



ICTR-97-31-T
 03-04-2008
 International Criminal Tribunal for Rwanda
 Tribunal pénal international pour le Rwanda
 (5304 - 5301)

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ORIGINAL: ENGLISH

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
 Judge Sergei Alekseevich Egorov
 Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 3 April 2008

THE PROSECUTOR

v.

Tharcisse RENZAHO

Case No. ICTR-97-31-T

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 JUDICIAL RECORDS/ARCHIVES
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**DECISION ON REQUEST FOR CLOSED SESSION TESTIMONY
 AND SEALED EXHIBITS**

The Applicant
 Georges Rutaganda

The Prosecution
 Jonathan Moses
 Katya Melliush

The Defence
 François Cantier
 Barnabé Nekuie

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Mose, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED OF Georges Rutaganda's "Requête urgente aux fins d'obtenir les transcrits de la déposition à huis clos et des pièces produites sous scellés du témoin « AWE » dans l'affaire Tharcisse Renzaho" etc., filed on 6 February 2008;

NOTING the Prosecution Response, filed on 18 February 2008, and Rutaganda's Reply, filed on 3 March 2008.

INTRODUCTION

1. On 26 May 2003, the Appeals Chamber confirmed Georges Rutaganda's sentence of life imprisonment for, amongst other crimes, genocide. He now requests disclosure of confidential transcripts and sealed exhibits of a protected witness, AWE, who testified in the *Renzaho* trial in January 2007.¹ Rutaganda argues that the witness is likely to have testified regarding events at Cyahafi between April and July 1994, and that this testimony may assist his case materially. It is necessary to seize the Chamber because the Prosecution has not disclosed these transcripts as exculpatory pursuant to Rule 68 of the Rules of Procedure and Evidence.²

2. The Prosecution opposes the motion. Having received final judgment, Rutaganda ought not to receive the requested material unless it contains a new fact likely to assist him in obtaining review under Rule 120 of the Rules. Furthermore, he does not identify any aspect of the testimony that might satisfy the requirements of Rule 68. If the Chamber grants the motion, it should consider separately the disclosure of the sealed exhibits, as they contain Witness AWE's personal details and are of questionable forensic value for Rutaganda.³

DELIBERATIONS

3. It follows from the case law of the Appeals Chamber that

an 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".⁴

¹ T. 31 January 2007, pp. 9-57 (closed session).

² Motion, paras. 4, 6-7.

³ Response, paras. 6-11. The witness' personal information sheet and statement are Exhibits P80 and D23, respectively.

⁴ *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 the Trial Chamber case law cited below.

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4. Rule 75 (F) 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.⁵ The authorities relied upon by Rutaganda concern requests previously granted by the Chamber in relation to witnesses who appeared in more than one case. In such instances, witness protection orders from one proceeding have been modified to permit disclosure of confidential material to parties in another proceeding where a protected witness from the first proceeding is scheduled to testify in the second proceeding.⁶ Rutaganda's situation is different, as his trial and appeal proceedings have been completed.

5. In relation to a case that had already closed and in which judgment was expected, the Chamber has found that a factual nexus can no longer constitute a legitimate forensic purpose for access to the requested material before the judgment is rendered.⁷ At present, Rutaganda has no case before the Tribunal. The only legitimate forensic purpose that the requested disclosure could have is in relation to a request for review of the judgment pursuant to Rule 120.

6. Rutaganda submits that Witness AWE may have testified in relation to events occurring in Cyahafi between April and July 1994, thus creating a nexus between his and Renzaho's case. The Chamber has previously considered that a "significant factual, geographic and temporal overlap ... between ... cases" constitute a legitimate forensic purpose for the material requested.⁸ However, the material requested by Rutaganda has no apparent nexus with his own case. His conviction in relation to Cyahafi concerns the distribution of weapons.⁹ Witness AWE's sealed evidence sheds no light on Rutaganda's conduct in this regard.¹⁰ Accordingly, it is unlikely to materially assist him. The Chamber adds that failure to disclose this testimony cannot be said to amount to a breach of the Prosecutor's obligation to disclose exculpatory material pursuant to Rule 68.

⁵ Witness protection measures in force in this case are *Renzaho*, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment (TC), 17 August 2005; *id.*, Decision on Renzaho's Motion to Reconsider the Decision on Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment (TC), 1 November 2005; and *id.*, Decision on Defence Request for Protective Measures (TC), 12 March 2007.

⁶ *Bagosora et al.*, Decision on Bizimungu Defence Second Request for Disclosure of Closed Session Testimony and Exhibits Placed Under Seal (TC), 13 June 2007, para. 2; *id.*, Decision on Bizimungu Defence Request for Disclosure of Closed Session Testimony and Exhibits Placed Under Seal (TC), 15 May 2007, para. 7; *id.*, Decision on Disclosure of Confidential Material Requested by Defence for Ntahobali (TC), 24 September 2004, para. 6; *Kajelijeli*, Decision on Disclosure of Closed Session Testimony of Witness FMB (TC), 26 September 2006, para. 2; and *Niyitegeka*, Decision on Release of Closed Session Transcript of Witness KJ for Use in the Trial of Bagosora et al. (TC), para. 2.

⁷ *Renzaho*, Decision on Karera Defence Motion for Disclosure (TC), 4 June 2007, para. 3.

⁸ *Bagosora et al.*, Decision on Bizimungu Defence Second Request for Disclosure of Closed Session Testimony and Exhibits Placed Under Seal (TC), 13 June 2007, para. 3, relying on *id.*, Decision on Bizimungu Defence Request for Disclosure of Closed Session Testimony and Exhibits Placed Under Seal (TC), 15 May 2007, para. 7. In those cases, the witnesses whom the moving party intended to call had all given their consent. There is no indication that Witness AWE has consented to the release of his closed session testimony and the sealed material.

⁹ *Rutaganda*, Judgment (TC), 6 December 1999, paras. 174 *et seq.*

¹⁰ T. 31 January 2007 (closed session), pp. 9-57; Exhibits P80 and D23.

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FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Motion.

Arusha, 3 April 2008


Erik Mose
Presiding Judge


Serger Alekseevich Egorov
Judge


Florence Rita Arrey
Judge

[Seal of the Tribunal]

