



ICTR-98-44-T  
17-9-2008  
(37690 - 37688)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

ENGLISH  
Original: French

Before : Judge Dennis C. M. Byron, presiding  
Judge Gberdao Gustave Kam  
Judge Vagn Joensen

Registrar: Adama Dieng

Date: 26 May 2008

THE PROSECUTOR

v.  
ÉDOUARD KAREMERA  
MATHIEU NGIRUMPATSE  
JOSEPH NZIRORERA

Case No. ICTR-98-44-T

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

*Rule 73 (F) and (G) of the Rules of Procedure and Evidence*

Office of the Prosecutor:  
Don Webster  
Alayne Frankson-Wallace  
Iain Morley  
Gerda Visser  
Saidou N'Dow  
Sunkarie Ballah-Conteh  
Takeh Sendze  
Deo Mbuto

Counsel for Édouard Karemera:  
Dior Diagne Mbaye and Félix Sow

Counsel for Mathieu Ndirumpatse:  
Chantal Hounkpatin and Frédéric Weyl

Counsel for Joseph Nzirorera:  
Peter Robinson and Patrick Niny Mayidika Ngimbi

ICTR-0088 (1)

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## 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 he 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. Pursuant 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 Bizimungu 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 proceedings, shall continue to have effect *mutatis 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 proceedings. 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 notes 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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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 BTH are nonetheless maintained *mutatis mutandis*.

**FOR THESE REASONS, THE CHAMBER**

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

**II. 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]

Dennis C. M. Byron  
Presiding Judge

[Signed]

Gberdao Gustave Kam  
Judge

[Signed]

Vagn Joensen  
Judge

[Seal of the Tribunal]

