



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

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 24 April 2008

The PROSECUTOR

v.

Pauline NYIRAMASUHUKE *et al.*

Joint Case No. ICTR-98-42-T

**DECISION ON THE PROSECUTOR'S MOTION TO UNSEAL AND DISCLOSE TO
CANADIAN AUTHORITIES THE TRANSCRIPTS OF WITNESS QA AND
EXHIBIT P-93**

Office of the Prosecutor

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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 Balungi Bossa (the “Chamber”);

BEING SEIZED of the “Prosecutor’s Motion to Unseal and Disclose to Canadian authorities the Transcripts of Witness QA-Confidential” filed on 15 April 2008 (the Motion);

NOTING that no response was filed although all the parties were notified;

NOW DECIDES the Motion pursuant to Rule 73 (A) of the Rules of Procedure and Evidence (the Rules) on the basis of the written submissions of the Prosecution.

SUBMISSIONS

1. On 8 June 2001, the Chamber granted protective measures for Prosecution witnesses including Witness QA.¹ Prosecution Witness QA testified in the *Nyiramasuhuko et al.* trial on 18, 22 and 23 March 2004, and on each of these days, he testified in both open and closed sessions. The transcripts of the testimony heard in closed session are inaccessible to the public. Exhibit P-93, the Identification Sheet of Witness QA was admitted under seal.

2. The Prosecution submits that on 13 March 2008, Me Pascale Ledoux, General Counsel for the Public Prosecution Services of Canada required the Prosecutor’s assistance in obtaining the closed session transcripts of Witness QA, who is scheduled to testify in the trial of Desiré Munyaneza in Canada.²

3. The Prosecution seeks a variation of the witness protection Decision of 8 June 2001 and the unsealing and disclosure to Canadian judicial authorities of the closed session transcripts of Witness QA and sealed Exhibit P-93.

4. The Prosecution submits that on 1 April 2008, the Canadian authorities secured a declaration signed by Witness QA consenting to the disclosure of any declarations given by him as well as his open and closed session testimony given during judicial proceedings at the Tribunal.³ Further, the Witness indicates in that statement that the disclosure of his own testimony can not have negative repercussions for his protection or prejudice him.⁴

5. The Prosecution avers that under Rules 54, 73, 75, and 66 (C), the Chamber has the authority to vary its witness protection order and issue the order sought. The Prosecution further submits that the Chamber has exercised this authority in previous Decisions.⁵

¹ See the Chamber’s Decision on the full Disclosure of the Identity and Unredacted statements of the Protected witnesses (8 June 2001).

² Me Pascale Ledoux’s communication is attached as Annex 1 to the Motion.

³ The original consent form received by the Prosecution on 15 April 2008 is attached to the Motion as Annex 2.

⁴ Paragraph 9 of the Motion.

⁵ Paragraph 8 of the Motion.

DELIBERATIONS

6. The Chamber observes that the disclosure is requested for the purpose of the trial of Desiré Munyaneza before a Canadian Court and that the Canadian authorities are not party to any proceedings before the Tribunal under Rule 75. The Chamber reiterates its jurisprudence that the guiding principles of state co-operation under Article 28 (1) of the Statute also apply to requests for co-operation or judicial assistance from states to the Tribunal in their investigation or prosecution of persons accused of committing serious violations of international humanitarian law.⁶ The Chamber also notes that the trial of Desiré Munyaneza before a Canadian Court for crimes committed in Rwanda in 1994 is in line with the principles of state cooperation envisaged by the completion strategy in Security Council Resolutions 1503 and 1534.

7. The Chamber notes that Prosecution Witness QA has consented to his prior statements being disclosed to the Canadian authorities. Considering that no prejudice is occasioned to the witness and that it is in the overall interest of justice, the Chamber hereby varies its order for protective measures for Witness QA pursuant to Rule 75 (A).

8. The Chamber directs the Registry to provide copies of the closed session transcripts of the Witness and sealed Exhibit P-93 for the purpose of the proceedings before the Canadian Court. The Chamber further orders that the protective measures granted to Witness QA shall continue to have effect *mutatis mutandis* in any proceedings before the Canadian Court unless and until they are rescinded, varied or augmented in accordance with the procedure set out in Rule 75.

FOR THE ABOVE REASONS, THE TRIBUNAL

GRANTS the Motion, and

DIRECTS the Registry to unseal the specified closed session transcripts of Witness QA of 18, 22 and 23 March 2004 and of Prosecution Exhibit P-93, make copies thereof and serve them to the Prosecution for onward transmission to the Canadian authorities.

ORDERS that the protective measures granted to Prosecution Witness QA shall continue to have effect *mutatis mutandis* in any proceedings before the Canadian Court.

Arusha, 24 April 2008

William H. Sekule
Presiding Judge

Arlette Ramaroson
Judge

Solomy Balungi Bossa
Judge

[Seal of the Tribunal]

⁶ See for example, *The Prosecutor v. Pauline Nyiramasuhuko*, Decision on Prosecution's Motion to Unseal the Transcripts of Witness WDUSA, 1 November 2006, para. 15.

