



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

(1856-1854)

ICTR-95-1B-R75  
04-03-2008

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TRIAL CHAMBER I

**Before:** Judge Erik Mose, presiding  
Judge Khalida Rachid Khan  
Judge Sergei Alekseevich Egorov

**Registrar:** Adama Dieng

**Date:** 4 March 2008

THE PROSECUTOR

v.

Mika MUHIMANA, *Case No. ICTR-95-1B-R75*

Éliézer NIYITEGEKA, *Case No. ICTR-96-14-R75*

Élizaphan and Gérard NTAKIRUTIMANA, *Case Nos. 96-10-R75 and 96-17-R75*

2008 MAR -11 P-3-58  
JUDICIAL RECORDS/ARCHIVES  
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**DECISION ON PROSECUTION MOTION TO UNSEAL AND DISCLOSE CLOSED  
SESSION TESTIMONY OF WITNESSES BI, AT, GGO AND GG**

**The Prosecution**

Hassan B. Jallow  
Richard Karegyesa  
William Egbe  
Gerda Visser

John

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

**SITTING** as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Khaidia Rachid Khan and Judge Sergei Alekseevich Egorov;

**BEING SEIZED OF** the Prosecution "Ex Parte Motion to Unseal and Disclose to the Dutch Authorities the Closed Session Transcripts of Witnesses BI and AT in the *Muhimana* case, GGO in the *Niyitegeka* case and GG in the *Ntakirutimana* case", filed on 21 December 2007;

**HEREBY DECIDES** the Motion.

1. On 19 and 20 April 2004, and on 30 April 2004, respectively, Witnesses AT and BI testified in the *Muhimana* trial. Witness GGO gave evidence in the *Niyitegeka* trial on 28 and 29 August 2002. The testimony of Witness GG in the *Ntakirutimana* case was heard on 20, 24 and 25 September 2001. As no Chamber is currently seized of these cases, this Motion is properly before this Chamber following its assignment to Trial Chamber I by the President.<sup>1</sup>
2. The four witnesses testified for the Prosecution in these three trials. Parts of their evidence were heard in closed session. The Motion seeks an order for disclosure of their closed session testimony and sealed exhibits (their personal information sheets) to the Dutch authorities. The purpose is to use this material in a trial in The Netherlands of an accused who is charged with crimes committed in Rwanda in 1994. Reference is made to Rules 54, 66 (C), 73 and 75 of the Rules of Procedure and Evidence.<sup>2</sup>
3. Closed session evidence of other witnesses has previously been provided to national authorities. Case law has established that assistance to national prosecutions of crimes committed in Rwanda in 1994 is consistent with the objectives of state cooperation contained in the Statute and Security Council Resolutions 1503 and 1534.<sup>3</sup>
4. The witnesses have consented to the disclosure to the Dutch authorities of their prior testimony before the Tribunal.<sup>4</sup> Accordingly, the Chamber allows the transmission of these Tribunal records, on the understanding that the applicable witness protection orders will apply *mutatis mutandis* to any proceedings before the Dutch authorities.<sup>5</sup>

<sup>1</sup> *Prosecutor v. Muhimana, Niyitegeka and Ntakirutimana*, Designation of a Trial Chamber to Consider the Prosecution Ex Parte Motion for Disclosure of the Closed Session Transcripts to the Dutch Authorities (President), 19 February 2008.

<sup>2</sup> Motion, paras. 7, 9 and conclusion.

<sup>3</sup> *Prosecutor v. Nyiramasuhuko et al.*, Decision on Prosecution's Motion to Unseal the Transcripts of Witness WDUJA (TC), 1 November 2006, para. 15 (recognising the uniqueness of a motion seeking disclosure of transcripts to authorities in Denmark, who are not party to any proceedings before the Tribunal, but noting the guiding principles of state cooperation under Article 28 (1) of the Statute and the conformity of such cooperation with Security Council Resolutions 1503 and 1534); *Prosecutor v. Nyiramasuhuko*, Decision on Prosecution Motion to Unseal and Disclose to Canadian Authorities the Transcripts of the Testimonies of Witnesses TA, QCB, TK, SJ, FAL, QY, and QBQ (TC), 19 March 2007; *Prosecutor v. Ntagerura et al.*, Decision on Disclosure of Closed Session Testimony of Witness KIH (TC), 21 March 2007; *Prosecutor v. Simba*, Decision on Disclosure of Closed Session Testimony of Witness YC (TC), 22 March 2007; *Prosecutor v. Rwamakuba*, Decision on Prosecution's Motion to Unseal and Disclose to the Canadian Authorities the Transcripts of Witness HF (TC), 26 March 2007.

<sup>4</sup> Motion, paras. 6, 17 and Annex A.

<sup>5</sup> *Ibid.*, para. 19 and conclusion (noting that in view of the consent received from the witnesses, disclosure to the Dutch authorities will not prejudice these witnesses, and declaring that the Dutch authorities are bound by the terms of the respective protective measures).

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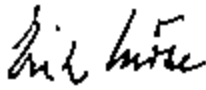
**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the Motion;

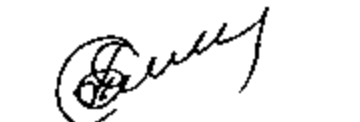
**ORDERS** the Registry to unseal the closed session transcripts and sealed exhibits of Witnesses BI and AT in the *Muhimana* case, GGO in the *Niyitegeka* case, and GG in the *Ntakirutimana* case, make copies and serve them upon the Prosecution for the purpose of their transmission to the Dutch authorities;

**ORDERS** that the protective measures granted to Witnesses BI, AT, GGO and GG shall continue to have effect *mutatis mutatis* in any proceedings before the Dutch court.

Arusha, 4 March 2008

  
Erik Mose  
Presiding Judge

  
Khalida Rachid Khan  
Judge

  
Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]

