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ICTR-97-21-T
25-8-2004
(1343 — 1341)



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

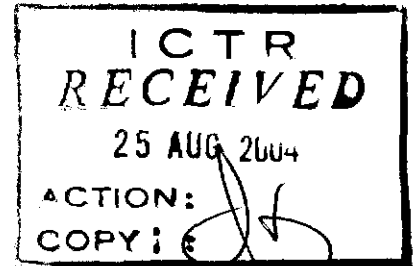
TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 25 August 2004

THE PROSECUTOR
v.
Pauline NYIRAMASUHUKO
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
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Michael adenuga
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Counsel for Ntahobali:

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1342

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 Pauline Nyiramasuhuko 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 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”);

RECALLING the Chamber’s “Decision on Pauline Nyiramasuhuko’s Motion for Protective Measures for Defense Witnesses and Their Family Members,” of 20 March 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 brief only, as filed by the Defence;

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;

WHEREAS the Prosecution referring to the jurisprudence in the *Bagosora* trial¹ objects to the Defence Motion for being premature because the Defence has not demonstrated to the Tribunal any reasonable attempts it has made to obtain the voluntary cooperation of the parties involved. The Prosecution further objects to the Motion 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 to Rwanda to testify;

¹ *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,” of 23 June 2004.



AFTER HAVING DELIBERATED:

1341

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.² 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 Ramaroson
Judge



Solomy B. Bossa
Judge

(Seal of the Tribunal)

² *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;