

ICTR-00-56-T

30600

19-05-2011
(30600-30597)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda



UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 17 May 2011

THE PROSECUTOR

v.

Augustin NDINDILYIMANA et al.

CASE No. ICTR-00-56-T

2011 MAY 19 P 12:36
JURISPRUDENCE ARCHIVES

DECISION ON THE PROSECUTOR'S URGENT *EX PARTE* MOTION TO VARY
THE PROTECTIVE MEASURES FOR WITNESSES GAP & GFC

Rule 75 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Hassan Boubacar Jallow
Richard Karegyesa
Frederick Nyiti

INTRODUCTION

1. On 11 May 2011, the Prosecution filed an urgent and *ex parte* motion seeking to vary the protective measures for Prosecution Witnesses GAP and GFC in order to disclose their witness statements, transcripts, exhibits tendered during their testimony and other necessary information to the Canadian Department of Justice, pursuant to Rule 75 (G) of the Rules of Procedure and Evidence ('Rules').¹ The Prosecution submits that such disclosure would facilitate proceedings in Canada for the crimes committed in the territory of Rwanda in 1994.² The order that the Prosecution seeks to vary was issued on 12 July 2001.³

DELIBERATION

2. Rule 75 of the Rules regulates the protection of witnesses in proceedings before this Tribunal and allows for protective orders to be varied or rescinded. The variation of a protective order is normally requested to allow a protected witness to testify in subsequent proceedings before this Tribunal without protection while maintaining the protective measures related to materials from prior proceedings, or to allow protected materials that do not fall within Rule 68 to be disclosed on a confidential basis to parties in other proceedings before the Tribunal.

3. Although Rule 75 does not refer to proceedings before other jurisdictions, it is well established that, with the consent of the witness, and where appropriate, protective measures may be varied or rescinded at the request of States or parties to proceedings before other jurisdictions.⁴

4. The Prosecution requests that the protective measures for Witnesses GAP and GFC be rescinded so that it may disclose their statements, transcripts, exhibits tendered during their testimony and other necessary information to the Canadian Department of Justice. The Prosecution further requests that the protective measures for Witnesses GAP and GFC be varied so that the witnesses can testify under their own name in open court in Canada.⁵ The Prosecution adds that it is necessary that the protective measures under which Witnesses

¹ Prosecutor's Urgent Confidential Ex Parte Motion to Rescind Protective Measures for Witnesses GAP and GFC, filed on 11 May 2011 ("Motion").

² Motion, para. 1.

³ Motion, para. 2.

⁴ *The Prosecutor v. Mikaeli Muhimana*, Case No. 95-1B, Decision on Prosecution's urgent *Ex Parte* Motion to Unseal and Disclose Personal Information Sheets and Rescind Protective Measures for Certain Witnesses, 13 August 2008, para. 5.

⁵ Motion, para. 12.



GAP and GFC testified be lifted so that the Canadian authorities can use and refer to the ICTR material in public and effectively investigate and prosecute persons responsible for international crimes.⁶

5. The Chamber notes that Witnesses GAP and GFC have consented to the rescission of the protective measures conferred on them only with respect to the proceedings in Canada where they wish to give testimony under their own name. The Chamber will, therefore, only consider whether the protective measures should be varied to allow confidential disclosure of the protected materials.

6. Protected material may be disclosed to a party in another case not before this Tribunal provided that the applicant demonstrates that it is likely to assist its case materially or that there is a good chance that it would. This is the case when it is demonstrated that there is a factual nexus between the cases before the Tribunal and the case or cases before the domestic jurisdiction.⁷

7. The Chamber considers that a sufficient factual nexus exists in the present cases because the proceedings in Canada relate to international crimes committed in the territory of Rwanda in 1994 which were also the subject matter of the present proceedings. Accordingly, the Chamber considers that it is in the overall interests of justice to request the Registry to provide copies of the witness statements and transcripts related to Witnesses GAP and GFC for transmission to the Canadian authorities on the conditions set out below.

FOR THE ABOVE REASONS, THE CHAMBER

- I. **GRANTS** the Prosecution's Motion in part;
- II. **REQUESTS** the Registry to provide copies of the transcripts of Witnesses GAP and GFC's testimonies in closed session and exhibits tendered during those testimonies to the Prosecution for the purpose of transmission to the Canadian authorities; and

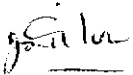
⁶ Motion, para, 12.

⁷ *The Prosecutor v. Augustin Ndingiyimana, Augustin Bizimungu, François-Xavier Nzuwonemeye and Innocent Sagahutu*, Case No. ICTR-00-56-T, 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.



III. **ALLOWS** the Prosecution to disclose the materials covered by the Decision of 12 July 2001 on protective measures to the Canadian authorities on the condition that the information that Witnesses GAP and GFC have testified before the Tribunal in this case and that the materials originating from this case shall be treated confidentially and will only be revealed to the parties in the Canadian proceedings.

Arusha, 17 May 2011, done in English.



Asoka de Silva
Presiding Judge



Taghrid Hikmet
Judge



Seon Ki Park
Judge

[Seal of the Tribunal]

