



ICTR-01-71-R75
05-03-2008
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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IVAH
11/A

~~(1782-1780)~~
~~(11/A-09/A)~~

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 5 March 2008

THE PROSECUTOR

v.

Emmanuel NDINDABAHIZI

Case No. ICTR-01-71-R75

2008 MAR -5 1 A 10 40
JUDICIAL RECORDS/ARCHIVES
RECEIVED

DECISION ON DISCLOSURE OF CLOSED SESSION TESTIMONY OF WITNESSES CGE, CGX, CGF, CGB and CGH

The Prosecution

Dior Fall
Abdoulaye Seye

The Applicant

Emmanuel Ndindabahizi

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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

BEING SEIZED OF the "Requête de Ndindabahizi ... pour utilisation des transcriptions à huis clos des témoignages des témoins CGE, CGX, CGF, CGB et CGH" etc., filed on 2 October 2007;

NOTING the Prosecution Response, filed on 31 October 2007;

HEREBY DECIDES the Motion.

1. Witnesses CGE, CGX, CGF, CGB and CGH testified for the Prosecution in the *Ndindabahizi* trial. As no Chamber is currently seized of this case, this Motion is properly before this Chamber following its assignment to Trial Chamber I by the President.¹
2. The Motion seeks an order for disclosure of the witnesses' closed session evidence and sealed exhibits in this trial to Ndindabahizi following an allegedly successful compensation claim by one of these witnesses against him before the Gahigiro-Gasharu *Gacaca* court in Rwanda. The purpose is to use the material before that court.² The Prosecution submits that the Motion has no legal basis.
3. Closed session evidence of 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 1534.³ In this instance, the Chamber is not seized by a request by any Rwandan authority in connection with prosecution of crimes; there is no information that the Tribunal's witness protection orders will apply *mutatis mutandis* in such proceedings, if any; and there is no indication that these witnesses have consented to the disclosure of their prior closed session testimony before the Tribunal.
4. Accordingly, the Chamber finds no basis to vary the witness protection measures currently in force in relation to these witnesses.

¹ *Prosecutor v. Ndindabahizi*, Designation of a Trial Chamber to Consider Emmanuel Ndindabahizi's Motion for Disclosure of the Closed Session Transcripts into the Gahigiro *Gacaca* Proceedings in Rwanda (President), 19 February 2008.

² Motion, paras. 3-4, 8-9, Disposition.

³ *Prosecutor v. Nyiramasuhuko et al.*, Decision on Prosecution's Motion to Unseal the Transcripts of Witness WDUSA (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, FAI, QY, and QBQ (TC), 19 March 2007; *Prosecutor v. Ntagerura et al.*, Decision on Disclosure of Closed Session Testimony of Witness K1H (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; *Prosecutor v. Muhimana, Niyitegeka and Ntakirutimana*, Decision on Prosecution Motion to Unseal and Disclose Closed Session Testimony of Witnesses BI, AT, GGO and GG (TC), 4 March 2008.

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FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Motion.

Arusha, 5 March 2008



Erik Mose
Presiding Judge



Khalida Rachid Khan
Judge

Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

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