



UNITED NATIONS
NATIONS UNIES

ICTR-07-91-T
26-06-2009
(4313-4302)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

4313
A

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Aydin Sefa Akay

Registrar: Mr. Adama Dieng

Date: 26 June 2009

THE PROSECUTOR

v.

Léonidas NSHOGOZA

Case No. ICTR-07-91-T

JUDICIAL AUTHORITY RECEIVED
2009 JUN 26 P 1:44
26/06/2009

**DECISION ON DEFENCE MOTION TO MAKE PUBLIC THE CONFIDENTIAL
DECISION ON DEFENCE MOTION FOR STAY OF PROCEEDINGS; AND
ANNEXURE COMPRISING REDACTED VERSION OF
SAID DECISION FOR PUBLIC CONSUMPTION**

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Richard Karegyesa
Abdoulaye Seye
Dennis Mabura
Marie Ka

For the Accused:

Allison Turner

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

SITTING as Trial Chamber III, composed of Judge Khalida Rachid Khan, presiding, and Judges Lee Gacuiga Muthoga and Aydin Sefa Akay;

CONSIDERING the [Confidential] “Defence Motion Requesting that the Chamber Issue a Public Version of the ‘Confidential Decision on the Defence Motion for a Stay of Proceedings’ ”, filed on 18 June 2009;¹

RECALLING the Chamber’s “Confidential Decision on the Defence Motion for a Stay of Proceedings” of 22 May 2009,² the confidential nature of which is the subject of the Defence complaint presently under consideration;

CONSIDERING the substance of the aforementioned Decision, and in particular that the several pages of that Decision refer to closed session testimony of a Defence Witness on a limited number of occasions; and reference is made to confidential, *ex parte* submissions filed by the Registrar in relation to the issues at stake, without actually detailing the contents of those confidential *ex parte* submissions;

RECALLING Article 19 (4) of the Statute of the Tribunal which requires that the hearings of a Trial Chamber shall be public unless the Chamber decides otherwise, in accordance with the Rules of Procedure and Evidence, and **CONSIDERING** that this includes decisions and rulings of the Trial Chamber;

RECALLING FURTHER Article 20 (2) of the Statute which entitles the Accused to a fair and public hearing, subject to the protection of victims and witnesses, as provided for in Article 21, and Rules 78 and 79 of the Rules of Procedure and Evidence which refer to open and closed session respectively;

FINDING that it is in the interests of justice, and important for transparency of judicial reasoning that decisions and rulings of the Trial Chambers are made public, where possible and in line with the aforementioned provisions;³

FOR THE AFOREMENTIONED REASONS, THE CHAMBER HEREBY

GRANTS the Defence Motion of 18 June 2009; and

¹ *Prosecutor v. Léonidas Nshogoza*, Case No. ICTR-07-91-T, “Defence Motion Requesting that the Chamber Issue a Public Version of the ‘Confidential Decision on the Defence Motion for a Stay of Proceedings’ ”, filed on 18 June 2009.

² *Prosecutor v. Léonidas Nshogoza*, Case No. ICTR-07-91-T, Confidential Decision on Defence Motion for Stay of Proceedings, dated 22 May 2009.

³ These principles are consistent with those enunciated by other Trial Chambers, both of the ICTR and the International Criminal Tribunal for the Former Yugoslavia. See, for example, *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Order to Lift Confidentiality of Prosecution Response to Nzirorera’s Motion for Reconsideration, 23 April 2008, para. 2: “Proceedings at this Tribunal must be public unless good cause is shown to the contrary.”



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FILES, as an Annexure to this Decision, a redacted version of the Chamber's Decision of 22 May 2009, for public consumption; and

ORDERS the Registry, and in particular the Court Management Section, to take all steps necessary to ensure that the Annexure to this Decision is made available for public consumption.


Arusha, 26 June 2009



Khalida Rachid Khan
Presiding Judge



Lee Gacuiga Muthoga
Judge



Aydin Sefa Akay
Judge



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Annexure A

Public Version of Confidential Decision
on the Defence Motion for a Stay of
Proceedings of 22 May 2009

ICTR-07-91-T
22-05-2009
(4099 - 4092)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Aydin Sefa Akay

Registrar: Mr. Adama Dieng

Date: 22 May 2009

JUDICIAL RECORDS/ARCHIVES
2009 MAY 22 P 12:25
22/05/2009

THE PROSECUTOR

v.

Léonidas NSHOGOZA

Case No. ICTR-07-91-T

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DECISION ON DEFENCE MOTION FOR
STAY OF PROCEEDINGS

*Articles 19 and 20 of the Statute of the Tribunal and
Rule 54 of the Rules of Procedure and Evidence*

Office of the Prosecutor:

For the Accused:

Richard Karegyesa
Abdoulaye Seye
Dennis Mabura
Marie Ka

Allison Turner

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CONFIDENTIAL

INTRODUCTION

1. By way of Motion filed on 4 March 2009, the Defence for Léonidas Nshogoza moves the Chamber to order a stay of proceedings in this case as a remedy for the alleged interference with two Defence witnesses – A8 and A14 – in Rwanda, by Rwandan authorities. The Accused submits that the interference with these witnesses amounts to a violation of his fair trial rights.¹
2. All Defence witnesses in this case are “protected witnesses” within the meaning of the Statute and the Rules of this Tribunal, by virtue of a decision of this Chamber of 22 January 2009.²
3. The Prosecution opposes the Defence Motion on a technical ground, submitting that it should be dismissed in its entirety because it does not comply with certain formal requirements concerning disputed facts.³
4. In compliance with an interim Order of this Chamber,⁴ the Registrar filed confidential submissions in respect of the Defence Motion.⁵ In the submissions, the Registrar outlined the typical process undertaken to obtain travel documents for witnesses and also addressed the specific situations of Witnesses A8 and A14. A representative of the

¹ *Prosecutor v. Léonidas Nshogoza*, Case No. ICTR-07-91-T, “Urgent Motion for Stay of Proceedings Due to Interference with Defence Witnesses”, filed by the Defence on 4 March 2009 (“Defence Motion”). In particular, the Accused alleges a breach of his right to “... obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her”, as articulated by Article 20 (4) (e) of the Statute of the Tribunal. The Defence Motion concerns Defence Witnesses A8 and A14. See also *Nshogoza*, “Defence Reply to ‘Prosecutor’s Response to ‘Urgent Motion for Stay of Proceedings Due to Interference with Defence Witnesses’”, filed 9 March 2009 (“Defence Reply of 9 March 2009”); and *Nshogoza*, “Defence Additional Submissions to ‘Urgent Motion for Stay of Proceedings Due to Interference with Defence Witnesses’”, filed 9 March 2009 (“Defence Additional Submissions of 9 March 2009”). Witness A8’s protective measures, i.e. the assignment and use of a pseudonym, were lifted on 16 March 2009 and he subsequently testified before the Chamber on 19 March 2009 under his real name, Fulgence Seminega; see T. 16 March 2009 and T. 19 March 2009.

² *Nshogoza*, Decision on Defence Motion for Protective Measures for Victims and Witnesses, 22 January 2009. Articles 19 (1) and 21 of the Statute,² and Rules 69 and 75 of the Rules of Procedure and Evidence (“Rules”) provide for the protection of victims and witnesses.

Under Rule 75 (A): A Judge or a Chamber may, *proprio motu*, or at the request of either party, or of the victim or witness concerned, or the Victims and Witnesses Support Unit, order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused.

Article 19 (1) of the Statute provides, “[t]he Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the Accused and due regard for protection of victims and witnesses.” Article 21 of the Statute reads “[t]he International Tribunal for Rwanda shall provide in its Rules of Procedure and Evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim’s identity.”

³ *Nshogoza*, “Prosecutor’s Response to ‘Urgent Motion for Stay of Proceedings Due to Interference with Defence Witnesses’ Filed on 4th March 2009”, filed on 6 March 2009 (“Prosecutor’s Response of 6 March 2009”).

⁴ *Nshogoza*, Order for the Registry to File Rule 33 (B) Submissions on the Defence Motion for Stay of Proceedings Due to Interference with Defence Witnesses, 6 March 2009.

⁵ *Nshogoza*, “Registrar’s [CONFIDENTIAL] Submissions in Respect of Defence Motion for Stay of Proceedings Due to Interference with Defence Witnesses,” filed 9 March 2009 (“Registrar’s Submissions of 9 March 2009”).




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Witnesses and Victims Support Section ('WVSS') gave an oral report to the Chamber on 9 March 2009 on the issues raised in the Defence Motion, and also outlined the procedures undertaken by the Registrar regarding the movement of witnesses from Rwanda.⁶ On 12 and 23 March 2009, the Registrar filed further submissions providing additional information on the procedure of obtaining travel documentation for protected witnesses and containing statements from 16 prospective Defence witnesses.⁷

DISCUSSION

Preliminary Matter – Prosecution’s Submissions for dismissal on technical ground

- 5. The Prosecution submits that the Defence Motion should be dismissed on a technical ground, submitting that the disputed facts alleged by the Defence were not filed in the proper form.⁸ The Prosecution, therefore, does not address the substantive issues raised by the Defence.
- 6. Article 27 (2) (iii) of the Tribunal’s Directive for the Registry, which deals with the format of motions and other processes, requires that a party seeking the Chamber to make any determination on a question of fact in dispute, does so under oath, by way of affidavit, affirmation, or solemn declaration.
- 7. In essence the Defence Motion alleges that two Defence Witnesses – A8 and A14 - were contacted by the Rwandan *Parquet Générale* in relation to their respective testimonies before the Tribunal. On 9 March 2009, the Defence filed a written statement signed by one “Callixte Habamenshi”, who attested to some facts consistent with those alleged in paragraph 4 of the Defence Motion.⁹
- 8. On 9 March 2009, the Registrar filed a statement by Witness A8 wherein he confirmed that he was contacted by staff from the Rwanda Prosecutor-General’s Office.¹⁰

[Redacted]

The Registrar also filed a statement by Witness A14, wherein he attested to having been contacted by the same Rwandan authority.¹² However, Witness A14 did not ultimately testify, as he did not appear on the Defence’s final list of witnesses to give oral testimony.¹³

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⁶ T. 9 March 2009, pp. 5-7.

⁷ Nshogoza, “Registrar’s [STRICTLY CONFIDENTIAL AND EX PARTE] Additional Submissions in Respect of Defence Motion for Stay of Proceedings due to Interference with Defence Witnesses,” filed 12 March 2009 (“Registrar’s Additional Submissions of 12 March 2009”); Nshogoza, “Registrar’s Further Submissions in Respect of Defence Motion for Stay of Proceedings Due to Interference with Defence Witnesses,” filed 23 March 2009 (“Registrar’s Further Submissions of 23 March 2009”).

⁸ Prosecutor’s Response of 6 March 2009, paras. 6-8.

⁹ See Defence Motion, para. 4; Compare with Defence Reply of 9 March 2009, Annex A wherein the attester states: “A woman by the name of Ancille called me, telling me that she worked for the *Parquet Générale*. She asked me to go and meet with her at her office today (4 March 2009) at 8am. She told me I have to go to sign my travel document (passport). I said I would go there.”

¹⁰ Registrar’s Submissions of 9 March 2009, Annex 3, pp. 1-4.

[Redacted]
¹² Registrar’s Submissions of 9 March 2009, Annex 4, pp. 3-6.

¹³ See, Nshogoza, “Defence Submissions Further to “Further Order for the Defence to Comply with the Chamber’s Orders and File its Reduced List of Witnesses”,” filed 13 March 2009 (“Defence Final List of Witnesses of 13 March 2009”).

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9. The Chamber finds that the issue of whether or not Article 27 of the abovementioned Directive applies to the present circumstances, and, if so, whether it has been properly complied with, need not be determined by the Chamber, since the disputed facts are now currently before it in compliance with Article 27 – that is, personally attested to by Witnesses A8 and A14.
10. Having decided this preliminary issue in favour of the Defence, the Chamber will now go on to consider the merits of the Defence Motion.

Fair Trial Rights of the Accused

11. Article 20 of the ICTR Statute enshrines the fair trial rights of the Accused. Amongst the minimum guarantees to which all accused persons are entitled, Article 20 (4) (e) provides that the Accused has the right:

To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her

12. The right is based on Article 14 (3) (e) of the International Covenant on Civil and Political Rights.¹⁴ This provision serves to guarantee that the Accused is in a position of procedural equality with the Prosecutor in respect of the attendance and examination of witnesses.¹⁵
13. The Defence argues that, due to the contact with two Defence witnesses by the Rwandan government, the Accused is unable to receive a fair trial as his ability to obtain the attendance of his witnesses has been impeded in violation of Article 20 (4) (e).¹⁶
14. Following the filing of the Chamber's Interim Order, the Registry obtained statements from the two witnesses who were the subject of the initial allegation made by the Defence. Those statements were filed before the Chamber.¹⁷ Both Witnesses A8 and A14 attested to having been contacted by a woman named "Ancille", working with the Office of the Prosecutor General, in Rwanda.¹⁸ Witness A8 attested to the fact that he used to work in this office, and that he was also contacted by a former colleague in relation to his travelling to Arusha to testify and told to "be careful".¹⁹ Witness A14 attested to having been asked to come to the office to sign his passport.²⁰ Both Witnesses A8 and A14 attested that they had not experienced any harassment or


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¹⁴ *The Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Modalities for Examination of Defence Witnesses, 26 April 2005, para. 4.

¹⁵ *The Prosecutor v. Kupreskic et al.*, IT-IT-95-16, Decision on Appeal by Dragan Papic Against Ruling to Proceed by Deposition, 15 July 1999, para. 24.

¹⁶ Defence Motion, paras. 9-11.

¹⁷ Registrar's Submissions of 9 March 2009, Annexes 3 and 4.

¹⁸ Witness A8 in Registrar's Submissions of 9 March 2009, Annex 3, p. 5; Witness A14 in Registrar's Submissions of 9 March 2009, Annex 4, p. 3.

¹⁹ Registrar's Submissions of 9 March 2009, Annex 3, p. 3.

²⁰ Registrar's Submissions of 9 March 2009, Annex 4, p. 3.



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threats,²¹ did not experience fear arising out of the contact from the Office of the Prosecutor General,²² and were willing to travel to Arusha to testify.²³ Furthermore, Witness A8 addressed the Chamber on this issue, confirming that he had no issues with his security or personal safety.²⁴

15. Sixteen other potential Defence witnesses made statements to the Registrar, attesting to the facts that: (i) they had not been contacted by anybody from the Office of the Prosecutor General of the Republic of Rwanda; (ii) they did not have any fear of testifying; (iii) they had not been threatened or harassed by anybody; (iv) they had not been contacted and instructed not to travel to Arusha to testify; and (v) that they were still willing to travel to Arusha to testify before the ICTR.²⁵ Six of these witnesses (A9, A10, A25, A29, A11, and A21) went on to testify before the Chamber.²⁶ Of those witnesses, Witness A11 testified that his protection was a "farce because everybody knows [his] real identity", but also confirmed that he had no problems concerning his security.²⁷
16. The Chamber further notes that all of the eleven witnesses listed to give oral testimony in the Defence's Witness List of 13 March 2009 [REDACTED] ultimately attended court and testified before the Chamber.²⁹ Defence Witness A8 – who originally enjoyed protective measures, including the use of a pseudonym – actually asked the Chamber to lift his pseudonym, so that he could testify under his real name. He further testified that he did not fear for his personal safety.³⁰

²¹ Witness A8 in Registrar's Submissions of 9 March 2009, Annex 3, p. 7; Witness A14 in Registrar's Submissions of 9 March 2009, Annex 4, p. 6.

²² Witness A8 in Registrar's Submissions of 9 March 2009, Annex 3, p. 7; Witness A14 in Registrar's Submissions of 9 March 2009, Annex 4, p. 7.

²³ Witness A8 in Registrar's Submissions of 9 March 2009, Annex 3, p. 7; Witness A14 in Registrar's Submissions of 9 March 2009, Annex 4, p. 7.

²⁴ T. 16 March 2009, pp. 33-34.

²⁵ See, Registrar's Additional Submissions of 12 March 2009, Annexes 1-5; Registrar's Further Submissions of 23 March 2009, Annexes 1-11.

²⁶ Defence Witness A9 (Augustin Nyagatare) testified on 23 March 2009, see T. 23 March 2009; Defence Witness A11 (Straton Nyarwaya) testified on 20 March 2009, see T. 20 March 2009; Defence Witness A10 testified on 23 March 2009, see T. 23 March 2009; Defence Witness A25 testified on 24 and 25 March 2009, see T. 24 March 2009 and T. 25 March 2009; Defence Witness A29 testified on 25 March 2009, see T. 25 March 2009; and Defence Witness A21 (Cyprien Hakizimana) testified on 24 March 2009, see T. 24 March 2009.

²⁷ T. 20 March 2009, p. 5.

²⁹ See Defence Final List of Witnesses of 13 March 2009. Defence Witness Aicha Conde testified on 16 and 17 March 2009, see T. 16 March 2009 and T. 17 March 2009; Defence Witness A7 testified on 17, 18 and 19 March 2009, see T. 17 March 2009, T. 18 March 2009 and T. 19 March 2009; Defence Witness A3 testified on 19 March 2009, see T. 19 March 2009; Defence Witness A8 (Fulgence Seminega) testified on 19 March 2009, see T. 19 March 2009; Defence Witness A11 (Straton Nyarwaya) testified on 20 March 2009, see T. 20 March 2009; Defence Witness A9 (Augustin Nyagatare) testified on 23 March 2009, see T. 23 March 2009; Defence Witness A10 testified on 23 March 2009, see T. 23 March 2009; Defence Witness A21 (Cyprien Hakizimana) testified on 24 March 2009, see T. 24 March 2009; Defence Witness A25 testified on 24 and 25 March 2009, see T. 24 March 2009 and T. 25 March 2009; Defence Witness A29 testified on 25 March 2009, see T. 25 March 2009; and the Accused testified on 30 and 31 March 2009, see T. 30 March 2009 and T. 31 March 2009. The Chamber notes that Witness A14 did not testify as the Defence did not include him on its final list of 11 witnesses scheduled for oral testimony; see Defence Final List of Witnesses of 13 March 2009.

³⁰ T. 16 March 2009, pp. 33-34, "...I have not had any problems or issues with security and concerning the protection measures notified to us and which are taken in the interest of witnesses. I consider that these

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17. Considering all of the aforementioned facts, the Chamber finds that the Defence has failed to demonstrate how the contact between the Rwanda Prosecutor General's office and the witnesses has adversely impacted the Accused's right under Article 20 (4) (e) to obtain the attendance of and examination of witnesses on his behalf, under the same conditions as those who have testified against him. First, the Defence obtained the attendance of all eleven witnesses on its witness list of 13 March 2009, listed for oral testimony on behalf of the Accused, and examined them; second, and considering the sum of the material before it, there is nothing to persuade the Chamber that any Defence witness who testified before it did not so of his or her own free will, including Witness A8; third, the Chamber is satisfied from the various Registry submissions that the current procedure to be followed to secure the attendance of any witness before this Tribunal requires that certain Rwandan authorities be informed of certain personal particulars of those witnesses. These procedures are followed for all witnesses, whether Prosecution, or Defence.
18. As such, the Defence has failed to show how the fair trial rights of the Accused have been violated.

The Power to Stay Proceedings

19. The International Criminal Court ('ICC') has found that the power to stay proceedings flows from the obligation on the court to protect the human rights of the Accused.³¹ Since the Defence has failed to establish any adverse effect on its ability to present its case arising from the alleged contact between the Rwandan authorities and its witnesses, there is no need for the Chamber to consider whether a stay of proceedings is warranted in the circumstances.

Additional issues

(i) *Disclosure of personal information by the Registry to the Rwandan Authorities*

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20. The Chamber has considered the oral report given by the representative of the WVSS, as well as the Registrar's various written submissions before it. In particular, the Chamber has considered the procedure followed by the Registry in obtaining the attendance of witnesses before the Tribunal, as well as the type of information (protected and otherwise) provided by the Registrar to the Rwandan authorities in the normal functioning of the Tribunal.³² The Chamber notes that it is necessary for the Registry to provide certain personal information of witnesses for the purposes of obtaining travel documentation for them, and in facilitating their transfer to the seat of the Tribunal in Arusha.
21. The Chamber considers that it would be prudent for the WVSS to keep witnesses and parties fully informed about exactly what personal information needs to be

measures rather contradict the freedom of the witnesses, and they impair his freedom. And so I've already stated that I was ready to testify in full view in an open session because I'm here to speak the truth, and I have no problem with my personal safety."

³¹ *The Prosecutor v. Lubanga* – ICC-01/04-01/06 (OA4), Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to Article 19 (2) (a) of the Statute of 3 October 2006, 14 December 2006, para. 36.

³² T. 9 March 2009, p. 6; Registrar's Further Submissions of 23 March 2009.



communicated for the purposes of facilitating their attendance to give testimony before the Tribunal, and to whom. This would ensure the full transparency of the system in place, while also allaying witnesses' concerns about their safety and security.

22. The Chamber therefore deems it appropriate to order the Registrar to conduct a review of the internal procedures in relation to facilitating the attendance of witnesses before the Tribunal. This review should address the question of the type of protected information which needs to be disclosed in order to facilitate a witness' attendance before the Tribunal, and to whom. It should also address the need to keep witnesses informed about to whom their personal information needs to be disclosed in order to facilitate their attendance before the Tribunal, and why.

(ii) *Prosecution Request for Sanctions*

23. The Prosecution has requested the Chamber to sanction the Defence for non-compliance with the Chamber's orders to file a reduced witness list and to order the non-payment of fees and impose a fine on Defence Counsel.³³ The Chamber notes that since the filing of the Prosecution motion, the Chamber has imposed sanctions upon Defence Counsel Allison Turner, and the Defence has complied with the Chamber's orders to reduce its witness list.³⁴ The Chamber thus considers these requests to be moot.
24. In relation to the Prosecutor's request for the Chamber to order a withholding of the payment of fees to Defence Counsel in relation to the filing of this Motion, the Chamber does not consider it appropriate, as the Defence Motion was neither frivolous nor an abuse of process.³⁵ The Chamber accordingly denies this particular request.

(iii) *Defence 11 March 2009 Questions for Registrar*

25. The Defence filed a list of 22 questions addressed to the Registrar, and asked the Chamber to order the Registrar to respond to those questions, and to file a list of security measures in place for witnesses who have testified and returned to Rwanda.³⁶
26. The Chambers notes the Registrar's submissions of 23 March 2009,³⁷ and considers that most of the Defence's questions have already been answered by those submissions.³⁸

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³³ Prosecutor's Response of 6 March 2009, para. 12 (ii).

³⁴ *Nshogoza*, Decision to Sanction the Defence for Failure to Comply with the Chamber's Orders, 11 March 2009; *Nshogoza*, Further Decision to Sanction Defence Counsel for Misconduct, 17 March 2009; *Nshogoza*, Defence Submissions Further to "Further Orders for the Defence to Comply with the Chamber's Orders and File its Reduced List of Witnesses", filed 13 March 2009.

³⁵ Rule 73 (F).

³⁶ *Nshogoza*, "Defence Response to "Registrar's Submissions in Respect of Defence Motion for Stay of Proceedings Due to Interference with Defence Witnesses" and Motion for Order to the Registrar to Respond to the Defence Questions," filed 11 March 2009.

³⁷ Registrar's Further Submissions of 23 March 2009.

³⁸ Defence questions 1 and 9 were answered in paragraphs 14 (a) and (e) of the Registrar's Further Submissions of 23 March 2009; Defence question 2 was answered in paragraph 14 (b); Defence questions 3 and 4 were answered in paragraphs 14 (d) and (e); Defence questions 5 and 6 were answered in paragraph 14 (d); Defence question 7 was answered in paragraph 14 (e); question 11 was answered in paragraph 6; Defence question 12 was answered in paragraph 8 of the earlier 9 March 2009 submissions of the Registrar;³⁸ Defence question 14

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27. As concerns the remaining matters, the Chamber does not consider these questions to be in any way determinative of any issues before it, and accordingly denies the Defence request to direct the Registrar to answer the remaining questions.

FOR THESE REASONS, THE CHAMBER HEREBY

DENIES the Defence Motion for a stay of proceedings in its entirety; and

DECLARES the Prosecutor's motion for sanctions in relation to the Defence's non-compliance with the Chamber's prior orders to be moot; and

DENIES the Prosecutor's motion for sanctions pursuant to Rule 73 (F), in relation to the Defence Motion; and

ORDERS the Registrar to conduct a review of the Registry's internal procedures in relation to facilitating the attendance of witnesses before the Tribunal, in particular addressing:

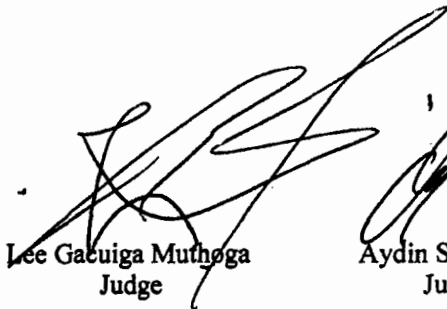
- the type of protected information which needs to be disclosed in order to facilitate a witness' attendance before the Tribunal, and to whom; and
- the need to keep witnesses informed about to whom their personal information needs to be disclosed in order to facilitate their attendance before the Tribunal, and why.

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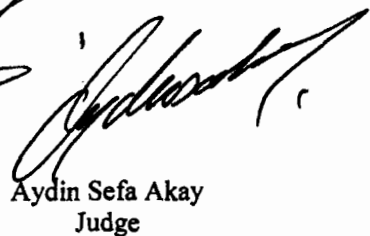
Arusha, 22 May 2009



Khalida Rachid Khan
Presiding Judge



Lee Gacuiga Muthoga
Judge



Aydin Sefa Akay
Judge



was answered in paragraph 14 (f); Defence question 15 was answered in paragraph 14 (a); Defence questions 19 and 20 were answered in paragraph 14 (h); Defence question 21 was answered in paragraph 14 (i); and Defence question 22 was answered in paragraph 14 (g).