



ICTR-98-42-T  
01-09-2011  
(15280-15276)

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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: 1 September 2011

**The PROSECUTOR**

v.

**Pauline NYIRAMASUHUKO et al,**

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

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**DECISION ON THE RE-FILING OF PROSECUTOR'S EX-PARTE MOTION TO  
VARY PROTECTIVE MEASURES FOR WITNESSES**

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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 Ramarosan and Solomy Balungi Bossa (the “Chamber”);

**BEING SEIZED** of the “Re-filing of Prosecutor’s *Ex Parte* Motion to Vary Protective Measures for Witnesses, Art. 28 and Rule 75”, filed on 7 June 2011 (the “Motion”);

**RECALLING** the Decision on the Prosecution’s Motion for Protective Measures for Victims and Witnesses of 27 March 2001 (the “Decision of 27 March 2001”);

**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. Witnesses EV and RT are protected Prosecution witnesses. The protection these witnesses enjoy was ordered pursuant to the Chamber’s Decision of 27 March 2001. It entails among others, that their identities be concealed from the press and the public.<sup>1</sup> Witness EV testified on 25, 26 and 27 February 2004. Witness RT testified on 10 and 11 March 2004. Each of these witnesses gave part of their evidence in closed session to avoid the disclosure of their respective identities.

### SUBMISSIONS OF THE PROSECUTION

2. The Prosecution seeks to vary the protective measures earlier ordered by the Chamber in its Decision of 27 March 2001 with respect to Witnesses EV and RT. In particular, the Prosecution seeks authorisation to disclose these witnesses’ witness statements, transcripts and exhibits tendered through these witnesses, as well as other necessary information, to the Special International Crimes Office of Denmark.<sup>2</sup> According to the Prosecution, these materials are required by the Special International Crimes Office of Denmark in order to facilitate investigations and eventual prosecution of crimes committed in Rwanda in 1994.<sup>3</sup>

3. The Prosecution submits that Witnesses EV and RT have each consented in writing to the varying of the protective measures applicable to them in order to assist such investigations and that the duly accomplished and signed affidavits of 31 May 2011 are annexed to the Prosecution Motion.<sup>4</sup>

4. The Prosecution further states that such assistance to Denmark is consistent with Article 28 of this Tribunal’s Statute, its jurisprudence, and Security Council Resolutions 1503 (2003) and 1534 (2004). The Prosecution further submits that jurisprudence has expanded Rule 75 (F)(i) to apply to proceedings in other jurisdictions and not just before this

<sup>1</sup> *The Prosecutor v. Nyiramasuhuko et al*, ICTR-98-42-T, Decision on Prosecution’s Motion for Protective Measures for Victims and Witnesses, 27 March 2001.

<sup>2</sup> Motion, paras. 1, 5.

<sup>3</sup> Motion, para. 1; details of the Danish investigation are contained in the affidavits, attached as Annex A to the Motion.

<sup>4</sup> Motion, paras. 5, 12; Annex A.

Tribunal.<sup>5</sup> The Prosecution adds that the International Criminal Tribunal for the former Yugoslavia ("ICTY") in fact amended Rule 75 (F)(i) to apply to proceedings in other jurisdictions.<sup>6</sup>

### DELIBERATIONS

5. As a preliminary matter, the Chamber notes that it rendered the Judgement in this case on 24 June 2011, and that, as of the filing of this Decision, no Party has filed a notice of appeal.<sup>7</sup> The Chamber considers that it has jurisdiction over this matter.

6. The Chamber understands that Witnesses EV and RT could facilitate investigations and eventual proceedings by the Special International Crimes Office of Denmark in connection to crimes committed in Rwanda in 1994.

7. 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 serious violations of international humanitarian law.<sup>8</sup> Moreover, the Chamber notes that the investigation and eventual prosecution by the Special International Crimes Office of Denmark of crimes committed in Rwanda in 1994, requiring the involvement of Witnesses EV, RT and RV, is in line with the principles of state cooperation envisaged by the completion strategy in Security Council Resolutions 1503 and 1534.

8. The Chamber notes the affidavits of Witnesses EV and RT attached to the Motion, express their consent to the disclosure of, among others, their confidential witness statements, testimony and other documents related to both the current proceedings as well as previous proceedings in which they appeared, to the Special International Crimes Office of Denmark.<sup>9</sup> The Chamber further notes the affidavits were translated from French to Kinyarwanda<sup>10</sup> and is therefore satisfied Witnesses EV and RT understood the purpose of the affidavit.

9. The Chamber recalls that pursuant to Rule 78, "all proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided" and that as such, the transcripts of the testimony of Witnesses EV and RT heard in open session are accessible to the public without further order by the Chamber.

10. The Chamber therefore varies the protective measures granted to Witnesses EV and RT and directs the Registry to provide copies of the closed session transcripts of Witnesses EV and RT, their personal information sheets admitted respectively as Prosecution Exhibits 82 and 86, as well as any other exhibits tendered under seal during their respective testimony, for the purpose of facilitating investigations and eventual prosecution by the Special International Crimes Office of Denmark.

<sup>5</sup> Motion, paras. 6-10.

<sup>6</sup> Motion, para. 11.

<sup>7</sup> See generally *Pauline Nyiramasuhuko et al. v. The Prosecutor*, ICTR-98-42-A, Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 22 July 2011, para. 5 ("The filing of a notice of appeal marks the commencement of the appeal proceedings in a case . . .").

<sup>8</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.

<sup>9</sup> Motion, Annex A at pages 13513 and 13511.

<sup>10</sup> Motion, Annexes A and B.

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11. The Chamber further orders that the protective measures granted to Witnesses EV and RT shall continue to have effect *mutatis mutandis* in any proceedings before these authorities unless and until they are rescinded, varied, or augmented in accordance with the procedure set out in Rule 75.

**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the Motion in its entirety and accordingly **VARIES** the applicable protective measures for the purposes of the disclosures as specified below;

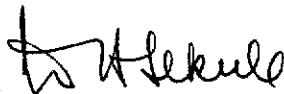
**DIRECTS** the Registry to provide the Prosecution with the closed session transcripts of Witness EV's testimony of 25, 26 and 27 February 2004, together with Prosecution Exhibit 82, and any other exhibits tendered under seal during his testimony for the purpose of disclosure of the same to the Special International Crimes Office of Denmark.

**DIRECTS** the Registry to provide the Prosecution with the closed session transcripts of Witness RT's testimony of 10 and 11 March 2004, together with Prosecution Exhibit 86, and any other exhibits tendered under seal during his testimony for the purpose of disclosure of the same to the Special International Crimes Office of Denmark.

With regard to the testimony of Witnesses EV and RT heard in open session, the Chamber observes that this is accessible to the public without further order of the Chamber.

**ORDERS** that the protective measures granted to Witnesses EV and RT shall continue to have effect *mutatis mutandis* in any proceedings before the Danish authorities.

Arusha, 1 September 2011



William H. Sekule  
Presiding Judge



Arlette Ramarason  
Judge



Solomy Balungi Bossa  
Judge



[Seal of the Tribunal]

