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(4782-4780)

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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: Lee Gacuiga Muthoga, *Presiding*
Seon Ki Park
Robert Fremr

Registrar: Adama Dieng

Date: 26 January 2011

JUDICIAL RECORDS ARCHIVE
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THE PROSECUTOR

v.

Ildephonse NIZEYIMANA

CASE NO. ICTR-00-55C-PT

**DECISION ON NIZEYIMANA'S EXTREMELY URGENT AND CONFIDENTIAL
MOTION CHALLENGING THE ADMISSIBILITY OF WITNESS TQ'S
TESTIMONY**

Office of the Prosecution:
Drew White
Kirsten Gray
Yasmine Chubin
Zahida Virani

Defence Counsel for Ildephonse Nizeyimana:
John Philpot
Cainnech Lussiaà-Berdou
Myriam Bouazdi

INTRODUCTION

1. The trial in this case commenced on 17 January 2011.
2. On 25 January 2011 the Defence team of the Accused, Ildéphonse Nizeyimana, ("Defence" and "the Accused" respectively) confidentially filed "Nizeyimana's Extremely Urgent and Confidential Motion Challenging the Admissibility of Witness TQ's Testimony" ("Motion"). The Motion relates to the impending testimony of Witness TQ, who in the period between April and July 1994, was affiliated with the Belgian Red Cross Society ("BRCS") in Rwanda,¹ and who is testifying under the aegis of the Office of the Prosecutor ("Prosecution"). The Defence submits that Witness TQ's relationship with the BRCS and the International Committee for the Red Cross ("ICRC") require the Prosecution to obtain the permission of one or both institutions before Witness TQ testifies in the Accused's trial.² The Motion requests that the Chamber postpone the testimony of Witness TQ until the Prosecution confirms that the "Red Cross has waived its non-disclosure privilege with respect to the testimony of witness TQ in the case at hand."³

DELIBERATIONS

3. The Chamber notes that trial chambers of both the Tribunal and the International Criminal Tribunal for the former Yugoslavia have acknowledged that under customary international law, the ICRC possesses unique rights to non-disclosure of information by its employees.⁴ However, having examined the Witness TQ Statement, the Chamber finds no indication that Witness TQ was an employee of the ICRC. The examples of limited cooperation and interaction with the ICRC cited by the Defence⁵ do not trigger the ICRC's non-disclosure rights.⁶
4. The Defence has not adduced any jurisprudence suggesting that national Red Cross or Red Crescent societies, such as the BRCS, enjoy non-disclosure rights under customary

¹ Witness Statement, Witness TQ (English translation) ("Witness TQ Statement"), pp. 1, 3-4, 13. The Chamber notes that Witness TQ's affiliation with the BRCS began in 1992.

² Motion, para. 16.

³ Motion, p. 5 ("Conclusions"). This decision has been issued without awaiting a response from the Prosecution in view of the lack of prejudice to it and the urgency of providing clarity to the parties with respect to witness scheduling.

⁴ See *Prosecutor v. Muvunyi*, Case No. ICTR-2000-55A-T, Reasons for the Chamber's Decision on the Accused's Motion to Exclude Witness TQ, 15 July 2005 ("Muvunyi Decision"), para. 16; *Prosecutor v. Simić et al.*, Case No. IT-95-9-PT, Decision on the Prosecution Motion Under Rule 73 for a Ruling Concerning the Testimony of a Witness, 27 July 1999 ("Simić Decision"), paras. 73-74.

⁵ Motion, para. 12, citing Witness TQ Statement, pp. 3, 7, 9, 11.

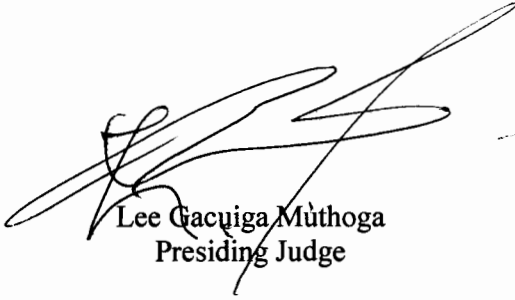
⁶ Cf. *Muvunyi Decision*, paras. 17-18.

international law.⁷ Thus Witness TQ's affiliation with the BRCS does not require the Prosecution to undertake any additional measures before the Chamber can hear his testimony.

FOR THESE REASONS, THE CHAMBER

DENIES the Motion.

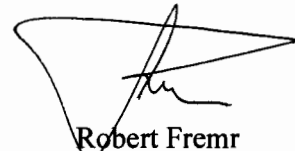
Arusha, 26 January 2011, done in English.



Lee Gacigira Muthoga
Presiding Judge



Seon Ki Park
Judge



Robert Fremr
Judge



⁷ See Motion, paras. 8-11. Cf. Muvunyi Decision, para. 19, *citing*, Gabor Rona, The ICRC Privilege Not to Testify: Confidentiality in Action, <http://www.icrc.org/eng/resources/documents/misc/5wsd9q.htm> (memorandum by the Legal Adviser to the ICRC Legal Division, who found that national Red Cross/Red Crescent societies enjoy no immunity with respect to testimony in judicial proceedings); Simić Decision. See also *Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Extremely Urgent Motion for Inadmissibility of Witness TQ's Testimony, 15 July 2004, para. 16.

