

UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER 2

OR:FR

Before: Judge Laïty Kama, Presiding Judge  
Judge Lennart Aspegren  
Judge Yakov Ostrovsky

Registry: Mr. Frederik Harhoff  
Mr. Jean-Pelé Fomété

Decision of: 4 March 1997

**THE PROSECUTOR  
VERSUS  
OBED RUZINDANA**

Case No. ICTR-95-1-T  
Case No. ICTR-96-10-T

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

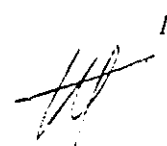
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The Office of the Prosecutor:

Mr. Jonah Rahetlah  
Mr. Charles Tate

The Counsel for the Accused:

Mr. Pascal Besnier (not present)



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**THE TRIBUNAL,**

SITTING AS Trial Chamber 2, composed of Judge Laity Kama as Presiding Judge, Judge Lennart Aspegren and Judge Yakov Ostrovsky;

CONSIDERING the two indictments issued by the Prosecutor against Obed Ruzindana, 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 decisions confirming these indictments, signed by Judge Navanethem Pillay on 28 November 1995 and by Judge Tafazzal H. Khan on 20 June 1996, respectively;

CONSIDERING the pre-trial motion filed on 13 December 1996 by the Prosecutor seeking an order for protective measures for victims of and witnesses to the crimes alleged in the indictments;

CONSIDERING the response to the aforementioned motion filed by the Defence on 27 January 1997;

HAVING CONVENED the two parties to a hearing of the said motion on 31 January 1997;

HAVING RECEIVED on 25 January 1997 a letter from the Defence Counsel explaining his inability to be present at the scheduled hearing, to which he annexed his written response to the Prosecutor's motion;

CONSIDERING the said response, approving of the protective measures no. 1-5, 7 and 8 as requested by the Prosecutor, but objecting against measure no. 6, in which the Prosecutor asks that the names, addresses and whereabouts of the witnesses remain undisclosed to the Defence until such time that the witnesses have been afforded protection by the Tribunal;

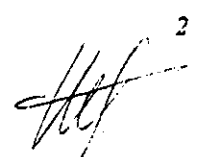
HAVING COMMUNICATED the contents of the Defence Counsel's written submission to the accused during the hearing in camera held on 31 January 1997;

HAVING THEN HEARD the Prosecutor at the hearing in camera held on this same day;

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

**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 a range of other measures for the same purpose;



for the same purpose;

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WHEREAS in support of this motion, the Prosecutor has pointed out that, according to various concordant reports from UN institutions, human rights organisations, and numerous media reports, since the November 1996, there has been a considerable increase in the number of violent acts aimed at victims of and witnesses to the serious violations of international humanitarian law committed in Rwanda in 1994, acts which, in numerous cases, have led to the death of victims and witnesses and most recently also of UN staff members in Rwanda;

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

WHEREAS the Defence Counsel, in his written submission, has opposed the Prosecutor's request for non-disclosure of the names and addresses of the witnesses to the Defence until such time that the Tribunal is assured that the witnesses are adequately protected, arguing that the disclosure of the identity of the witnesses will thereby come to depend on an element of uncertainty, since the Prosecutor is unable to establish at which time the witnesses can be afforded such adequate protection;

WHEREAS the Judges, given the particular character of the Tribunal and the fact that they represent the principal legal systems of the world in accordance with Article 12(3)(c) of the Statute, have endeavoured 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, while at the same time respecting the interest of the international community that justice be done in the most diligent manner possible;

**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, but also specifically by Rule 75(B) of the Rules;

WHEREAS these measures are even more comprehensible in light of the many concordant reports, issued by various sources, which describe the particularly worrisome situation at present in Rwanda and in the neighbouring countries where those persons who may have, in one way or another, borne witness to the events of 1994, are found today;

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THE TRIBUNAL is therefore of the opinion that, regarding the non-disclosure to the public and the media of identity of the victims and witnesses, it is appropriate to grant the measures requested by the Prosecutor;

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

WHEREAS Rule 69(A) of the Rules, which is invoked by the Prosecutor in requesting the non-disclosure of the identity of victims and witnesses to the Defence, is of a general nature and does not distinguish between non-disclosure to the public, to the media and to the Defence, nevertheless provides specific pre-conditions for such a measure to be applied;

WHEREAS, pursuant to Rule 69(A) of the Rules, non-disclosure by the Prosecutor of the identity of a victim or witness can only be administered if she has first obtained a court order for such measures from the Trial Chamber, and in any case, only when exceptional circumstances are shown;

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 Defence, without first requesting an order from a Trial Chamber as required under Rules 69(A) of the Rule;

WHEREAS the Prosecutor thereby wrongfully submitted to the Defence versions in which identifying information on victims and witnesses were redacted, even if, had the Prosecutor first obtained an order to that effect, she would have have been legally entitled to do so;

WHEREAS, furthermore, the Defence Counsel has requested that all non-redacted witness statements be submitted to the Defence and the accused no later than 15 days in advance of the trial date;

WHEREAS Rule 69(C) requires that the identity of victims and witnesses be disclosed to the Defence in sufficient time to prepare for the trial;

**FOR ALL THE ABOVE STATED REASONS**, the Tribunal considers that there is cause to grant the Prosecutor's request for protective measures but, however, reminds the latter that in accordance with the provisions of Rules 69(C) of the Rules, the identity of the victims and witnesses shall be disclosed as soon as possible, so as to allow the Defence adequate time for the preparation of the defence and in any case, within fifteen days prior to the start of the trial on the merits;

**FOR THESE REASONS,**

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**DECIDES** the following measures:

- (1) The names and addresses of persons for whom pseudonyms were used in the indictments 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 make video or audio recordings or broadcastings and shall not take photographs nor make sketches of victims or witnesses under the protection of the Tribunal, without the authorisation 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 indictments 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 Defence 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 urgent need to establish, if it has not already been so done, adequate protection measures for victims and witnesses before, during and after their testimonies.
- (7) Subject to the provisions of Rules 69 and 75 of the Rules, the Prosecutor, in any case, shall disclose to the Defence the names of victims and witnesses, and their unredacted statements, in order to allow the Defence at least fifteen days to prepare for trial.

Arusha, 4 March 1997

Laity Kama  
Presiding Judge



*Lennart Aspegren*  
Lennart Aspegren  
Judge

*Yakov Ostrovsky*  
Yakov Ostrovsky  
Judge



Seal of the Tribunal

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