

ICTR-96-11-T  
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ICTR  
CRIMINAL REGISTRY  
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UNITED NATIONS



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1998 JUL 15 P 2:23

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: FR

Before: Judge Laïty Kama, Presiding  
Judge Tafazzal H. Khan  
Judge William H. Sekule

Registry: Dr. Kesia, Mbe, Mindua

THE PROSECUTOR  
VERSUS  
FERDINAND NAHIMANA

Case No. ICTR-96-11-T

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

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The Office of the Prosecutor:

Mr. James Stewart  
Mr. Gregory Gordon  
Mr. Craig Mc Conaghy

The Counsel for the Accused:

Mr Jean -Marie Biju -Duval

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS
NAME / NOM: PRISCA M. NYAMBE
SIGNATURE: [Signature] DATE: 15-7-98

Case No. ICTR-96-11-T

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA( the “TRIBUNAL”)**

SITTING AS Trial Chamber I, composed of Judge Laïty Kama, Presiding , Judge Tafazzal H. Khan and Judge William H. Sekule;

CONSIDERING the indictment issued by the Prosecutor against Ferdinand Nahimana 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 the indictment, signed by Judge Yakov A. Ostrovsky on 12 July 1996;

CONSIDERING the preliminary motion filed 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 in which, the Defence requests 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;

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;

HAVING HEARD the parties on 26 June 1997;

**ARGUMENTS OF THE PROSECUTOR;**

WHEREAS the Prosecutor has, for the protection of victims and witnesses, filed a motion before the Tribunal requesting that the Trial Chamber issue orders:-

- (1) Requiring that the names, addresses, whereabouts of, and other identifying information concerning all prosecution witnesses, be sealed by the Registry and not included in any Tribunal records;
- (2) Requiring that any names, addresses, whereabouts of, and other identifying information, concerning potential prosecution witnesses contained in existing Tribunal or public records, be expunged from those documents;
- (3) Prohibiting the disclosure to the public or the media of the names, addresses, whereabouts of the Prosecution witnesses ;
- (4) Prohibiting the Defense and the accused from sharing, discussing or revealing directly or indirectly, any documents, or any information contained in any documents, or any other information which is prohibited from being disclosed to the public, to anyone other than assigned counsel or others working on the

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immediate defense team designated by the assigned counsel or the accused;

- (5) Prohibiting the photographing, audio and video recording, or sketching of any witness at any time or place without leave of the Trial Chamber and parties.
- (6) That in order to comply with Art. 66 of the Statute, the Prosecution will submit a written request to the Trial Chamber, or a Judge thereof, to lift the protective measures in respect of certain witnesses should those measures no longer appear to be necessary after appropriate verification and investigation and, at the direction of the Trial Chamber or a Judge thereof, notice will be given to the Witness Protection Unit where protective measures has been lifted.
- (7) That the accused or his defense counsel shall make a written request, on reasonable notice to the Prosecution, the Trial Chamber, or a Judge thereof, of its wish to contact any protected Prosecution witnesses, and the Prosecution shall undertake to facilitate such contact.
- (8) At the direction of the Trial Chamber, or a Judge thereof, and with the consent of the witness or his relative, to be interviewed by the Defense, and the Prosecution shall undertake the necessary arrangements to facilitate such contact.
- (9) Requiring that the Prosecutor designates pseudonym for each Prosecution witness which will be used whenever referring to such witness in Tribunal proceedings, communications and discussions between the parties to the Trial, and the public.
- (10) The Prosecutor reserves the right to apply to the Chamber to amend the protective measures or for additional protective measures, if necessary.

#### **ARGUMENTS OF THE DEFENCE:**

WHEREAS the Defence Counsel, in his written and oral submissions, generally 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;

TAKING INTO ACCOUNT the fact that, except for measures 4, 6 and 8 of the Prosecutors' written motion, the Defence did not raise any serious objection to other measures sought for and having regard to the rights of the accused and that of the witnesses who come forth to give testimony;

WHEREAS, furthermore, the Defence Counsel has argued that delays in the submissions to the Defence of the names and identities of the prosecution 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.

#### **DELIBERATIONS:**

WHEREAS in support of this motion, the Prosecutor has submitted that, according to various concordant reports

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from UN institutions and human rights organizations and numerous media reports, there has been a considerable increase in the number of violent acts directed against the victims of and the witnesses to the serious violations of international humanitarian law committed in Rwanda in 1994;

WHEREAS, while invoking the provisions of Rule 69(A) of the Rules and citing previous decisions of this Tribunal on witness protection and the deterioration of the security situation throughout Rwanda, the Prosecutor applies to the Tribunal for the issue of orders specified above;

**(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 Rule 69(A) of the Rules, requires that the Prosecutor should ask a Trial Chamber to order such measures, and that, the request be made where exceptional circumstances exist ;

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;

**FOR THESE REASONS, THE TRIAL CHAMBER**

**GRANTS THE PROTECTIVE MEASURES SOUGHT BY THE PROSECUTOR:**


PROVIDED THAT, the protective measures granted shall not prejudice the defence right to disclosure by seeing to it that;


- (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.


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- (5) The pseudonyms given to the victims and witnesses in the indictment and the supporting documentation shall be used each time when 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.
- (7) Subject to the provisions of 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 prior to the trial in order to allow the Defence a sufficient amount of time to prepare itself.

Oral decision rendered on 26 June 1997 in the presence of both parties  
 Written decision signed this 08 July 1998.

  
 Lary Kama  
 Presiding Judge

  
 Tafazzal H. Khan  
 Judge

  
 William H. Sekule  
 Judge

SEAL OF THE TRIBUNAL

