



UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 13 August 2008

**PROSECUTOR v. MUHIMANA**

Case No. ICTR-95-1B

**PROSECUTOR v. RUZINDANA and KAYISHEMA**

Case No. ICTR-95-1

**PROSECUTOR v. NIYITEGEKA**

Case No. ICTR-96-14

**PROSECUTOR v. NTAKIRUTIMANA et al.**

Case No. ICTR-96-10/17

**PROSECUTOR v. MUSEMA**

Case No. ICTR-96-13

---

**DECISION ON PROSECUTION'S URGENT EX PARTE MOTION TO UNSEAL  
AND DISCLOSE PERSONAL INFORMATION SHEETS AND RESCIND  
PROTECTIVE MEASURES FOR CERTAIN WITNESSES**

*Rule 75(F)(i) of the Rules of Procedure and Evidence*

---

**Office of the Prosecutor:**

Hassan B. Jallow  
Richard Karegyesa  
Frederick Nyiti  
Gerda Visser

## INTRODUCTION

1. On 4 March 2008, Trial Chamber I granted a motion by the Prosecution to unseal and disclose closed session testimony of Witnesses BI and AT in the *Muhimana* case, GGO in the *Niyitegeka* case, and GG in the *Ntakirutimana* case, for the purpose of transmitting it to the Dutch authorities who are currently prosecuting an accused, Joseph Mpambara, who is charged with crimes committed in Rwanda in 1994.<sup>1</sup> In its decision, that Chamber also ordered that the protective measures for those witnesses would continue to have effect *mutatis mutandis* in any proceedings before the Dutch court.<sup>2</sup>

2. On 17 July 2008, the Prosecution filed an urgent and *ex parte* motion requesting that those witness protection orders, along with the ones for Witnesses BB and FF in *Ruzindana and Kayishema*, GGY and GHA in *Niyitegeka*, P in *Musema*, and HH and YY in *Ntakirutimana et al.* be rescinded because the witnesses have agreed to testify under their own name in the Dutch proceedings so that the Dutch authorities can use and refer to ICTR materials in public.<sup>3</sup>

3. In its motion, the Prosecution also requests that the Personal Information Sheets admitted under seal for Witnesses BB and FF in *Ruzindana and Kayishema*, GHA and GGY in *Niyitegeka*, P in *Musema*, and HH and YY in *Ntakirutimana* be disclosed to the Prosecution for their transmission to the Dutch authorities. The purpose is to use this material in the Joseph Mpambara trial in The Netherlands.

## DELIBERATIONS

4. As no Chamber is currently seized of these cases, this motion is properly before this Chamber following its assignment to Trial Chamber III by the President.

### ***Rescission of Protective Measures under Rule 75(F)(i)***

5. Rule 75(F)(i) of the Rules of Procedure and Evidence states that protective measures, which have been ordered in respect of a witness by the Tribunal, shall continue to have effect *mutatis mutandis* in any other proceeding before the Tribunal unless and until they are rescinded, varied, or augmented according to the procedure set out in Rule 75(G). While Rule 75 does not provide for rescission of protective orders when the case is not before the

---

<sup>1</sup> *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.

<sup>2</sup> *Ibid.*

<sup>3</sup> Prosecution's Urgent *Ex Parte* Motion to Rescind Protective Measures for Certain Witnesses ("Prosecution's Motion"), filed on 17 July 2008.

Tribunal, the jurisprudence has established that the interests of justice require a broad interpretation of Rule 75(F)(i) for variation of the protective orders even when the second case is before another jurisdiction.<sup>4</sup>

6. The Chamber notes that witnesses BB, FF, AT, BI, GGY, GHA, GGO, P, GG, HH, and YY have consented to the rescission of their protective measures so that they may testify in the Dutch proceedings against Joseph Mpambara.<sup>5</sup> Accordingly, having considered that there is no prejudice to these witnesses given their written and signed consent, the Chamber deems that it is in the overall interest of justice to rescind their protective measures for the purposes of the Dutch proceedings against Joseph Mpambara.

### ***Disclosure and Transmission of Personal Information Sheets***

7. Case law has established that assistance to national prosecutions of crimes committed in Rwanda in 1994 is consistent with the goals of state cooperation contained in the Statute and Security Council Resolutions 1503 and 1534.<sup>6</sup> Confidential *inter partes* material may be disclosed to a party in another case not before the Tribunal provided the applicant demonstrates that it is likely to assist its case materially, or there is good chance that it would.<sup>7</sup> This standard can be met by showing that there is a factual nexus between the two cases.<sup>8</sup>

8. The Chamber concludes that a sufficient factual nexus exists in this case because the proceedings in the Netherlands relate to the 1994 events in Rwanda, which were also the subject matter of the Tribunal's proceedings. Accordingly, the Chamber considers that it is in the overall interest of justice to request the Registry to unseal and provide copies of the

---

<sup>4</sup> *Prosecutor v. Simba*, ICTR-01-76-R75, Decision on Charles Munyaneza's Motion for Disclosure of Documents Related to Protected Witnesses Before the Tribunal (TC), 9 April 2008, para 5.

<sup>5</sup> Confidential Annex "B" to the Prosecution's Motion.

<sup>6</sup> *Prosecutor v. Nyiramasuhuko et al.*, Decision on Prosecution's Motion to Unseal the Transcripts of Witness WDUSA (TC), 1 November 2006, para. 15 (recognizing 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.

<sup>7</sup> *The Prosecutor v. Augustin Ndindiliyimana, Augustin Bizimungu, Francois-Xavier Nzuwonemeye, and Innocent Sagahutu*, Case No. ICTR-00-56-T, ("Ndindiliyimana et al."), Decision on the Prosecution Motion to Unseal and Disclose to the Canadian Authorities the Closed Session Transcripts of Witness ANA (TC), 23 March 2007, para. 10.

<sup>8</sup> *Ibid.*

personal information sheets for witnesses BB, FF, GHA, GGY, P, HH, and YY to the Prosecution for the purpose of transmission to the Dutch authorities.

**FOR THESE REASONS, THE CHAMBER**

- I. GRANTS** the Prosecution's motion in its entirety; and
- II. REQUESTS** the Registry to: (1) rescind the protective measures in place for witnesses BB, FF, AT, BI, GGY, GHA, GGO, P, GG, HH, and YY; and (2) unseal and provide copies of the personal information sheets for witnesses BB, FF, GHA, GGY, P, HH, and YY to the Prosecution for the purpose of transmission to the Dutch authorities.

Arusha, 13 August 2008, done in English.

Dennis C. M. Byron  
Presiding Judge

Gberdao Gustave Kam  
Judge  
(absent during signature)

Vagn Joensen  
Judge  
(absent during signature)

[Seal of the Tribunal]