

ICTR-00-55C-T  
15-9-2011  
(8212-5710)

8213



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:** 15 September 2011

**THE PROSECUTOR**

v.

**Ildéphonse NIZEYIMANA**

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

**DECISION ON PROSECUTOR'S EXTREMELY URGENT MOTION  
CONCERNING CERTAIN ISSUES REGARDING WITNESS ZAV**

*Rules 54 and 73 of the Rules of Procedure and Evidence*

JUDICIAL RECORDS ARCHIVES  
UNICTR  
2011 SEP 15 4: 34

**Office of the Prosecution:**

Drew White  
Kirsten Gray  
Yasmine Chubin  
Astou Mbow

**Defence Counsel for Ildéphonse Nizeyimana:**

John Philpot  
Cainech 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 25 February 2011, after called 38 witnesses. The Defence closed its case on 16 June 2011, having called 38 witnesses. On 6 September 2011, the Chamber heard one Defence Witness, Witness BNN07. On 8 September 2011, the Prosecution completed the presentation of its evidence in rebuttal to the Defence case. The Defence will present evidence in rejoinder on 20 and 21 September 2011.

2. On 25 March 2011, the Defence team of the Accused, Ildéphonse Nizeyimana, (“Defence” and “the Accused” respectively) filed its “Confidential and Extremely Urgent *Ex Parte* Defence Motion for Judicial Cooperation with the United States of America” (“First Defence Motion”).

3. On 15 April 2011, the Defence filed a supplementary confidential *ex parte* motion for judicial cooperation with the United States of America.<sup>1</sup> The Defence requested “immediate assistance” from the Chamber due to the lack of response from the United States government and the Executive Agent.<sup>2</sup>

4. On 19 April 2011, the Chamber granted the Supplementary Motion.<sup>3</sup> The Chamber requested cooperation from the United States government and ordered the Registry to report on the implementation thereof.<sup>4</sup>

5. On 15 June 2011, the Defence filed a second motion for judicial cooperation with the United States of America.<sup>5</sup> The Defence submitted that the United States government had refused to provide it with the material it had requested in its earlier motions.<sup>6</sup> The Defence argued that the *ex parte* nature of its filing was appropriate since the Prosecution “has no role to play in defence strategy.”<sup>7</sup>

6. On 21 June 2011, the Chamber granted the Second Defence Motion in part, noting that, contrary to the submissions of the Defence, the United States government had “not

<sup>1</sup> Defence Supplementary *Ex Parte* Filing in Support of Confidential and Extremely Urgent *Ex Parte* Defence Motion for Judicial Cooperation with the United States of America (“Supplementary Motion”), 15 April, 2011.

<sup>2</sup> Supplementary Motion, paras. 4, 6.

<sup>3</sup> Decision on Supplementary *Ex Parte* Filing in Support of the Confidential and Extremely Urgent *Ex Parte* Defence Motion for Judicial Cooperation with the United States of America (“First Decision”), 19 April 2011.

<sup>4</sup> First Decision, p. 3.

<sup>5</sup> Second Extremely Urgent Confidential *Ex Parte* Defence Motion for Judicial Cooperation with the United States of America (“Second Defence Motion”), 15 June, 2011.

<sup>6</sup> Second Defence Motion, paras. 25-26.

<sup>7</sup> Second Defence Motion, para. 31.

refused to cooperate with the Defence” in providing the requested documents.<sup>8</sup> The Chamber instead advised the Defence to communicate with the United States government to obtain the documents sought.<sup>9</sup>

7. On 25 July 2011, the Chamber received a letter from the United States Department of State, requesting that the Chamber provide a “copy of the relevant portions of the trial transcript”, in order to determine whether it can provide the material to the Defence.<sup>10</sup>

8. On 8 September 2011, the Chamber issued a *proprio motu* decision, instructing the Registry to reclassify all filings related to the judicial cooperation with the United States from *ex parte* to *inter partes*.<sup>11</sup> The Chamber further ordered the parties to make submissions on the necessity of varying the protective measures for Prosecution Witness ZAV.<sup>12</sup>

9. On 14 September 2011, the Defence filed a motion for variance of the protective measures in place for Prosecution Witness ZAV.<sup>13</sup>

10. On 14 September 2011, the Office of the Prosecutor (“Prosecution”) filed a motion requesting (1) for permission to provide Prosecution Witness ZAV with the confidential documents in order to be in a position to submit a response and (2) additional time to respond to the Defence Motion.<sup>14</sup>

### DELIBERATIONS

11. As a preliminary matter, the Chamber notes the urgency of this motion. According to Rule 73(E) of the Rules of Procedure and Evidence (“Rules”), the Prosecution is obliged to file a response to the Defence Motion within 5 days. The Chamber, using its discretion, will entertain the Prosecution Motion for an extension of time before having heard the Defence submissions on this matter.

12. The Chamber notes that the Prosecution only recently obtained the entirety of the submissions related to the Defence request for judicial cooperation with the United States for

---

<sup>8</sup> Decision on Second Extremely Urgent Confidential Ex Parte Defence Motion for Judicial Cooperation with the United States of America (“Second Decision”), 21 June 2011, para. 12.

<sup>9</sup> Second Decision, para. 13.

<sup>10</sup> Letter by Juan Alsace to Trial Chamber III, entitled “*Case of Prosecutor v. Ildéphonse Nizeyimana* Decision on Extremely Urgent Confidential Ex Parte Defence Motion for Judicial Cooperation with the United States of America, 25 July 2011.

<sup>11</sup> Decision on Reclassification of Confidential and Ex Parte Submissions Regarding Judicial Cooperation with the United States of America (“Reclassification Decision”), 8 September 2011, para. 14.

<sup>12</sup> *Ibid.*

<sup>13</sup> Nizeyimana Defence Motion for Variance of Protective Measures of Witness ZAV (“Defence Motion”), 14 September 2011.

<sup>14</sup> Prosecutor’s Extremely Urgent Motion Concerning Certain Issues Regarding Witness ZAV, 14 September 2011.

the immigration files of Prosecution Witness ZAV.<sup>15</sup> The *ex parte* nature of the submissions regarding Prosecution Witness ZAV has prevented the Prosecution from taking cognizance of the filings for the past five months. Considering the potentially complex issues that may arise from varying the protective measures in place for Prosecution Witness ZAV, particularly in respect to his immigration status, the Chamber finds it reasonable that the Prosecution be provided with additional time to respond the Defence Motion.

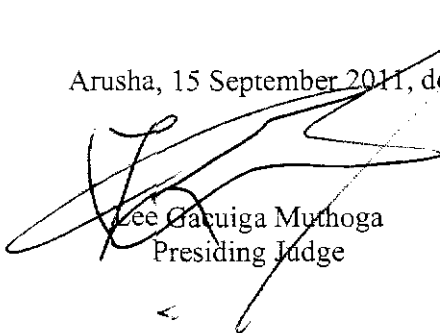
13. Moreover, in order to properly analyse and prepare for the Prosecution response to the variance of the protective measures in relation to Prosecution Witness ZAV, the Chamber considers it in the interest of justice that the submissions classified as confidential, be made available to Witness ZAV for his review. The Chamber notes that the protective measures in place for Witness ZAV are there to protect his identity from the public, not to prevent him from consulting documents in regards to himself.

**FOR THESE REASONS, THE CHAMBER**

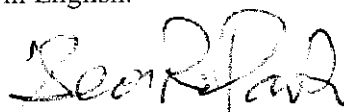
**GRANTS** the Prosecution Motion; and

**ORDERS** that the Prosecution Response to the Defence motion for variance of protective measures for Witness ZAV be submitted by close of business on 28 September 2011.

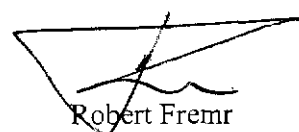
Arusha, 15 September 2011, done in English.



Lee Gakuiga Muthoga  
Presiding Judge



Seon Ki Park  
Judge



Robert Fremr  
Judge



<sup>15</sup> The latest Decision was only made available to the Prosecution on 13 September 2011.  
*The Prosecutor v. Hdephonse Nizeyimana*, Case No. ICTR-00-550-T