



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 Balungi Bossa

Registrar: Mr. Adama Dieng

Date: 13 September 2010

**The PROSECUTOR**

v.

**Pauline NYIRAMASUHUKO *et al*,**

*Joint Case No. ICTR-98-42-T*

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**DECISION ON THE PROSECUTION URGENT *EX-PARTE* MOTION FOR  
DISCLOSURE OF WITNESS FAE'S CONFIDENTIAL MATERIAL**

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Ms. Josette Kadji

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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 Urgent *Ex Parte* Motion to Rescind Protective Measures for Witness FAE, Art. 28 and Rule 75”, filed on 4 August 2010 (the “Motion”);

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

**NOW DECIDES** the Motion pursuant to Rule 73 (A) and 75 of the Rules, on the basis of the written briefs filed by the Prosecution.

### **INTRODUCTION**

1. Witness FAE is a protected Prosecution witness. The protection this witness enjoys was ordered pursuant to the Chamber’s Decision of 27 March 2001. It entails among others, that her identity be concealed from the press and the public. Witness FAE testified on 17 and 18 March 2004. Part of her evidence was given in closed session to avoid the disclosure of her identity.

### **SUBMISSIONS OF THE PROSECUTION**

2. The Prosecution seeks a variance order of the witness protection Decision of 27 March 2001 regarding Witness FAE, to be authorised to disclose this Witness’ statements, transcripts, personal information sheets, exhibits tendered under seal and other necessary information to the French Investigating Judges.<sup>1</sup> According to the Prosecution, these materials are required by the French Investigating Judges in relation to the proceedings held against Eugène Rwamucyo and Agathe Kanziga, for their alleged role in the crimes committed in Rwanda in 1994.<sup>2</sup>

3. The Prosecution submits that Witness FAE consents to the sought disclosure through an affidavit dated 13 January 2010.<sup>3</sup> The Prosecution further points out that the protective measures enjoyed by Witness FAE will no longer apply to the proceedings in France since the Witness has indicated her willingness to testify under her real identity and in open session in the French proceedings.<sup>4</sup>

### **DELIBERATIONS**

4. The Chamber understands that Witness FAE is a potential witness in two cases held before the French Investigating Judges in connection to crimes committed in Rwanda in 1994.

5. The Chamber recalls that the guiding principles of state cooperation under Article 28 (1) of the Statute also apply to requests for cooperation or judicial assistance from States to the Tribunal, in their investigation or prosecution of persons accused of committing

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<sup>1</sup> Motion, para. 1.

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

<sup>3</sup> Motion, para. 4. The affidavit is attached to the Motion as Annex A.

<sup>4</sup> Motion, para. 12.

serious violations of international humanitarian law.<sup>5</sup> Moreover, the Chamber notes that the French Judicial Authorities' investigation on crimes committed in Rwanda in 1994, requiring the involvement of Witness FAE, is in line with the principles of state cooperation envisaged by the completion strategy in Security Council Resolutions 1503 and 1534.

6. Accordingly, having considered that there is no prejudice to the witness, the Chamber is of the view that it is in the overall interest of justice to vary its order for protective measures for Witness FAE, pursuant to Rule 75(A). The Chamber further notes that on the basis of Witness FAE's affidavit attached to the Motion, she has apparently consented to the disclosure of, among others, her statements, testimony and confidential documents in previous proceedings to the French Judicial Authorities. The Chamber therefore directs the Registry to provide copies of the closed session transcripts of the witness, of her personal information sheets admitted as Prosecution Exhibit 92 and of any other exhibits tendered under seal during her testimony for the purpose of the proceedings before the French Investigating Judges.

7. Still on the basis of the same affidavit, Witness FAE appears to have waived her right to protection and intends to testify under her real identity before the French Judicial Authorities. Accordingly, the Chamber hereby rescinds the protective measures enjoyed by Witness FAE in any proceedings before these Authorities.

**FOR THE ABOVE REASONS, THE TRIBUNAL**

**DIRECTS** the Registry to provide the Prosecution with the closed session transcripts of Witness FAE's testimony of 17 and 18 March 2004, together with Prosecution Exhibit 92, and any other exhibits tendered under seal during her testimony for the purpose of disclosure of the same to the French Investigating Judges.

**RESCINDS** the protective measures enjoyed by Witness FAE in any proceedings before the French Judicial Authorities.

Arusha, 13 September 2010

William H. Sekule  
Presiding Judge

Arlette Ramaroson  
Judge

Solomy Balungi Bossa  
Judge

[Seal of the Tribunal]

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<sup>5</sup> *The Prosecutor v. Nyiramasuhuko et al*, ICTR-98-42-T, "Decision on Prosecution's Motion to Unseal the Transcripts of Witness WDUSA" 1 November 2006, para. 15.