

ICTR-96-8-T
13 MARCH 1997
(176-172)

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Case No. ICTR-96-8-T



International Criminal Tribunal for Rwanda

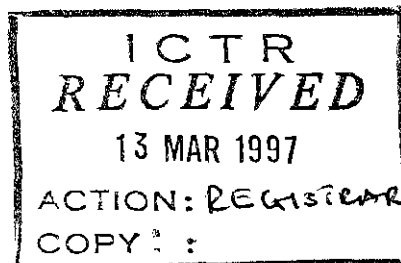
TRIAL CHAMBER 2

OR:ENG

Before: Judge William Sekule, Presiding Judge
Judge Yakov Ostrovsky
Judge Lennart Aspegren

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

Decision of: 11 March 1997



THE PROSECUTOR
VERSUS
ÉLIE NDAYAMBAJE

Case No. ICTR-96-8-T

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

The Office of the Prosecutor:

Mr. Yacob Haile-Mariam

The Counsel for the Accused:

Mr. Chrétien Boumo



Case No. ICTR-96-8-T

THE TRIBUNAL,

SITTING AS Trial Chamber 2, composed of Judge William Sekule, Presiding Judge, Judge Yakov Ostrovsky and Judge Lennart Aspegren;

CONSIDERING the indictment filed on 17 June 1996 by the Prosecutor against Élie Ndayambaje 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 T. H. Khan on 21 June 1996;

CONSIDERING the preliminary motion filed on 27 January 1997 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 10 March, 1997;

HAVING HEARD the parties at the hearing held on 10 March 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 requesting that the non-disclosure of their identities as well as other related relief be ordered;

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 December 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;

WHEREAS, the Prosecutor invoked the provisions of Rule 69(A) of the Rules and relied on the deterioration of the security situation throughout Rwanda to request the Tribunal to order 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;

AMS. 2

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WHEREAS the Defence Counsel filed a motion, dated 10 March 1997, in response to the Prosecutor's motion for protective measures for victims and witnesses;

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 in the light of 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;

WHEREAS the Defence Counsel, during the hearing on 10 March 1997, opposed the Prosecutor's request in prayer 5 for an order to prohibit the public and the media from photographing, video recording and sketching of victims and witnesses, claiming it would prevent the public in general from following the proceedings in Court;

WHEREAS the Prosecutor, during the hearing on 10 March 1997, requested the inclusion of audio recording and broadcastings among the protective measures sought in prayer 5 of its motion;

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;

B. On the matter of the request for the temporary non-disclosure of the identity of victims and prosecution 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 victims and prosecution 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 Rule 69(C) of the Rules provides that, subject to Rule 75 of the Rules, the identity of the victims or witnesses shall be disclosed in sufficient time prior to the trial to allow for preparation of the defence;



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WHEREAS the Defence Counsel, during the hearing on 10 March 1997, while consenting in principle to the protection of victims and witnesses, nevertheless objected in particular to prayers 4, 6 and 7, as requested by the Prosecutor, on the ground that these measures, if granted, would constitute a violation of the rights of the defence to identify, contact and interview witnesses unconditionally;


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 non-disclosure to the Defence of the identity of victims and prosecution 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;

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 and 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, at any time, without the authorisation of the 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.

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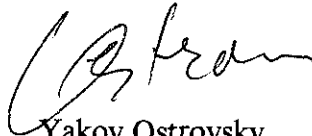
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- (6) The Prosecutor is authorised to withhold disclosure to the Defence of the identity of the victims and witnesses and to temporarily redact their names and addresses in the written statements, until such time as the said victims or witnesses are 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.
- (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.

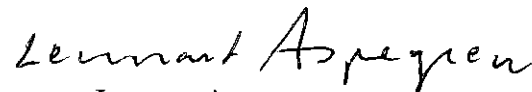
Arusha, 11 March 1997



William Sekule,
Presiding Judge



Yakov Ostrovsky
Judge



Lennart Aspegren
Judge

(Seal of the Tribunal)