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ICTR-97-29-T  
04-02-2005  
(4734-4732)  
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 Ramarosan  
Judge Solomy Balungi Bossa

**Registrar:** Mr. Adama Dieng

**Date:** 4 February 2005

JUDICIAL RECORDS/ARCHIVES  
ICTR  
2005 FEB -11 P 1:52

**The Prosecutor**  
v.  
**Alphonse NTEZIRYAYO**  
Case No. ICTR-97-29-T  
*Joint Case No. ICTR-98-42-T*

**DECISION ON ALPHONSE NTEZIRYAYO'S REQUEST TO MEET WITNESS FAT  
IN THE ABSENCE OF THE PROSECUTION**

**Office of the Prosecutor**

Ms Silvana Arbia  
Ms Adelaide Whest  
Ms Adesola Adeboyejo  
Ms Althea Alexis  
Mr Michael Adenuga  
Ms Astou Mbow

**Counsel for Nteziryayo**

Mr Titinga Frédéric Pacere  
Mr Richard Perras

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4733

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

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

**BEING SEIZED** of the "*Requête afin d'être autorisé à reconstruire le Témoin "FAT" hors la présence du Procureur*" filed on 2 December 2004<sup>1</sup>;

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

**NOW DECIDES** the Motion solely on the basis of the written brief filed by the Defence pursuant to Rule 73(A) of the Rules;

### **Relief Sought**

1. The Defence requests the Chamber to authorise it or one member of its team to meet Witness FAT in the absence of the Prosecution, subject to FAT's consent, and to the condition that the Defence shall respect all the measures of protection that may be in place for the witness.
2. The Defence further requests the Chamber to grant authorisation for it to meet other Prosecution witnesses in the absence of the Prosecution when the following conditions have been met:
  - 1) The Prosecution specifically consents in writing to such a meeting;
  - 2) The witness concerned has given his/her consent to meet with the Defence; and
  - 3) The Defence team undertakes to respect all the measures in place for the protection of the witness concerned.

### **Submissions of the Defence**

3. The Defence argues that the Prosecution has agreed in writing in a letter dated 29 November 2004 (attached to the Motion), that the Defence may meet Witness FAT in the absence of the Prosecution provided that the witness agrees to such a meeting and that the Defence respect all the protective measures in place for the witness;

### **HAVING DELIBERATED**

4. The Chamber recalls its "Decision on Joseph Kanyabashi's Request to Meet SW and FAT and All Other Persons Whose Identities Were Not Disclosed to the Defence," of 23 November 2004 (the "Kanyabashi Decision to Meet SW and FAT").
5. The Chamber notes that the Prosecution does not object to the Defence request to meet Witness FAT in the absence of the Prosecution and the Defence's undertaking to respect the orders for protection of witnesses.

<sup>1</sup> attached to the Motion are two letters; the first from the Defence of Nteziryayo dated 24 November 2004 to the Prosecution on the subject of meeting Witness FAT and the second a Response to that Defence letter from the Prosecution dated 29 November 2004.

4732

6. Therefore, the Chamber grants the Defence request in part and authorises it to meet Witness FAT in the absence of the Prosecution provided that Witness FAT agrees to such a meeting and that the Defence undertakes to respect all protective measures in place for Witness FAT.

8. Provided Witness FAT agrees to meet with the Defence, the Chamber instructs WVSS to make the necessary arrangements to facilitate such a meeting.

9. The Chamber denies the Defence's request for authorisation to meet other Prosecution witnesses in the absence of the Prosecution when the enumerated conditions have been met because such a request is speculative at this juncture.

**FOR THE ABOVE REASONS, THE TRIAL CHAMBER**

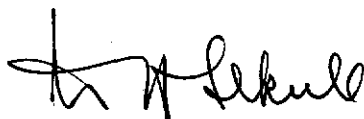
**GRANTS** the Defence request in part and authorises it to meet with Witness FAT in the absence of the Prosecution provided that;

1. Witness FAT agrees to such a meeting; and
2. the Defence abides by its undertaking to respect the protective measures in place for witness FAT.

**DIRECTS** the WVSS to contact Witness FAT and determine whether he/she wishes to meet with the Defence, and, if so, to facilitate such a meeting.

**DENIES** the Defence Motion in all other respects.

Arusha, 4 February 2005



William H. Sekule  
Presiding Judge



Arlette Ramaroson  
Judge



Solomy Balungi Bossa  
Judge

(Seal of the Tribunal)