101R-98-42-1 08-06-2004 International Criminal Tribunal for Rwanda

Tribunal penal international pour le Rwanda

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## TRIAL CHAMBER II

- Before: Judge William H. Sekule, Presiding Judge Arlette Ramaroson Judge Solomy Balungi Bossa
- Registrar: Mr. Adama Dieng
- Date: 08 June 2007

The PROSECUTOR v. Pauline NYIRAMASUHUKO & Shalom NTAHOBALE Case No. ICTR-97-21-T

Joint Case No. ICTR-98-42-T

# DECISION ON AUGUSTIN BIZIMUNGU'S EXTREMELY URGENT MOTION FOR DISCLOSURE OF THE CLOSED SESSION TESTIMONY OF WITNESS WKNMJ AND ANY SEALED EXHIBITS ADMITTED IN THE COURSE OF HER TESTIMONY

### Office of the Prosecutor

Ms. Silvana Arbia Ms. Adelaide Whest Ms. Holo Makwaia Ms. Althea Alexis Windsor Ms. Madelcine Schwarz Ms. Tolulope Olowoye Defence Counsel for Ntahobali Mr. Normand Marquis, Mr. Louis Huot Defence Counsel for Bizimungu Mr. Gilles St- Laurent, Mr. Ronnie MacDonald

## THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

**SITTING** as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramaroson and Solomy B. Bossa (the "Chamber");

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**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 scellées du témoin protégé de la Défense WKNMJ<sup>2</sup>, filed on 1 June 2007 (Bizimungu<sup>\*</sup>s Motion);

#### CONSIDERING the

i) "Réplique d'Arsène Shalom Ntahobali à la requête d'Augustin Bizimungu en communication des transcriptions d'audience du témoin WKNMJ", filed on 4 June 2007 (Ntahobali's Reply);

ii) "Prosecutor's Response to the Requête en extrême argence de la Défense du Général Augustin Bizimungu en communication des audiences à huis clos et des pièces produtes sous scellées du témoin protégé de la Défense WKNMJ<sup>2</sup>, filed on 4 June 2007 (Prosecution Reply);

**CONSIDERING** the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules"), in particular Rules 69 and 75,

#### HERERY DECIDES the Motion.

- 1. The Chamber notes that the Defence for Bizimungu requests disclosure of the closed session testimony and any exhibits under seal for Witness WKNMJ.<sup>1</sup> The Witness is said to be one of Bizimungu's potential witnesses due to testify soon, and has apparently given his consent for the said disclosure. The Defence wishes to review the Witness' prior testimony as part of its preparation. Neither the Defence for Ntahobali or the Prosecution object to the Motion, as long as the protective measures ordered by the Trial Chamber in favour of the Witness apply *mutatis mutandis* to the Defence for Bizimungu.
- 2. Pursuant to Rule 75 (G) of the Rules, a party to the second proceedings (in this case Bizimungu in Prosecutor v. Bizimungu et al.) seeking to rescind, vary or augment protective measures ordered in the first proceedings (in this case Ntahobali in Prosecutor v. Nyiramasuhuko et al.) must apply to the Chamber seized of the first proceedings. As the Nyiramasuhuko et al. case remains before Trial Chamber II, the Bizimungu Defence has properly applied to this Chamber.
- 3. The Chamber considers that there are valid reasons to order the disclosure of the transcripts of the closed session testimony of Witness WKNMJ for the 28 and 29 November 2005 and exhibit D.373 (Ntahobali) admitted under seal.

<sup>&</sup>lt;sup>1</sup> Witness WKNMJ testified on behalf of the Accused Ntahobali in the Butare Trial, on 28 and 29 November 2005.

4. The Chamber recalls that pursuant to Rule 75(F) (i), the protective measures ordered by this Chamber in the *Ntahobali* proceedings will continue to have effect *mutatis mutandis* in the *Bizimungu* proceedings.<sup>2</sup>

#### FOR THE ABOVE REASONS, THE TRIBUNAL

GRANTS the motion;

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**ORDERS** the Registry to disclose the closed session transcripts and sealed exhibit of Witness WKNMJ to the Defence for Bizimungu;

**ORDERS** that the Defence for Bizimungu and any other party in receipt of the protected information, including the Accused, are bound *mutatis mutandis* by the terms of the witness protection order governing the witnesses for Ntahobali in the Butarc trial.

Arusha, 08 June 2007

William H. Sekule Presiding Judge



Arlette Ramaroson Judge

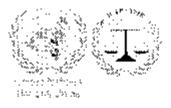
[Seal of the Tribunal]

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Solomy Balungi Bossa Judge

<sup>2</sup> See Decision on Arsene Shalom Ntahobali's Motion for Protective Measures for Defence Witnesses of 3 April 2001



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COURT MANAGEMENT SECTION

(Art. 27 of the Directive for the Registry)

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	Chief, CMS	Deputy Chief, CMS	Chief, JPU. CN		
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From:	¦ ⊠ Chamber ' Lydia Mugambe	Defence	🗌 Prosecutoris O	ffice D Other.	
	: (names)	(names)	(names)	(names)	
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Dates:	Transmitted: 08/06/2	2007	Document's date: 08/06/2007		
No. of Pages:	3	Original Language	: 🛛 English	French 🗍 Kinyarwanda	
Title of				GENT MOTION FOR DISCLOSURE	
Document: OF THE CLOSED SESSION TESTIMONY OF WITNESS WKNMJ AND ANY SEALED EXHIBITS ADMITTED IN THE COURSE OF HER TESTIMONY					
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