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ICTR-97-21-T  
25-8-2004  
(1346 — 1344)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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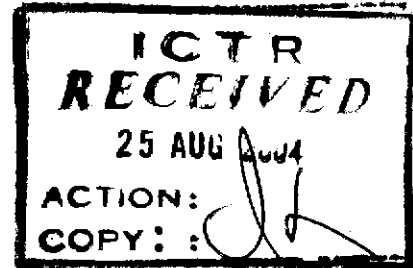
TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 25 August 2004

THE PROSECUTOR  
v.  
Arsène Sbalom NTAHOBALI  
Case No. ICTR-97-21-T



**DECISION ON THE DEFENCE MOTION SEEKING A REQUEST  
FOR COOPERATION AND JUDICIAL ASSISTANCE FROM A CERTAIN STATE  
AND THE UNHRCR PURSUANT TO ARTICLE 28 OF THE STATUTE AND  
RESOLUTIONS 955 (1994) AND 1165 (1998) OF THE SECURITY COUNCIL**

The Office of the Prosecutor:

- Silvana Arbia
- Adelaide Whest
- Jonathan Moses
- Adesola Adeboyejo
- Althea Alexis
- Michael adenuga
- Manuel Bouwknecht

Counsel for Ntahobali:

- Duncan Mwanyumba
- Normand Marquis

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

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

**BEING SEIZED** of the “*Requête en extrême urgence de Shalom Ntahobali afin de solliciter la coopération d’un état et du HCR en vertu de l’article 28 du Statut et des Résolutions 955 (1994) et 1165 (1998) du Conseil de sécurité,*” filed on 12 July 2004 (the “Motion”);

**CONSIDERING** the “Prosecutor’s Response to ‘*Requête en extrême urgence de Shalom Ntahobali afin de solliciter la coopération d’un état et du HCR en vertu de l’Article 28 du Statut et des Résolution 955 (1994) et 1165 (1998) du Conseil de Sécurité*’ and to a Similar Motion by Nyiramasuhuko” filed on 15 July 2004 (the “Prosecution Response” AND “*Réplique à la Réponse du Procureur à la Requête en extrême urgence de Shalom Ntahobali afin de solliciter la coopération d’un état et du HCR en vertu de l’Article 28 du Statut et des Résolution 955 (1994) et 1165 (1998) du Conseil de sécurité*” filed on 20 July 2004 (the “Defence Reply”);

**RECALLING** the “Decision on Arsène Shalom Ntahobali’s Motion for Protective Measures for Defense Witnesses,” of 3 April 2001 (the “Decision on Protective Measures for Defense Witnesses”);

**CONSIDERING** the Statute of the Tribunal (the “Statute”), particularly Article 28 and the Rules of Procedure and Evidence (the “Rules”);

**NOW CONSIDERS**, pursuant to Rule 73 of the Rules, the instant Motion on the basis of the written briefs only;

**WHEREAS** the Defense requests that the Chamber issue, pursuant to Article 28 of the Statute, a request for cooperation and judicial assistance to Zambia and the United Nations High Commissioner for Refugees (the “UNHCR”);

**WHEREAS** the Defense essentially submits that such a request is necessary to implement the Decision on Protective Measures for Defense Witnesses, particularly as some of its potential witnesses reside in refugee camps in Zambia and fear being repatriated to Rwanda in the event they testify;

**WHEREAS** the Prosecution referring to the jurisprudence in the *Bagosora* trial<sup>1</sup> objects to the Defence Motion for being premature because the Defence has not demonstrated any reasonable attempts it has made to obtain the voluntary cooperation of the Parties involved. The Prosecution further objects indicating that it is unreasonable to request that the State of Zambia as well as the UNHCR be solicited not to repatriate possible Defence witnesses because the Defence have not shown that, if repatriated, the Defence witnesses would be unable to travel from Rwanda to the Tribunal in order to testify;

**WHEREAS** the Defense submits in reply that the Tribunal’s Witnesses and Victims Support Section has indicated that an efficient protection of witnesses can only be implemented by

<sup>1</sup> *Prosecution v. Bagosora*, Case No. ICTR-98-41-T, “Decision on Request for Subpoena of Major General Yaache and Cooperation of the Republic of Ghana,” 23 June 2004.

requesting the cooperation of the States in which those witnesses currently reside. The Defence further submits that given the difficulties it has faced in trying to convince the witnesses to testify at the Tribunal, this fear would be twofold if the refugees were to have the possibility of being repatriated to Rwanda.

**AFTER HAVING DELIBERATED:**

**WHEREAS** the United Nations Security Council reaffirmed Resolution 955 (1994) in its Resolution 1165 (1998) urging States to cooperate fully with the Tribunal; and

**WHEREAS** Article 28 of the Statute of the Tribunal provides that States shall cooperate with the Tribunal;

**WHEREAS** after a careful consideration of the matter, the Chamber finds that a request for cooperation under Article 28 of the Statute to States wherein potential witnesses reside and to the UNHCR in the event said witnesses reside in refugee camps, is reasonable and is supported by the jurisprudence of the Tribunal.<sup>2</sup> Accordingly, the Chamber grants the request.

**THE TRIBUNAL HEREBY**

1. **GRANTS** the Motion;
2. **REQUESTS**, in the execution and implementation of the Decision on Protective Measures for Defense Witnesses, the cooperation and judicial assistance of Zambia and the UNHCR;
3. **DIRECTS** the Registry to transmit this request forthwith to the concerned State and to report back to the Trial Chamber on the implementation of the present request.

Arusha, 25 August 2004



William H. Sekule  
Judge, Presiding



Arlette Ramarason  
Judge



Solomy B. Bossa  
Judge

(Seal of the Tribunal)

<sup>2</sup> *Prosecutor v. Kamuhanda*, Case No. ICTR-99-54A-T, "Decision on Kamuhanda's Motions for Extension of Judicial Cooperation to Certain States and to the UNHCR Pursuant to Article 28 of the Statute and Resolution 955 of the Security Council," of 9 May 2002; *Prosecutor v. Barayagwiza*, Case No. ICTR-99-52-T, "Request for Cooperation Pursuant to Article 28 of the Statute," of 30 May 2002; *Prosecutor v. Kajelijeli*, Case No. ICTR-99-44A-T, "Decision on Kamuhanda's Motions for Extension of Judicial Cooperation To Certain States Pursuant to Article 28 of the Statute," of 8 May 2002;