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UNITED NATIONS  
NATIONS UNIES

ICTR-97-21-T  
16-04-2004  
(1625 — 1623)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

1625 smahy

OR: ENG

**TRIAL CHAMBER II**

**Before:** Judge William H. Sekule, Presiding  
Judge Arlette Ramaroson  
Judge Solomy Balungi Bossa

**Registrar:** Mr Adama Dieng

**Date:** 16 April 2004

**The PROSECUTOR**

v.

**Pauline NYIRAMASUHUKO**

**Case No. ICTR-97-21-T**

MP  
JUDICIAL RECORDS  
ICTR  
2004 APR 16 12:51

**DECISION ON NYIRAMASUHUKO'S MOTION  
TO DECLARE THE EVIDENCE OF WITNESS FAS  
INADMISSIBLE AGAINST HER**

**Office of the Prosecutor**

Silvana Arbia  
Adelaide Whest  
Jonathan Moses  
Adesola Adeboyejo  
*Manuel Bouwknecht, Case Manager*

**Defence Counsel**

Nicole Bergevin  
Guy Poupart

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1624

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (“Tribunal”),

**SITTING** as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa (the “Chamber”);

**BEING SEISED** of “Nyiramasuhuko’s Motion to Declare the Evidence of Witnesses FAS Inadmissible Against Her” (the “Motion”), filed on 15 March 2004;<sup>1</sup>

**NOTING** that the Prosecutor did not respond to the Motion;

**CONSIDERING** the Indictment against Pauline Nyiramasuhuko and Arsène Shalom Ntahobali, as amended on 10 August 1999 (“Nyiramasuhuko and Ntahobali Amended Indictment”);

**CONSIDERING** the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

**NOW DECIDES** the matter, pursuant to Rule 73 (A) of the Rules, on the basis of the written submissions of the Parties.

**Submissions of the Parties:**

1. **WHEREAS** the Defence for Nyiramasuhuko contends that Witness FAS’s statement, dated 21 February 2001 supports facts that are not alleged in the Indictment, in particular:

- Nyiramasuhuko’s presence, together with Accused Nsabimana, in Mutunda *secteur*, Mbazi *Commune* for a meeting on 18 April 1994 where the killing of Tutsi was allegedly decided;
- Nyiramasuhuko’s presence, together with Accused Nsabimana, in the same place where about 3000 Tutsi refugees had gathered on 19 April 1994;
- The order by Nyiramasuhuko and Accused Nsabimana to kill the Tutsi gathered in that place on the same day.

In a second statement, Witness FAS added new elements. These elements were disclosed to the Defence by a Will-Say Statement dated 20 October 2003.

2. **WHEREAS** the Defence for Nyiramasuhuko relies on several cases to submit that there is a well established jurisprudence to the effect that specific facts alleged by a witness which have not been pleaded against the accused in an indictment are not admissible.

3. **WHEREAS** the Defence for Nyiramasuhuko challenges the reasoning of the Trial Chamber in its “Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible” of 16 February 2004, submitting that the paragraphs of the Indictment referred to in this Decision are vague and lack the required specificity.



<sup>1</sup> The Motion was filed in French and originally entitled: « *Requête de Pauline Nyiramasuhuko aux fins de déclarer inadmissibles en preuve contre elle le témoignage du témoin FAS* ».

4. **WHEREAS** the Defence for Nyiramasuhuko argues that if Witness FAS was allowed to testify against the Accused, the Accused's right to a fair trial would be violated insofar as she was not informed, in her Indictment, of all the charges against her.

5. **WHEREAS** the Defence prays the Chamber to declare inadmissible the testimony of Witness FAS against the Accused and order the Prosecutor not to examine the Witness against her.

**HAVING DELIBERATED,**

6. The Trial Chamber adopts a similar reasoning as the one held in its "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" rendered on 16 February 2004, essentially:

- that an indictment must be considered in its entirety and not as isolated parts and paragraphs;
- that paragraphs 5.1, 5.8, 6.20, 6.38, 6.39, 6.52 to 6.56 of the Nyiramasuhuko and Ntahobali Amended Indictment do clearly contain allegations of criminal conducts, as charged in the Indictments, on part of the Accused in Butare *Préfecture*;
- that, since the disclosure of the Witness' statements on 20 October 2003, the Accused has had sufficient time to prepare its defence.

7. Consequently, the Trial Chamber decides to hear the testimony of Witness FAS on the basis of his statements of 21 February 2001 and 20 October 2003.

**FOR THE ABOVE REASONS,**

**THE TRIAL CHAMBER:**

**DENIES** the Motion in its entirety;

**DECIDES** to hear the testimony of Witness FAS on the basis of his statements of 21 February 2001 and 20 October 2003.

Arusha, 16 April 2004



William H. Sekule  
Presiding Judge



Arlette Ramarason  
Judge



Solomy Balungi Bossa  
Judge

[Seal of the Tribunal]



# TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

**COURT MANAGEMENT SECTION**  
(Art. 27 of the Directive for the Registry)

### I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

<b>To:</b>	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input checked="" type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS K. K. A. Afande	<input type="checkbox"/> Appeals Chamber / The Hague R. Burriss
<b>From:</b>	<input checked="" type="checkbox"/> Chamber Cyril LAUCCI <small>(names)</small>	<input type="checkbox"/> Defence <small>(names)</small>	<input type="checkbox"/> Prosecutor's Office <small>(names)</small>	<input type="checkbox"/> Other: <small>(names)</small>
<b>Case Name:</b>	The Prosecutor vs. Nyiramasuhuko			<b>Case Number:</b> ICTR-97-21-T
<b>Dates:</b>	Transmitted: 16/4/2004		Document's date: 16/4/2004	
<b>No. of Pages:</b>	3		<b>Original Language:</b> <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
<b>Title of Document:</b>	Decision on Nyiramasuhuko's Motion to Declare the Evidence of Witness FAS Inadmissible Against Her			
<b>Classification Level:</b>		<b>TRIM Document Type:</b>		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Confidential		<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
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Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French
			<input type="checkbox"/> Kinyarwanda
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<input type="checkbox"/> Filing Party <b>will be submitting the translated version(s)</b> in due course in the following language(s):			
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<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: