ICTR-98-41-T 39210
13-06-2007
Ivan

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

(39210 – 39208)

UNITED NATIONS
NATIONS UNIES

ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 13 June 2007

2007 JUN 13 A 11:16
JUDICIAL RECORDS/ARCHIVES
RECEIVED

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. ICTR-98-41-T

DECISION ON BIZIMUNGU DEFENCE SECOND 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
Gershom Otachi Bw'Omanwa

39209

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 BDR-1 et HOP-1", filed on 8 June 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence of Augustin Bizimungu, currently being tried in the *Ndindiliyimana et al.* ("*Military II*") case before Trial Chamber II, makes a request for disclosure of confidential transcripts and sealed exhibits pertaining to two additional Defence witnesses who testified in the *Bagosora et al.* ("*Military I*") trial. These witnesses are scheduled to testify in the *Military II* case on behalf of the Bizimungu Defence and have consented to 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.[1] No parties in the *Military I* case have filed any submissions.

DELIBERATIONS

2. The Chamber has granted a similar request in connection with seven other Defence witnesses common to the *Military I* and *Military II* cases.[2] It relied on Appeals Chamber jurisprudence, which 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".[3]

3. The Chamber recalls its findings on the Bizimungu Defence's first request, namely that a "significant factual, geographic and temporal overlap exists between the cases", that the request was narrowly tailored to specific witnesses whom the Bizimungu Defence intends to call, and that the witnesses have all given their consent. Consequently, it found that the Defence had articulated a legitimate forensic purpose for the material requested and that access to the confidential material would materially assist the Defence.[4] In the Chamber's

[1] Motion, paras. 5-6, 10.
[2] *Bagosora et al.*, Decision on Bizimungu Defence Request for Disclosure of Closed Session Testimony and Exhibits Placed Under Seal (TC), 15 May 2007.
[3] *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.
[4] *Bagosora et al.*, Decision on Bizimungu Defence Request for Disclosure of Closed Session Testimony and Exhibits Placed Under Seal (TC), 15 May 2007, para. 7.

view, this second request relating to Witnesses BDR-1 and HOP-1 meets the same criteria and should be granted.

4. The Chamber notes that Rule 75 (F) of the Rules of Procedure and Evidence provides that witness protection 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. Thus, the Bizimungu Defence shall be bound by all of the Chamber's previous Defence witness protection orders in the *Military I* case.[5]

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; and

DIRECTS the Registry to disclose the closed session transcripts for Witnesses BDR-1 and HOP-1 and all of the exhibits admitted under seal during the testimony of these witnesses.

Arusha, 13 June 2007

Erik Møse
Presiding Judge

Jai Ram Reddy
Judge

Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

[5] 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 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).