

ICTR-95-1-T 247  
(947-242)  
14-11-1996

UNITED NATIONS



NATIONS UNIES

**International Criminal Tribunal for Rwanda**

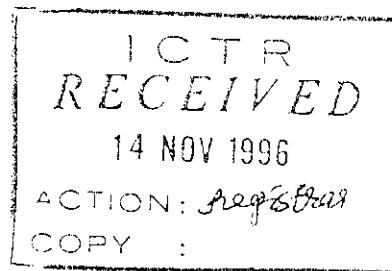
**TRIAL CHAMBER 1**

OR : FR

Before: Judge Laity Kama, Presiding Judge  
Judge Lennart Aspegren  
Judge Yakov A. Ostrovsky

Registry: Ms. Prisca Nyambe  
Ms. Cécile Aptel

Decision of: 6 November 1996



**THE PROSECUTOR  
VERSUS  
CLÉMENT KAYISHEMA**

Case No. ICTR-95-1-T

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**DECISION ON THE MOTION  
FILED BY THE PROSECUTOR ON THE PROTECTION  
OF VICTIMS AND WITNESSES**

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The Office of the Prosecutor:

Mr. Jonah Rahetlah  
Ms. Elizabeth Ann Farr  
Ms. Brenda Sue Thorton  
Mr. Cheickh Mara

The Counsel for the Accused:

Mr. André Ferran

**THE TRIBUNAL,**

Sitting as Trial Chamber 1, composed of Judge Laïty Kama as Presiding Judge, Judge Lennart Aspegren and Judge Yakov A. Ostrovsky;

CONSIDERING the indictment issued by the Prosecutor against Clément Kayishema pursuant to Rule 47 of the Rules of Procedure and Evidence ("The Rules"), on the basis that there was sufficient evidence to provide reasonable grounds for believing that he has committed genocide, conspiracy to commit genocide, crimes against humanity and violations of article 3 common to the 1949 Geneva conventions and Additional Protocol II thereto;

CONSIDERING the decision confirming this indictment, signed by Judge Navanethem Pillay on 28 November 1995;

CONSIDERING the preliminary motion filed on 2 September 1996 by the Prosecutor seeking the issuance of an order for protection measures for victims of and witnesses to the crimes alleged in the indictment;

CONSIDERING the response to the aforementioned motion filed by the Defense on 23 October 1996;

HAVING THEN HEARD the parties at the hearing held on 5 November 1996;

CONSIDERING the provisions regarding the protection of victims and witnesses in Articles 19 and 21 of the Statute of the Tribunal and in Rules 69 and 75 of the Rules;

CONSIDERING the relevant decisions rendered by the Tribunal on 26 and 27 September 1996 respectively in cases ICTR-96-3-T and ICTR-96-4-T;

**AFTER HAVING DELIBERATED:**

WHEREAS, for the protection of victims and witnesses, the Prosecutor has filed a motion before the Tribunal to order the non-disclosure of their identities as well as several other measures for the same purpose;

WHEREAS in support of this motion, the Prosecutor has pointed out that, according to various concordant reports from human rights organizations, since January 1996, there has been a considerable increase in the number of violent acts directed against victims of and witnesses to the genocide and other serious violations of international humanitarian law committed in Rwanda in 1994, which in numerous cases have led to the death of the said persons;

WHEREAS, according to the Prosecutor, the threat is particularly serious in the Kibuye area, on the border with Zaire, where a large number of those who participated in the genocide and other serious violations of international humanitarian law committed in Rwanda in 1994 now reside;

WHEREAS, while invoking the provisions of Rule 69 (A) of the Rules, the Prosecutor requests that the Tribunal issue a temporary pre-trial order for the non-disclosure to the public and the Defense of the identity of all victims and witnesses for the prosecution, as well as all identifying information in their previous statements and in the supporting documentation which may reveal their identities;

**A. On the matter of the request for the non-disclosure of the identity of victims and witnesses to the public and the media**

WHEREAS the non-disclosure of the identity of victims and witnesses to the public and the media is not only provided for by the general provisions of Rule 69(A) of the Rules, which, in any event, impose conditions which do not seem to have been fulfilled by the Prosecutor during the 15 July 1996 disclosure of supporting documentation to the indictment, and to which the Tribunal shall return herein, but also this non-disclosure is specifically provided for under Rule 75 of the Rules where it is explicitly mentioned in paragraph (B);

THE TRIBUNAL is consequently of the opinion that, regarding the non-disclosure to the public and the media of the identity of the victims and witnesses, it is appropriate to grant the measures requested by the Prosecutor to which, in any case, the Defense is not opposed; that these measures are even more comprehensible in light of the many concordant reports issued by various sources which describe the particularly worrisome situation in Rwanda and the neighboring countries where those persons who may have, in one way or another, borne witness to the events of 1994 are found today;

**B. On the matter of the request for the non-disclosure of the identity of victims and witnesses to the Defense**

WHEREAS Rule 69 (A) of the Rules, invoked by the Prosecutor in requesting the non-disclosure of the identity of victims and witnesses to the Defense, although, given its general nature, no distinction is made between non-disclosure to the public, to the media and to the Defense, nevertheless provides specific pre-conditions for such a measure to be applied;

WHEREAS Rule 69 (A) of the Rules requires that the Prosecutor first request a Trial Chamber to order such measures and that the request be made under exceptional circumstances;

WHEREAS, in this case, the Tribunal notes *ex officio* that the Prosecutor independently decided not to disclose the identity of victims and witnesses to the Defense, without first requesting an order from a Trial Chamber as required under Rule 69(A) of the Rules, after demonstrating the existence of exceptional circumstances;

WHEREAS the Prosecutor wrongfully submitted to the Defense versions in which identifying information on victims and witnesses were redacted, even if, contrary to what the Defense has moved, the Prosecutor would have had the legal right to do so, had she first obtained an order to that effect;

WHEREAS, in any event, the Trial Chamber does not have the power to nullify the documents submitted to the Defense, since the Rules do not provide for such a sanction;

WHEREAS, in this regard, the Tribunal draws attention to the differences that exist between the Rules and the various national legislations, which provide for the possibility of sanctioning the procedural errors with textual or substantive annulments, when, in the latter case, there is a prejudice to the very substance of a right or a legislative or regulatory text; and that this should not be surprising, given the particular character of the Tribunal, composed of Judges representing the principal legal systems of the world, in application of Article 12(3)(c) of the Statute of the Tribunal, who bore in mind the need to maintain a perfect balance between, on the one hand the rights of the accused to a fair trial and, on the other hand the rights of the victims and witnesses, as well as the interest of the international community that justice be done in the most diligent manner possible;

FOR ALL THE ABOVE STATED REASONS, the Tribunal considers that there is cause to grant the Prosecutor's request for measures but however reminds the latter that, in any case and in accordance with the provisions of Rule 69(C) of the Rules, the identity of the victims and witnesses shall be disclosed before the commencement of trial and within a time frame which will allow for the Defense to prepare;

**FOR THESE REASONS,**

**THE TRIBUNAL**

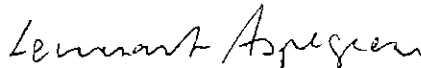
**DECIDES** the following measures:

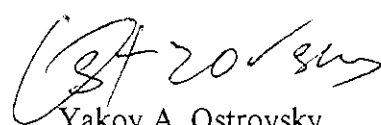
- (1) The names and addresses of persons for whom pseudonyms were used in the indictment and supporting documentation, as well as their location and all other identifying information shall not be disclosed to the public nor to the media.
- (2) The public and the media shall not take photographs or video recordings, nor make sketches of victims or witnesses when the latter enter the Tribunal, are present therein, or exit therefrom, without the authorization of the Trial Chamber and the parties.
- (3) The names, addresses and other identifying information of the victims and witnesses, as well as their locations, shall be kept under seal and shall not be placed in any file at the Tribunal.

- (4) In cases where the names, addresses and other identifying information of the victims and witnesses, as well as their locations appear in any existing files at the Tribunal, such information shall be expunged from said files.
- (5) The pseudonyms given to the victims and witnesses in the indictment and the supporting documentation shall be used each time reference is made to said victims and witnesses in court, in the proceedings of the Tribunal, or during discussions between the parties.
- (6) The names, addresses and other identifying information of the victims or witnesses, as well as their locations, shall not be disclosed to the Defense so long as the said victims or witnesses are not under the protection of the Tribunal. On this point, the attention of the Registrar is drawn to the need to establish adequate protection measures, if it had not already been done.
- (7) Subject to the provisions of Rules 69 and 75 of the Rules, the Prosecutor, in any case, shall disclose to the Defense the names of victims, witnesses, and their unredacted statements, in order to allow the Defense a sufficient amount of time to prepare for trial.

Arusha, 6 November 1996

  
 Laity Kama  
 Presiding Judge

  
 Lennart Aspegren  
 Judge

  
 Yakov A. Ostrovsky  
 Judge

(Seal of the Tribunal)

