



ICTR-98-4-T  
15-05-2007  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

38251  
1494  
(38251-38248)

ORIGINAL: ENGLISH

**TRIAL CHAMBER I**

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

**Registrar:** Adama Dieng

**Date:** 15 May 2007

JUDICIAL RECORDS ARCHIVE  
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**THE PROSECUTOR**

v.

**Théoneste BAGOSORA**

**Gratien KABILIGI**

**Aloys NTABAKUZE**

**Anatole NSENGIYUMVA**

*Case No. ICTR-98-41-T*

**DECISION ON BIZIMUNGU DEFENCE REQUEST FOR  
DISCLOSURE OF CLOSED SESSION TESTIMONY  
AND EXHIBITS PLACED UNDER SEAL**

**The Prosecution**

Barbara Mulvaney  
Drew White  
Christine Graham  
Rashid Rashid  
Kartik Murukutla

**The Defence**

Raphaël Constant  
Allison Turner  
Paul Skolnik  
Frédéric Hivon  
Peter Erlinder  
Kennedy Ogetto  
Gershon Otachi Bw'Omanwa

## 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 en extrême urgence de la Défense du Général Augustin Bizimungu en communication des audiences à huis clos et des pièces produites sous scellés des témoins protégés de la Défense DM-25, DM-190, DK-32, DI35, STAR-1, FLA-4 et YUL-39", filed on 3 May 2007;

CONSIDERING the "Requête en extrême urgence de la défense d'Augustin Bizimungu afin d'avoir accès aux comptes rendus d'audiences à huis clos et aux pièces déposées sous scellé lors de la comparution des Témoins de la Défense", filed on 8 September 2006; and the Nsengiyumva Response in Opposition thereto, filed on 14 September 2006;

HEREBY DECIDES the motion.

### INTRODUCTION

1. The Defence of Augustin Bizimungu, currently being tried in the *Ndindiliyimana et al. ("Military I")* case before Trial Chamber II, requests the disclosure of confidential transcripts and sealed exhibits pertaining to seven Defence witnesses who testified in the *Bagosora et al. ("Military I")* trial, all of whom are scheduled to testify in the *Military II* case on behalf of the Bizimungu Defence. According to the Defence, the seven witnesses have given consent for the release of their prior testimony in the *Military I* case. The Defence agrees to be bound by all of the witness protection measures in place in this case as well as any other measures that the Chamber deems necessary.<sup>1</sup>

2. In its original motion of 8 September 2006, the Bizimungu Defence sought disclosure of all confidential transcripts and sealed exhibits in the *Military I* case. It reasoned that (i) the two cases are closely linked insofar as the Accused are military leaders charged with largely the same crimes for the events of 1994; (ii) many of the Prosecution witnesses are the same in both cases; (iii) the materials would be useful in preparing cross-examination of key Prosecution witnesses and would place the Defence on equal footing with the Prosecution in terms of access to these materials; and (iv) disclosure of the identity of these witnesses would allow the Bizimungu Defence to economize time and resources in deciding whether to call these individuals as Defence witnesses on behalf of General Bizimungu.<sup>2</sup>

3. The Nsengiyumva Defence opposed the original motion, arguing that disclosure would compromise the protection of these witnesses – particularly those whose testimony was conducted entirely in closed session. It further argued that the Bizimungu Defence had not identified with sufficient particularity the precise material sought and the manner in which the material would be useful to the Defence.<sup>3</sup> Neither the Prosecution nor any other Defence team submitted a response to the original Bizimungu motion.

<sup>1</sup> Motion, paras. 7, 8, 12.

<sup>2</sup> Original Motion, paras. 5-6, 9, 11-13.

<sup>3</sup> Nsengiyumva Response, paras. 3-8, 12-13.

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## DELIBERATIONS

4. The Appeals Chamber has previously held:

[A]n accused in a case before the International Tribunal may be granted access to confidential material in another case if he shows a legitimate forensic purpose for such access. With respect to *inter partes* confidential material, it is sufficient for an applicant to demonstrate that "the material sought is likely to assist the applicant's case materially or at least that there is a good chance that it would". This standard can be met "by showing the existence of a nexus between the applicant's case and the case from which such material is sought, for example, if the cases stem from events alleged to have occurred in the same geographical area at the same time".<sup>4</sup>

5. Moreover, pursuant to Rule 75 (G) of the Rules of Procedure and Evidence, witness protective measures ordered by a Trial Chamber in any "first proceedings" will continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the "second proceedings") unless and until they are rescinded, varied or augmented in accordance with the procedure set out in the Rules.

6. As the *Military I* trial remains before Trial Chamber I, the Bizimungu Defence – being a party to "second proceedings" (the *Military II* case) – has properly applied to this Chamber for the relief requested.

7. The Chamber finds that the case of Bizimungu is closely related to those of the four Accused in the *Military I* case and that a significant factual, geographic and temporal overlap exists between the cases. In addition, the Bizimungu Defence's second motion is narrowly tailored to request information for seven witnesses whom it intends to call as part of the Defence case and who have all given consent for the requested disclosure. In these circumstances, the Chamber is satisfied that the Bizimungu Defence has articulated a legitimate forensic purpose for the material requested and that access to the confidential material would materially assist the Defence.

8. While the Nsengiyumva Defence raised objections to the initial Bizimungu motion, it has not filed any opposition to the present motion. In the Chamber's view, the Bizimungu Defence has remedied any error in its initial motion by reducing the scope of the confidential material it seeks and by identifying the precise purpose for which the information will be used. Moreover, the Chamber notes that only one Nsengiyumva witness, Witness STAR-1, is directly concerned by the present motion. All of the other witnesses for whom the Bizimungu Defence seeks information were called by either the Ntabakuze or Kabiligi Defence teams and, at most, were cross-examined by the Nsengiyumva Defence.

9. Pursuant to Rule 75 (F), the Bizimungu Defence shall be bound by all of the Chamber's previous Defence witness protection orders in the *Military I* case.<sup>5</sup>

<sup>4</sup> *Blagojević and Jokić*, Decision on Momčilo Perišić's Motion Seeking Access to Confidential Material in the Blagojević and Jokić Case (AC), 18 January 2006, para. 4; *Prosecutor v. Galić*, Decision on Momčilo Perišić's Motion Seeking Access to Confidential Material in the Galić Case (AC), 16 February 2006, para. 3. See also *Bagosora et al.*, Decision on Nzirorera Request for Access to Protected Material (TC), 19 May 2006, para. 2.

<sup>5</sup> Three of the Defence witness protection orders are, in substance, identical: *Bagosora et al.*, Decision on Ntabakuze Motion for Protection of Witnesses (TC), 15 March 2004; *Bagosora et al.*, Decision on Kabiligi Motion for Protection of Witnesses (TC), 1 September 2003; *Bagosora et al.*, Decision on Bagosora Motion for Protection of Witnesses (TC), 1 September 2003. The Nsengiyumva witness protection order was rendered before the joinder of the four accused in a single trial: *Nsengiyumva*, Decision on Protective Measures for

**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the Bizimungu Defence motion;

**DECLARES** that the Bizimungu Defence and any persons under its instruction or authorization shall be bound *mutatis mutatis* by the terms of the defence witness protection orders in the *Military I* case;

**DIRECTS** the Registry to disclose the closed session transcripts for Witnesses DM-25, DM-190, DK-32, DI35, STAR-1, FLA-4, and YUL-39 and all of the exhibits admitted under seal during the testimony of these witnesses; and

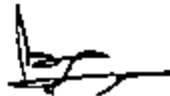
**DECLARES** that the original Defence motion filed on 8 September 2006 is moot.

Arusha, 15 May 2007



Erik Møse  
Presiding Judge

P. P.



Jai Ram Reddy  
Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]



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Defence Witnesses and Their Families and Relatives (TC), 5 November 1997. In June 2005, the Chamber held that its Decision on Ntabakuze Motion for Protection of Witnesses, dated 15 March 2004, applied *mutatis mutandis* to the Nsengiyumva Defence and its witnesses. *Bagosora et al*, Decision on Motion to Harmonize and Amend Witness Protection Orders (TC), 1 June 2005. See also Decision Amending Defence Witness Protection Orders (TC), 2 December 2005 (modifying all previous Defence witness protection orders to take into account the Prosecution's discretion to access confidential information).