

ICTR-00-55C-T  
20-5-2011  
(6746-6744)

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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Lee Gacuiga Muthoga, *Presiding*  
Seon Ki Park  
Robert Fremr

**Registrar:** Adama Dieng

**Date:** 20 May 2011

**THE PROSECUTOR**

v.

**Ildéphonse NIZEYIMANA**

**CASE NO. ICTR-00-55C-T**

RECEIVED  
20 MAY 2011  
D. L. 15

**DECISION ON PROSECUTOR'S EXTREMELY URGENT MOTION TO RECEIVE  
INFORMATION COMMUNICATED EX PARTE**

**Office of the Prosecution:**

Drew White  
Kirsten Gray  
Yasmine Chubin  
Zahida Virani

**Defence Counsel for Ildéphonse Nizeyimana:**

John Philpot  
Cainnech Lussiaà-Berdou  
Myriam Bouazdi  
Sébastien Chartrand

INTRODUCTION

1. The trial commenced on 17 January 2011 with the opening statements of both the Prosecution and the Defence. The Prosecution closed its case-in-chief on Friday, 25 February 2011, after having called 38 witnesses. The Defence case commenced on 9 May 2011.

2. On 20 April 2011, Defence team of the Accused, Ildéphonse Nizeyimana (“the Defence” and “the Accused” respectively) filed a confidential *ex parte* motion for cooperation and judicial assistance from the Kingdom of Belgium (“Defence Ex Parte Motion”).<sup>1</sup> The Defence requested that the Trial Chamber ask the Kingdom of Belgium to cooperate with the Tribunal and provide written confirmation of their assistance in transferring Defence witness Alphonse Higaniro to Arusha for purposes of hearing his testimony, or, alternatively, to facilitate the hearing of his testimony via video-link in Belgium or any other location deemed appropriate.<sup>2</sup>

3. On 3 May 2011, the Chamber granted the Defence *Ex Parte* Motion and requested the Belgium government to confirm that it would assist the Defence in either transferring Higaniro to Arusha for purposes of his testimony, or alternatively, with a hearing by video-link from Belgium “should the Chamber so order.”<sup>3</sup>

4. On 11 May 2011, the Defence filed a Motion requesting the Chamber to allow for Witness Higaniro’s testimony to be heard from Belgium via video-link.<sup>4</sup>

5. On 16 May 2011, the Office of the Prosecutor (“the Prosecution”) filed a motion requesting information communicated by the Defence *ex parte*.<sup>5</sup> The Prosecution submits that the existence of the Defence Ex Parte Motion should have been made known to the Prosecution and the Decision on the Defence *Ex Parte* Motion should have been filed publically.<sup>6</sup> The Prosecution argues that Witness Higaniro is not the subject of protective measures and disclosure of the information will not prejudice the Defence, as the Witness is willing to testify as an unprotected witness.<sup>7</sup>

<sup>1</sup> Nizeyimana Defense Extremely Urgent Ex Parte Motion for Judicial Cooperation from the Kingdom of Belgium, 20 April 2011.

<sup>2</sup> Defence *Ex Parte* Motion, para. 12.

<sup>3</sup> Decision on Confidential, Ex Parte Defence Motion for Judicial Cooperation from the Kingdom of Belgium, 3 May 2011, p. 4.

<sup>4</sup> Defence Extremely Urgent Motion for Testimony via Video-Link of Witness Higaniro (“Defence Motion”), 11 May 2011.

<sup>5</sup> Prosecutor’s Extremely Urgent Motion to Receive Information Communicated Ex Parte (“Prosecution Motion”), 16 May 2011.

<sup>6</sup> Prosecution Motion, paras. 9-10.

<sup>7</sup> Prosecution Motion, para.12.

6. On 18 May 2011, the Defence filed its response, in which it disclosed the Defence Ex Parte Motion to the Prosecution, in order to "streamline the procedures."<sup>8</sup>

**DELIBERATIONS**

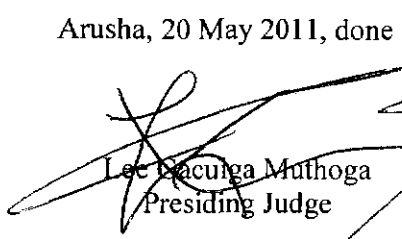
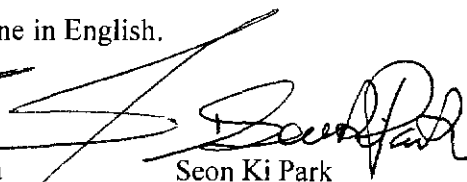
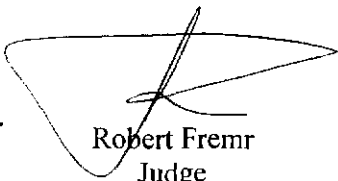
7. The Chamber notes that ex parte submissions may necessary where it is in the interest of justice, or where disclosure of the information contained in the submission may prejudice either the party making the submission or a person or persons involved in or related to the submissions.<sup>9</sup> The Chamber further notes that the Defence, on its own volition, disclosed the Defence Ex Parte Motion to the Prosecution. The Chamber therefore sees no reason to maintain the confidential, ex parte status of its Decision rendered on 3 May 2011. The issue raised by the Prosecution is therefore partially moot.

**FOR THESE REASONS, THE CHAMBER**

**DISMISSES** the Prosecution Motion as partially moot; and

**INSTRUCTS** the Registrar to alter the classification of the 'Decision on Nizeyimana Defense Extremely Urgent Ex Parte Motion for Judicial Cooperation from the Kingdom of Belgium' rendered on 3 May 2011, from 'confidential' and 'ex parte' to 'public'.

Arusha, 20 May 2011, done in English.

Lee Oacunga Muthoga  
 Presiding Judge

Seon Ki Park  
 Judge

Robert Fremr  
 Judge



<sup>8</sup> Nizeyimana's Reply to Prosecutor's Response to Extremely Urgent Defence Motion for a Hearing by Video-Link for Witness Higaniro and Response to Prosecutor's Extremely Urgent Motion to Receive Information Communicated Ex Parte, 18 May 2011, para.12; Confidential Annex I.

<sup>9</sup> Prosecutor v. Gatete, Case No. ICTR-00-61-T, Decision on Prosecutor Motion to Receive Ex Parte Information, 29 July 2010, para. 3.