



UNITED NATIONS  
NATIONS UNIES

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

OR: ENG

**TRIAL CHAMBER II**

**Before:** Judge Asoka de Silva, Presiding  
Judge Taghrid Hikmet  
Judge Seon Ki Park

**Registrar:** Mr Adama Dieng

**Date:** 11 September 2007

**THE PROSECUTOR**

v.

**Emmanuel RUKUNDO**

*Case No. ICTR-2001-70-T*

**DECISION ON DEFENCE MOTION REQUESTING DISCLOSURE  
BY SWISS AUTHORITIES OF THE ENTIRE JUDICIAL DOSSIER  
RELATING TO THE ACCUSED**

**Office of the Prosecutor:**

Mr William T. Egbe  
Mr Sulaiman Khan  
Ms Veronic Wright  
Mr Patrick Gabaake  
Mr Disengi Mugeyo  
Ms Amina Ibrahim

**Counsel for the Defence:**

Ms Aïcha Condé  
Ms Allison Turner

## INTRODUCTION

1. The trial against Emmanuel Rukundo commenced on 15 November 2006. The Prosecution closed its case on 12 March 2007. The Defence commenced its case on 9 July 2007.
2. On 10 August 2007, the Defence filed the present Motion with two Annexes, requesting the Chamber to order the Swiss Authorities pursuant to Article 28 of the Statute of the Tribunal to disclose the entire Judicial Dossier relating to investigations conducted by them against the Accused Rukundo.<sup>1</sup> The Defence filed two further Annexes on 7 September 2007. The Defence submits that the witness statements contained in the Dossier relate directly to the charges against the Accused and that it has strong reasons to believe that certain witnesses who have testified before the Swiss Authorities have also testified for the Prosecution in the present trial.<sup>2</sup> The Defence indicates that it had seized the Registrar of its request for co-operation with the Swiss Authorities on 13 February 2007.<sup>3</sup> The Defence also relies on correspondence between the Registrar and the Swiss Authorities contained in four Annexes to its Motion<sup>4</sup> and indicates the willingness of the Swiss Authorities to make the relevant Dossier available, provided that the Chamber issue an Order to that effect, and order protective measures for the witnesses mentioned in the Dossier.<sup>5</sup>
3. The Prosecution joins the Defence in its request for the entire Judicial Dossier, in view of the willingness of the Swiss Authorities to make it available. The Prosecution does not oppose the request for protective measures.<sup>6</sup>

## DELIBERATIONS

4. After a careful examination of the Annexes attached to the Motion, the Chamber takes particular note of Annexe 3 which is a letter dated 26 June 2007 from the relevant Swiss Authorities to the Registry on the Defence request for cooperation.
5. Paragraphs 3 and 4 of Annexe 3 indicate as follows: *« Vu le Règlement de procédure et de preuve du TPIR, en particulier les articles 69 – Protection des victimes et témoins – et 75- Mesures destinées à assurer la protection des victimes et des témoins – nous vous saurions gré de bien vouloir nous confirmer que le Procureur et la Chambre compétente du TPIR sont informés de la présente requête et que celle-ci ne doit pas faire l'objet d'une décision de la Chambre compétente. À noter également que la compétence pour demander l'assistance judiciaire à la Suisse appartient à l'autorité judiciaire compétente pour connaître de l'affaire pénale dans le cadre de laquelle l'entraide est demandée. Vous voudrez bien par conséquent nous confirmer que la transmission de la requête en question par votre*

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<sup>1</sup> Requête aux fins d'obtenir de la Chambre une Ordonnance à la Confédération Suisse en vue de la transmission d'un Dossier d'instruction, filed by Defence on 10 August 2007 (Defence Motion).

<sup>2</sup> Defence Motion, para. 4.

<sup>3</sup> Defence Motion, para. 7.

<sup>4</sup> Defence Motion, Annexe 1: Demande aux autorités suisses de coopérer avec le Tribunal en vue de la transmission d'un dossier d'instruction, 13 février 2007; Annexe 2: Note verbale du Greffe du Tribunal à l'Ambassadeur de Suisse de Dar es Salaam, 21 février 2007; Annexe 3: Lettre du Département fédéral de justice et police de Suisse – unité de l'entraide judiciaire – au Greffe du Tribunal, 26 juin 2007; Annexe 4: Courriel adressé par le Greffe du Tribunal à la Défense de Monsieur Rukundo, 26 juillet 2007.

<sup>5</sup> Defence Motion, paras. 7-10.

<sup>6</sup> Prosecutor's Response to the Defence Motion for Request of Judicial Dossiers from the Swiss Authorities, filed on 13 August 2007.

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*Greffe équivaut à sa reconnaissance par la Chambre compétente du TPIR.*<sup>7</sup> (emphasis added)

6. In the absence of further correspondence from the Swiss Authorities or other supporting material being available, the Chamber does not see from this correspondence any compulsory requirement that a decision must be handed down to trigger the cooperation of the Swiss Authorities. Rather, the latter seek clarification as to the role of the ICTR's Registry in the cooperation process and ask for confirmation if a request presented directly by the Registry to a State may be recognized by the Chamber. The Registry is fully competent to handle issues of cooperation with States, as per Rule 33 of the Rules of Procedure and Evidence which makes the Registrar the channel of communication of the Tribunal. The Registry should be in a position to fully explain this to the Swiss Authorities as they request, also indicating clearly that a judicial order is only resorted to as a last recourse, when States are reluctant and/or unwilling to voluntarily cooperate.

**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the Defence Motion; and

**DIRECTS** the Defence to liaise with the Registry for any further clarification or follow up that may be required for the cooperation of the Swiss Authorities.

Arusha, 11 September 2007

Asoka de Silva  
Presiding Judge

Taghrid Hikmet  
Judge

Seon Ki Park  
Judge

[Seal of the Tribunal]

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<sup>7</sup> Unofficial translation of paragraphs 3 and 4 of Annexe 3: "*Considering the Rules of Procedure and Evidence of the ICTR, in particular Articles 69 – Protection of victims and witnesses – and 75- Measures for the Protection of victims and witnesses – we would be grateful if you could confirm that the Prosecutor and the relevant Chamber of the ICTR are informed of this request and that it is not necessary for the Chamber to render a decision. To note also that the competence to ask for the judicial assistance of Switzerland belongs to the concerned judicial authority within the framework for which cooperation is sought. Therefore please assure us that the transmission of the request by the [ICTR] Registrar is equivalent to its recognition by the relevant Chamber.*" (emphasis added)