



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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ICTR-99-50-T

29-08-2007

(24279-24276)

OR: ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuga Muthoga
Emile Francis Short

Registrar: Mr. Adama Dieng

Date: 29 August 2007

THE PROSECUTOR
v.
CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JÉRÔME-CLÉMENT BICAMUMPAKA
PROSPER MUGIRANEZA

Case No. ICTR-99-50-T

**DECISION ON AUGUSTIN BIZIMUNGU'S MOTION FOR DISCLOSURE OF
CLOSED SESSION TRANSCRIPTS OF TESTIMONY OF DEFENCE WITNESSES
WFP10, WFP2, WFQ3 AND WAE AND EXHIBITS ADMITTED UNDER SEAL
DURING THOSE WITNESSES' TESTIMONY**

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. George William Mugwanya
Mr. Shyamlal Rajapaksa

Counsel for the Defence:

Ms. Michelyne C. St. Laurent and Ms. Alexandra Marcil for Casimir Bizimungu
Mr. Ben Gumpert and Mr. Jonathan Kirk for Justin Mugenzi
Mr. Pierre Gaudreau and Mr. Michel Croteau for Jérôme-Clément Bicamumpaka
Mr. Tom Moran and Ms. Marie-Pierre Poulain for Prosper Mugiraneza

INTRODUCTION

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1. By Motion dated 1 June 2007,¹ the Defence for General Augustin Bizimungu (the "Defence"), the trial of whom is ongoing before Trial Chamber II, requests disclosure of the closed session transcripts of, and the sealed exhibits associated with, the testimonies of Witnesses WFP10, WFP2, WFQ3 and WAE, who appeared as Defence witnesses in the *Casimir Bizimungu et al* trial before this Chamber.² The Defence advises this Chamber that these four witnesses are soon scheduled to testify in Augustin Bizimungu's defence. By virtue of this Chamber's Decision of 27 June 2005, the aforementioned witnesses are protected witnesses within the meaning of the Statute and Rules of this Tribunal.³

2. The Prosecution does not oppose the Motion.⁴

DELIBERATIONS

3. Rule 75 of the Rules empowers a Chamber to order appropriate measures to safeguard the privacy and security of witnesses, provided that the measures are consistent with the rights of the accused. Furthermore, Rule 79(A)(ii) permits the Chamber to order that the proceedings be held in closed session (in absence of the press and the public) in order to preserve any protective measures granted under Rule 75. Pursuant to these powers, this Chamber extended a number of protective measures to Casimir Bizimungu's witnesses including several measures aimed at preserving the secrecy of those witnesses' identities.⁵ At appropriate times during the proceedings in this case – notably during the testimonies of the Defence witnesses in relation to whom this application is made – the Chamber has heard testimony in closed session, and has placed exhibits admitted into evidence under seal.

4. Sub-Rules 75(F) and (G) of the Rules envisage the circumstances currently before this Chamber. First, those sub-Rules provide that the witness protection orders in place for Casimir Bizimungu's witnesses ("the first proceedings") continue to have effect in Augustin Bizimungu's case ("the second proceedings").⁶ Second, they prescribe a method by which Augustin Bizimungu may seek to rescind, vary, or augment those protective measures.⁷ Augustin Bizimungu has therefore correctly applied to this Trial Chamber to seek variation of the witness protection orders applicable to the closed session testimonies and exhibits under

¹ *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, "Requête en Extrême Urgence de la Défense du Général Augustin Bizimungu en Communication des Audiences à Huis Clos et des Pièces Produites sous Scellées des Témoins de la Défense WFP10, WFP2, WFQ3 et WAE", filed by the Defence for Augustin Bizimungu on 1 June 2007 (see also official translation of this document from original French into English dated 15 June 2007, DI107-0192(E)).

² Defence Witness WFP10 testified in the *Casimir Bizimungu et al* trial on 30 and 31 August 2006, and on 4 and 5 September 2006; Defence Witness WFP2 testified on 22 and 23 January 2007; Defence Witness WFQ3 testified on 23, 24, 25, 26 and 29 January 2007; and Defence Witness WAE testified on 13 and 14 February 2007.

³ See *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Casimir Bizimungu's Motion for Protection of Defence Witnesses (TC), 27 June 2005.

⁴ *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, "Prosecutor's Response to General Augustin Bizimungu's Extremely Urgent Motion for Disclosure of Closed Session Transcripts and Sealed Exhibits of Defence Witnesses WFP10, WFP2, WFQ3 and WAE", filed on 19 June 2007, para. 2.

⁵ *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Casimir Bizimungu's Motion for Protection of Defence Witnesses (TC), 27 June 2005, pp. 6-8.

⁶ See Rule 75(F).

⁷ See Rule 75(G).



seal of Defence Witnesses WFP10, WFP2, WFQ3 and WAE in the trial of *Casimir Bizimungu et al.*

5. The Defence for Augustin Bizimungu advises the Chamber that each of Defence Witnesses WFP10, WFP2, WFQ3 and WAE informed them that they had testified as protected witnesses for Casimir Bizimungu, and furthermore, that they have given their consent for the Augustin Bizimungu Defence to obtain their previous testimonies from the *Casimir Bizimungu et al.* case. However, the witnesses expressed their intention to remain protected and to testify under a pseudonym. The Defence agrees to be bound by the protective measures already extended to these witnesses, as well as by any additional measures the Chamber deems necessary.

6. Additionally, the Defence submits that the disclosure of closed session testimonies and sealed exhibits are crucial to enable it to decide on whether the witnesses should appear on Augustin Bizimungu's behalf, as well as to prepare them for their testimony.

7. Having reviewed the material sought by the Defence, the Chamber considers that no witness protection purpose would be served by denying the Augustin Bizimungu Defence access to the sought-after records. The Chamber notes: (i) that Witnesses WFP10, WFP2, WFQ3 and WAE consent to the disclosure sought; (ii) that the Defence has agreed to be bound by the protective measures already extended to these witnesses by virtue of the Chamber's Decision of 27 June 2005, as it is required to do pursuant to Rule 75(F)(i) of the Rules; (iii) that it is in the interests of justice to grant the Defence's request, in particular in weighing the rights of the Accused *inter alia* under Articles 19 and 20 of the Statute as against the rights of victims and witnesses; and (iv) that the Prosecution does not oppose the Defence Motion. Finally, the Chamber agrees with the position adopted in Trial Chamber I in the case of *Bagosora et al.* in its decision of 16 May 2006 (subsequently adopted by Trial Chamber II in the case of *Prosecutor v. Nahimana et al.*⁸) in which it said:

[T]he Appeals Chamber has held that any person within the Office of the Prosecutor may be designated to have access to protected information in any case before this Tribunal. Denying the same access to the Defence in respect [of] a witness who has revealed his status would be unfair.⁹

FOR THE FOREGOING REASONS, THE CHAMBER

GRANTS the Defence Motion and hereby

ORDERS the Registry to disclose the closed session transcripts of, and the sealed exhibits associated with, the testimonies of Witnesses WFP10, WFP2, WFQ3 and WAE to the Defence for Augustin Bizimungu;

⁸ *Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-96-11-A and ICTR-99-52-A-T, Decision on Disclosure of Sealed Exhibits of Witness DM-12, 25 May 2006, para. 9.

⁹ *Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Zigiranyirazo Motion for Disclosure of Closed Session Testimony of DM-190 (JC), 16 May 2006, para. 5. The Appeals Chamber Decision referred to is *Bagosora et al.*, Decision on Interlocutory Appeals of Decision on Witness Protection Orders (AC), 6 October 2005, paras. 44-46.

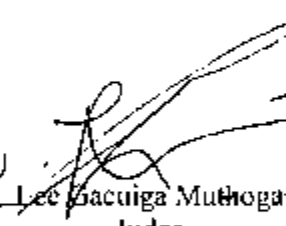


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DECLARES that the Augustin Bizimungu Defence, including the Accused, are bound by the terms of the Casimir Bizimungu Defence Witness Protection Order of 27 June 2005 in respect of Witnesses WFP10, WFP2, WFQ3 and WAE, as well as in respect of any other protected witnesses referred to in the closed session transcripts of, and the sealed exhibits associated with, the aforementioned testimonies.

Arusha 29 August 2007


Mr. Ida Raehid Khalif
residing Judge


Lee Mucunga Muthoga
Judge


for Emile Francis Short
Judge

