

ICTR-96-15-T
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14, 04, 1997

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Case No. ICTR-96-15-T

UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER 2

OR:FR

Before: Judge Laity Kama, Presiding Judge
Judge Lennart Aspegren
Judge Navanethem Pillay

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

Decision of: 6 March 1997

THE PROSECUTOR
VERSUS
JOSEPH KANYABASHI

Case No. ICTR-96-15-T

DECISION ON THE PROSECUTOR'S MOTION FOR THE
PROTECTION OF VICTIMS AND WITNESSES

ICTR
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ACTION: REGISTRAR
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The Office of the Prosecutor:

Mr. Yacob Haile-Mariam
Mr. Pierre-Richard Prosper

The Counsel for the Accused:

Mr. Evans Monari

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LW/LA

Case No. ICTR-96-15-T

THE TRIBUNAL,

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

CONSIDERING the indictment issued by the Prosecutor against Joseph Kanyabashi 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 Yakov A. Ostrovsky on 15 July 1996;

CONSIDERING the preliminary motion filed on 18 December 1996 by the Prosecutor seeking an order for protective measures for victims of and witnesses to the crimes alleged in the indictment;

CONSIDERING the response to the aforementioned motion filed by the Defence on 16 January 1997, by which the Defence Counsel requests, firstly, that the Tribunal dismiss the Prosecutor's motion and, secondly, that an order be issued for the immediate revelation of the identities of the Prosecution witnesses in the statements already produced and for full disclosure of all testimonies not yet provided;

HAVING HEARD the parties at the hearing held on 7 February 1997;

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;

AFTER HAVING DELIBERATED:

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

WHEREAS in support of this motion, the Prosecutor has submitted that, according to various concordant reports from UN institutions and human rights organizations and numerous media reports, since November 1996, there has been a considerable increase in the number of violent acts directed against 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;

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WHEREAS, while invoking the provisions of Rule 69(A) of the Rules and relying on the deterioration of the security situation throughout Rwanda, the Prosecutor applies to the Tribunal for the issue of an order for the non-disclosure to the public and the media, and temporarily also to the Defence until such time as the witnesses have been afforded complete measures of protection, of the identity of all victims and witnesses for the prosecution, as well as all identifying information in their previous statements or in the supporting documentation which may reveal their identities;

WHEREAS the Defence Counsel, in his written and oral submissions, has opposed the Prosecutor's request on the grounds that each case must be assessed on its own merits and that the Prosecutor has not shown the existence of exceptional circumstances justifying special protection for the witnesses in the present case, since violence against or intimidation of victims and witnesses has not been reported in the Ngoma and Butare areas, where the accused, Joseph Kanyabashi, is alleged to have committed the crimes for which he is charged;

WHEREAS, furthermore, the Defence Counsel has argued that delays in the submissions to the Defence of the names and identities of the prosecution's witnesses, as requested by the Prosecutor, may frustrate the fair administration of Justice by creating an imbalance in the equality between the parties to the proceedings and thereby constituting a violation of the right of the accused to a fair trial and of the international human rights standards that the Tribunal must also respect;

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 measures for the non-disclosure of the identity of victims and witnesses to the public and the media are provided for by the general provisions of Rule 69(A) of the Rules, and also more specifically by Rule 75(B) of the Rules;

WHEREAS in the present situation these measures are even more warranted by the many concordant reports, issued by various sources, which describe the particularly volatile 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;

THE TRIBUNAL is therefore 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;

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B. On the matter of the request for the temporary non-disclosure of the identity of prosecution victims and witnesses to the Defence until such time as they are under the protection of the Tribunal

WHEREAS Rule 69(A) of the Rules, which is invoked by the Prosecutor in requesting the non-disclosure of the identity of prosecution 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 Rule 69(A) of the Rules, thus, requires that the Prosecutor ask a Trial Chamber to order such measures, and that the request be made under exceptional circumstances only;

WHEREAS, in this case, the Tribunal notes 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 Rule 69(A) of the Rules;

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

WHEREAS Rule 69(C) of the Rules provides that, subject to Rule 75 of the Rules, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow for preparation of the defence;

WHEREAS, in the light of the reports and submissions made with regard to the security situation in Rwanda and the neighbouring countries, the Chamber is of the opinion that exceptional circumstances exist to warrant the temporary non-disclosure to the Defence of the identity of prosecution victims and witnesses and temporary redaction of their names and addresses in the written statements, until such time as the said witnesses have been brought under the protection of the Tribunal, but however reminds the Prosecutor 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 to the Defence well in advance of the trial and within a time frame which will allow sufficient opportunity for the preparation of the defence;

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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 or to the media.
- (2) The public and the media shall not make video or audio recordings or broadcastings and shall not take photographs or make sketches of victims or witnesses under the protection of the Tribunal, without the authorization of the Trial Chamber.
- (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 the 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 the said victims and witnesses in the proceedings of the Tribunal or during discussions between the parties.
- (6) The Prosecutor is authorised to withhold disclosure to the Defence of the identity of the victims and witnesses and to temporarily redact their names and addresses in the written statements, until such time as the said victims or witnesses are brought under the protection of the Tribunal. On this point, the Registrar is directed to install adequate protection measures immediately for victims and witnesses before, during and after their testimonies, if it has not already been so done.

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- (7) Subject to the provisions in Rules 69 and 75 of the Rules and to paragraph 6 above, the Prosecutor is ordered to disclose to the Defence the identity of the said protected victims and witnesses as well as their non-redacted statements within thirty days prior to the trial in order to allow the Defence a sufficient amount of time to prepare itself.

Arusha, 6 March 1997

[Signature]
 Laity Kama
 Presiding Judge

[Signature]
 Lennart Aspegren
 Judge

[Signature]
 Navanethem Pillay
 Judge



(Seal of the Tribunal)

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