Ý ŒG	International Criminal Trib Tribunal penal international	- 37688) - 1 unal for Rwanda
·	TRIAL CHAMBER III	<u></u>
		ENGL1SH Orignial:French
Before :	Judge Dennis C. M. Byron, presiding Judge Gberdao Gustave Kam Judge Vagn Joensen	€÷. ⊋ti
Registrar:	Adama Dieng	N 8
Date:	26 May 2008	
	THE PROSECUTOR	
	ÉDOUARD KAREMERA MATHIEU NGIRUMPATS JOSEPH NZIRORERA	
	Case No. ICTR-98-44-T	$\langle \rangle$

DECISION ON GENERAL AUGUSTIN BIZIMUNGU'S MOTION FOR THE DISCLOSURE OF THE CLOSED SESSION TRANSCRIPTS OF THE TESTIMONY OF WITNESS BTH AND THE EXHIBITS TENDERED UNDER SEAL DURING THE SAID HEARINGS

Office of the Prosecutor:	Counsel for Édouard Karemera:		
Don Webster	Dior Diagne Mbaye and Félix Sow		
Alayne Frankson-Wallace			
lain Morley	Counsel for Mathieu Ngirumpalse:		
Gerda Visser	Chantal Hounkpatin and Frédéric Weyl		
Saidou N'Dow			
Sunkarie Ballah-Conteñ	Counsel for Joseph Nzirorera:		
Takeh Sendze	Peter Robinson and Patrick Nimy Mayidika Ngimbi		
Deo Mbuto			

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Rule 75 (F) and (G) of the Rules of Procedure and Evidence

CH08-0088 (15)

Translation certified by LSS, ICTR

Decision on General Augustul Bizimungu's Motion for the Disclosure of the Closed Session Transcripts and the Exhibits Tenfored under Seal of Watness BTH

26 May 2008

The Protection v. Edmand Korendra, Mathica Ngiruanjsibe and Joseph Neuroren, Case No. JCTR-98-44-T.

INTRODUCTION

1. The protected witness, known under the pseudonym BTH in the instant case, again testified from 10 to 17 April 2008, because of statements be had made after his initial testimony from 8 to 20 June 2006, alleging that he had lied while giving evidence for the Prosecution. This same protected witness also appeared before Trial Chamber II from 30 January to 2 February 2006 in the case of *The Prosecutor v Ndindiliyimana et al.*, under the pseudonym GFA. Parsuant to Sub-Rules 75 (F) and (G)(i) of the Rules of Procedure and Evidence, the Defence for Augustin Bizimungu as party to this latter case, which is still in progress, therefore prays this Chamber to direct that all the transcripts of Witness BTH's testimony at the session from 10 to 17 April 2008 be disclosed to it together with the Exhibits tendered during the said session.

2. Augustin Bizimungu contends that from the transcripts of the open session of April 2008 he had inferred that Witness BTH had retracted the evidence he had given against him in early 2006. He submits that the said exhibits are necessary for his case, as Witness BTH this time around is disavowing his participation in the crimes pleaded in the Indictment and on which he specifically testified. The Defence moreover underlines the fact that the disavowal was related to a discussion held with BTH in February 2008 in the presence of the Prosecution in its case. Augustin Bizimungu further indicates that he is unable to meet Witness BTH for that purpose as the latter has mysteriously disappeared, which situation moreover prompted his Motion of 13 May 2008, to Trial Chamber II for leave to take all necessary steps to find and meet BTH.

3. The Defence for Joseph Nzirorera and the Prosecution filed a response to the Motion on 20 May 2008, indicating that they had no objection to the disclosure sought. In Joseph Nzirorera's case, the Prosecutor is bound at any rate to disclose those materials to Augustin Bizimongu under Rules 66(A)(ii), 68 and 75(F)(ii) of the Rules, even if he has not so requested.

DELIBERATIONS.

4. Rule 75(F) of the Rules provides that protective measures ordered in respect of a witness in the first properdings, shall continue to have effect *mutatix mutandis* in any other proceedings. Rule 75(G)(i) of the Rules, for its part, allows any party to the proceedings that seeks to vary protective measures ordered in another proceeding to apply to the Chamber seized of the latter properdings. Such variation would imply that the said party would have access from then on to confidential material, if so allowed by the competent Chamber.

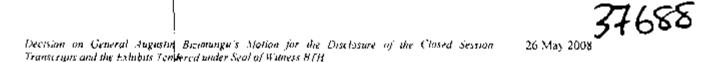
5. The Chamber nptes that the present request is for it to strike a balance between on the one hand, the need for protective measures for Witness BTH, which formed the basis for part of his testimony being given in closed session, and on the other hand. Bizimungu's well-founded need to have access to the evidence for his defence.

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The Prosection v. Educated Karemeira, Mathiew Neuranautice and Jaseph Neurorent, Case No. ICTR-98-14-1

6. As is the practice at the Tribunal, the witness' opinion is sought even if it is not binding on the Chamber. In the instant case, the Chamber notes that Witness BTH is unavailable, and that it is therefore not now possible to seek his opinion. The Chamber notes further that the material sought by Augustin Bizimungu is of definite importance to his defence. In addition, the rights of the Accused demand that the said material be disclosed to him. The Chamber accordingly grants the request, and reminds Augustin Bizimungu that the protective measures applicable to Witness UTH are nonotheless maintained mutatis mutandis.

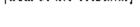
FOR THESE REASONS, THE CHAMBER

I. ALLOWS Gendral Augustin Bizimungu's Motion and, ORDERS his Defence to ensure that the confidentiality of the disclosed exhibits is maintained.

11. DIRECTS the Registry to disclose to the Defence for Augustin Bizimungu the closed session transcripts as well as the exhibits tendered under seal during the hearing of protected Witness BTH on 10, 14, 15, 16 and 17 April 2008.

Done in French at Arusha, on 26 May 2008

[Signed] [Signed] [Signed] Dennis C. M. Byron Gberdao Gustave Kam Judge Judge Presiding Judge [Seal of the Tribunal]





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Vagn Joensen

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