TO UNSEAL AND DISCLOSE TO
THE CANADIAN AUTHORITIES THE TRANSCRIPTS OF WITNESS QY**

Office of the Prosecutor

Ms. Adesola Adeboyejo, Trial Attorney

Mr Gregory Townsend, Trial Attorney

Defence Counsel

Mr. William E. Taylor, Lead Counsel

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INTRODUCTION

1. On 25 April 2001, Trial Chamber III granted protective measures to prosecution witnesses in the case of *The Prosecutor v. Tharcisse Muvunyi*. The trial commenced on 28 February 2005 before Trial Chamber II and ended on 12 September 2006 when the Accused was found guilty and convicted of genocide and war crimes.
2. Prosecution Witness QY testified in that case on 8, 13, 14 and 15 June 2005.
3. On 5 March 2007, the Prosecution filed a motion requesting the Chamber to issue an order varying its Decision on Protective Measures for Witnesses, dated 25 April 2001 and to unseal and disclose to the Canadian authorities Witness QY's closed session transcripts of 8, 13, 14 and 15 June 2005 and sealed Exhibit P-18 (Witness QY's Personal Information Sheet).¹

DELIBERATIONS

4. As a preliminary matter regarding the jurisdiction to decide this issue, Rule 75 (G) (i) provides that if a party to a second proceeding wishes to rescind, vary or augment protective measures ordered in the first proceeding, it must apply "to any Chamber, however constituted, remaining seised of the first proceedings." This Trial Chamber remains seised of all matters not related to the appeal, including requests to modify witness protection measures since it was the trial chamber before which the trial was conducted.² Additionally, Rule 75(H)(i) allows such a request to be made before a Judge and not necessarily the entire Trial Chamber. As such, the application is properly before the present Chamber.
5. The Chamber notes that the Prosecution request for disclosure of the closed session transcripts for Witness QY stems from a joint request from both the national level Prosecution and Defence. The Chamber also notes that Witness QY has consented in writing to the disclosure of his prior statements and testimony in this trial to the Canadian authorities.
6. This Tribunal has previously held that the guiding principles of State cooperation under Article 28(1) of the ICTR Statute, also apply to requests for cooperation or judicial assistance from states to the Tribunal, in their investigation or prosecution of persons accused of committing serious violations of international humanitarian law. The Chamber notes that the request from the Canadian authorities for the disclosure of closed session transcripts of Witness QY falls within the ambit of the principles of state cooperation under Article 28 (1).³
7. 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

¹ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A, "The Prosecutor's Motion to Unseal and Disclose to the Canadian Authorities the Transcripts of Witness QY," 6 March 2007.

² *Prosecution v. Nahimana et al.*, Case No. 99-52-T, Decision on Nsengiyumva Request for Access to Protected Material (TC), 16 July 2006, para. 3.

³ See *Prosecutor v. Nyiramasuhuko, et al.*, Case No. ICTR-98-42-T, "Decision on the Prosecution's Motion to Unseal the Transcripts of Witness WDUSA," 1 November 2006.



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cases.⁴ In the Chamber's view a sufficient factual nexus exists because the proceedings in Canada relate to the 1994 events in Rwanda, which were also the subject matter of Tribunal's proceedings.

8. Accordingly, having considered that there is no prejudice to Witness QY given his written consent and the joint nature of the request from Canada, the Chamber deems that it is in the overall interest of justice to vary its protective order for Witness QY, so as to enable the Registry to unseal and provide copies of the closed session transcripts of Witness QY's testimony and of Exhibit P-18 for the purpose of disclosure to the Canadian authorities.
9. The Chamber further orders that the protective measures accorded to Witness QY shall continue to have effect *mutatis mutandis* in any proceedings in Canada unless and until they are rescinded, varied or augmented in accordance with the procedure delineated in Rule 75 (F).

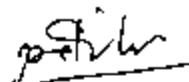
FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Prosecution Motion;

DIRECTS the Registry to unseal and provide the Prosecution with the closed session transcripts of Witness QY's testimony of 8, 13, 14 and 15 June 2005, as well as Exhibit P-18 (Witness QY's Personal Information Sheet), for the purpose of disclosure to the Canadian authorities.

ORDERS that the protective measures granted to Witness QY shall continue to have effect *mutatis mutandis* in any proceedings in Canada.

Arusha, 23 March 2007.


Asoka de Silva
Presiding Judge



⁴ *The Prosecutor v. Ndindiliyimana et al.*, "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; *The Prosecutor v. Bagosora et al.*, "Decision on Nzirorera Request for Access to Protected Material", 19 May 2006, para. 2.



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Dates:	Transmitted: 23 March 2007			Document's date: 23 March 2007
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