

ICTR-00-56-T
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(67797-67793)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

INTERNET
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OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr. Adama Dieng

Date: 11 August 2008

JUDICIAL RECORDS SECTION
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The PROSECUTOR
v.
Augustin NDINDIYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

**INTERIM ORDER ON DEFENCE MOTIONS REGARDING THE PROSECUTOR'S
DISCLOSURE OF ALLEGED EXCLLPATORY MATERIAL**

Office of the Prosecutor:
Mr. Alphonse Van
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Mr. Lloyd Strickland
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Ms. Felistas Mushi
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Counsel for the Defence:
Mr. Gilles St-Laurent and Mr. Ronnie MacDonald for Augustin Bizimungu
Mr. Christopher Black and Mr. Vincent Lurquin for Augustin Ndindiyimana
Mr. Charles Taku and Ms. Beth Lyons for François-Xavier Nzuwonemeye
Mr. Fabien Segatwa and Mr. Seydou Dombia for Innocent Sagahutu

INTRODUCTION

1. On 4 February 2008, the Defence teams in this case presented oral submissions alleging violations of the Prosecution's disclosure obligation pursuant to Rule 68 of the Rules of Procedure and Evidence.¹ On the same day, the Chamber ordered the Prosecution to review the documents in its possession and to disclose to the Defence all exculpatory material by the end of February.²
2. On 29 February 2008, the Prosecution disclosed to the Defence a total of 140 witness statements comprising approximately 3000 pages. On 7 March 2008, the Chamber ordered the Defence to file any motions relating to the Prosecutor's 29 February 2008 disclosure not later than 28 March 2008.³
3. The Defence for Sagahutu filed its Motion on 17 March 2008⁴; the Defence for Bizimungu and the Defence for Nzuwonemeye both filed their Motions on 28 March 2008⁵; the Defence for Ndindiliyimana filed its Motion on 31 March 2008,⁶ three days outside the time limit set by the Chamber. The Prosecution responded to all the Motions,⁷ Bizimungu and Nzuwonemeye replied on 7 April 2008; Ndindiliyimana filed a Reply on 8 April 2008.⁸ The issue of late filings by the Ndindiliyimana Defence and the Prosecution has already been dealt with by the Chamber.⁹
4. The Prosecution made certain further disclosures containing redacted statements pertaining to RPF investigations on 19 March 2008, and other documents relevant to the RPF on 23 April 2008.
5. On 23 May 2008, the Chamber issued an Interim Order directing (i) the Defence teams for Bizimungu, Ndindiliyimana, and Nzuwonemeye to each file the alleged

¹ T. 4 February 2008, pp. 1 - 13 (O.S.).

² Oral Decision (TC), T. 4 February 2008, pp. 12-13 (O.S.).

³ Scheduling Order following the Status Conference of 5 and 6 March 2008 (TC), 7 March 2008.

⁴ Requête aux fins de communication de pièces (sic) à décharge et autres éléments pertinents - Article 68 RPP, filed by the Defence for Sagahutu on 17 March 2008 « Sagahutu Motion ».

⁵ Requête en arrêt des procédures et conclusions subsidiaires, filed by the Defence for Bizimungu on 28 March 2008 « Bizimungu Motion »; Nzuwonemeye Defence Motion, based on Prosecution's Violations of Rule 68 (Rules of Procedure and Evidence) and for Relief, and Pursuant to Rules 5, 90(G) (ii) and 90(G)(ii) (Rules of Procedure and Evidence), filed on 28 March 2008 ("Nzuwonemeye Motion")

⁶ Augustin Ndindiliyimana's Motion for Disclosure Violations, Remedial and Punitive Measures, filed on 31 March 2008.

⁷ Réponse du Procureur à la "Requête aux fins de communication de pièces à décharge et autres éléments pertinents - Article 68RPP" présentée par la défense du Capitaine Innocent Sagahutu le 17 Mars 2008, filed on 27 March 2008; Prosecutor's Joint Response to Major Francois-Xavier Nzuwonemeye based on Prosecution's Violations of Rule 68 and for Relief, pursuant to Rules 5, 90(g)(i) and 90(g) (ii) RPE and Augustin Bizimungu's "requête en arrêt des procédures et conclusions subsidiaires", filed on 2 April 2008; Prosecutor's Response to General Augustin Ndindiliyimana's "Motion for Disclosure Violations, Remedial and Punitive measures", filed on 2 April 2008.

⁸ Réplique de Augustin Bizimungu à la "Prosecutor's Joint Response to Major Francois-Xavier Nzuwonemeye based on Prosecution's Violations of Rule 68 and for Relief, pursuant to Rules 5, 90(g)(i) and 90(g) (iii) RPE and Augustin Bizimungu's "requête en arrêt des procédures et conclusions subsidiaires", filed on 7 April 2008 ("Bizimungu Reply") ; Nzuwonemeye Defence Reply to Prosecution's Joint Response to Nzuwonemeye Defence Motion, Based on Prosecution's Violations of Rule 68, filed on 7 April 2008; Ndindiliyimana's Reply to Respondent's response to Motion Re Disclosure and Remedial Measures, filed on 8 April 2008.

⁹ See Interim Order on Defence Motions regarding the Prosecution's Disclosure of Alleged Exculpatory Material (TC), 23 May 2008, para. 3 and Disposition.



exculpatory documents from the Prosecution's disclosure of 29 February 2008 relevant to its case; (ii) the Prosecution to file confidentially for the exclusive use of the Chamber the un-redacted versions of only the alleged exculpatory documents listed in the Defence Motions, including the thirty-nine pages of RPF materials mentioned in Nzawonemeye's Motion and documents numbered R0000280-283, and R0000299-302 referred to in Sagahutu's Motion; and (iii) the Prosecution to clearly indicate the specific dates on which it disclosed the six statements referred to in its Response to Ndindiliyimana's Motion and to file un-redacted versions of them with the Chamber. The Chamber ordered that all necessary disclosures be made within seven days of the date of the Interim Order.¹⁰

6. Following the Chamber's Interim Order, the Defence teams for Nzawonemeye, Ndindiliyimana and Bizimungu provided copies of the redacted statements referred to in their earlier motions.¹¹ The Prosecution complied with the Order, by providing extensive material containing un-redacted statements referred to in the Defence motions for the exclusive use of the Chamber.¹² The Defence for Nzawonemeye filed further observations on the Prosecution's latest disclosure.¹³

7. The Prosecution indicates that of the thirty-two (32) statements filed *ex parte* with the Chamber on 30 May 2008, twelve (12) had been previously disclosed on 11 May 2004 as part of the "Belgian Files". The Prosecution, however, failed to indicate whether or not the pre-trial disclosure of the "Belgian files" was redacted and if so, the extent of the redactions.

DISCUSSION

8. The Chamber considers that in order for it to properly consider the Defence Motions for alleged violation of Rule 68 disclosure obligations by the Prosecution, it is necessary to ascertain whether the alleged pre-trial disclosure of the "Belgian files" by the Prosecution was in redacted or un-redacted format.

9. The Chamber therefore orders each of the Defence teams and the Prosecution to clearly indicate to the Chamber whether or not the disclosure of the "Belgian files" in 2004 was redacted. If the disclosure was in redacted format, the Parties must also inform the Chamber whether the redaction went beyond the names and other identifying information of the witnesses.

ORDERS the Parties to make their submissions within seven (7) days of the date of this Order

¹⁰ Interim Order on Defence Motions regarding the Prosecution's Disclosure of Alleged Exculpatory Material (TC), 23 May 2008.


¹¹ Nzawonemeye Defence Compliance with Interim Order, Dated 23 May 2008 in reference to Prosecution Disclosure, Pursuant to Rule 68, filed on 29 May 2008; Augustin Ndindiliyimana's Filing in compliance with the Interim Order of 23 May 2008 on Defence Motions regarding the Prosecution's Disclosure of Alleged Exculpatory Material, filed on 30 May 2008; Annexes à la Requête en arrêt des procédures et conclusions subsidiaires de la Défense du Général Augustin Bizimungu conformément à l'Ordonnance Intérimaire du 23 Mai 2008, filed on 30 May 2008.

¹² Prosecution's filing of unredacted statements in compliance with the Interim Order of Trial Chamber II dated 23 May 2008, filed on 30 May 2008.

¹³ Nzawonemeye's Defence Observations on Prosecution Disclosure, dated 30 May 2008, filed on 9 June 2008.

Interim Order on Defence Motions Regarding the Prosecutor's Disclosure of Alleged Exculpatory Material

Arusha, 11 August 2008


Asoka de Silva
Presiding Judge



[read and approved by]
Tahmid Hikmet
Judge 


[read and approved by]
Seon Ki Park
Judge 

[Seal of the Tribunal]