



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

6630  
Mwamba

**TRIAL CHAMBER II**

**Before:** Judge William H. Sekule, Presiding  
Judge Winston C. Matanzima Maqutu  
Judge Arlette Ramaroson

**Registrar:** Adama Dieng

**Date:** 31 May 2002

ICTR-98-42-T  
3-6-2002  
6630-6628

JUDICIAL RECORDS ARCHIVES  
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Dr. Eng.

**The PROSECUTOR v. Pauline NYIRAMASUHUKO and Arsène Shalom NTAHOBALI**  
Case No. ICTR-97-21-T

**The PROSECUTOR v. Sylvain NSABIMANA and Alphonse NTEZIRYAYO**  
Case No. ICTR-97-29A and B-T

**The PROSECUTOR v. Joseph KANYABASHI**  
Case No. ICTR-96-15-T

**The PROSECUTOR v. Elie NDAYAMBAJE**  
Case No. ICTR-96-8-T  
(Case No. 98-42-T)

**DECISION ON THE PROSECUTOR *EX-PARTE* MOTION PURSUANT TO RULE  
66(C) TO BE RELIEVED OF OBLIGATION TO DISCLOSE CERTAIN  
DOCUMENTS**

**The Office of the Prosecutor**  
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Adesola Adeboyejo  
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Manuel Bouwknecht

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Michel Marchand  
Michel Boyer

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**Counsel for Nsabimana**  
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**Counsel for Nteziryayo**  
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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal");

**SITTING** as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Winston C. Matanzima Maqutu and Judge Arlette Ramaroson (the "Chamber");

**BEING SEIZED OF** the "Prosecutor's *Ex- Parte* Motion Pursuant to Rule 66 (C) to Be Relieved of Obligation to Disclose Certain Documents" filed on 29 April 2002 and considering "Annex One to the Prosecutor's *Ex- Parte* Motion Pursuant to Rule 66 (C) to Be Relieved of Obligation to Disclose Certain Documents" filed on 2 May 2002;

**NOTING** that the Prosecutor relies on a "Decision on the Application of Drago Josipovic for Leave to Appeal the Oral Decision of Trial Chamber II of 5 March 1999" by the Appeal Chamber of the International Criminal Tribunal for the Former Yugoslavia in case of the Prosecutor v. Kupreskic et al., 4 May 1999 (Prosecutor's Annex One).

**WHEREAS** the Prosecutor submits that she has recently located nine witness statements taken by investigators during ongoing investigations of new targets, and that disclosure of these statements containing names of new targets might interfere with ongoing investigations. Therefore, the Prosecutor requests to be relieved of her obligation to disclose said statements pursuant to Rule 66(C) of the Rules of Procedure and Evidence (the "Rules").

**WHEREAS** the Prosecutor alleges that those statements, which either (1) make no reference to any of the Accused in the "Butare" trial, relate entirely to new targets and do not contain any exculpatory evidence pursuant to Rule 68 of the Rules should not be disclosed or which (2) make limited reference to one or more Accused and essentially relate to new targets should be disclosed in respect of the Accused and redacted in respect of the new targets.

**NOTING** that the Prosecution intends to disclose to the six Accused the highlighted parts of the witness statements which relate to them, as illustrated and amended during the hearing of 15 May 2002.

**CONSIDERING** that Rule 66 (C) of the Rules states as follows:

Where information or materials are in the possession of the Prosecutor, the disclosure of which may prejudice further or ongoing investigations, or for any other reasons may be contrary to the public interest or affect the security interests of any State, the Prosecutor may apply to the Trial Chamber sitting *in camera* to be relieved from the obligation to disclose pursuant to Sub-Rule (A) and (B). When making such an application the Prosecutor shall provide the Trial Chamber, and only the Trial Chamber, with the information or materials that are sought to be kept confidential.

**HAVING HEARD** the Prosecution *in camera* pursuant to Rule 66 (C) of the Rules and having reviewed the witness statements at stake on 15 May 2002.

**THE TRIAL CHAMBER HEREBY**

**FINDS** that the Prosecution has proved that the disclosure of information in its possession relating to new targets contained in the nine witness statements may prejudice ongoing investigation pursuant to Rule 66 (C) of the Rules.

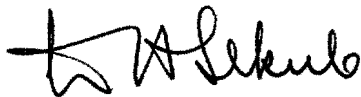


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**GRANTS** the application by the Prosecution to be relieved from its obligation to disclose to the Defence parts or all of the witness statements, as indicated in the written material submitted to the Chamber as amended during the hearing of 15 May 2002. The Chamber rules that the relief from the disclosure obligation pursuant to Rule 66 (A) of the Rules granted to the Prosecution is only authorised as long as such disclosure is prejudicial to its investigations, but ceases thereafter.

**ORDERS** that the unredacted parts of the witness statements in the written material submitted to the Chamber as amended during the hearing of 15 May 2002, be immediately disclosed to the Defence pursuant to Rule 66(A) of the Rules.

Arusha, 31 May 2002,



William H. Sekule  
Presiding Judge



Winston C. Matanzima Maqutu  
Judge



Arlette Ramaroson  
Judge

[Seal of the Tribunal]