

ICTR-96-12-I  
3.12.1997  
(257-253)

257  
FF

Case No. ICTR-96-12-T

ICTR  
CRIMINAL REGISTRY  
RECEIVED

UNITED NATIONS UNIES

1997 DEC -3 A 11:27

International Criminal Tribunal for Rwanda

TRIAL CHAMBER 1

OR:FRE.

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

Registry: Mr. Antoine Mindua.

Decision of: 26 June 1997

THE PROSECUTOR  
VERSUS  
ANATOLE NSENGIYUMVA

Case No. ICTR-96-12-T

---

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

---

The Office of the Prosecutor:

Mr. Udo Gehring.  
Mr. Graigh McConaghy  
Ms. Josee D'Aoust

Counsel for the Accused: Mr. Kennedy Ogetto

Case No. ICTR-96-12-T

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the ' TRIBUNAL' )**

SITTING AS Trial Chamber 1, composed of Judge Laity Kama Presiding, Judge Tafazzal Hossain Khan and Judge William H. Sekule;

CONSIDERING the indictment issued by the Prosecutor against Anatole Nsengiyumva 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 12 July 1996;

CONSIDERING the preliminary motion filed on 24 March, 1997 by the Prosecutor pursuant to Article 21 of the Statute and Rules 69 and 75 of the Rules seeking an order for protective measures for witnesses and victims;

CONSIDERING the defence counsel's response to the aforementioned motion filed on 10 April 1997.

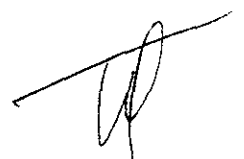
HAVING HEARD the parties on 26 June 1997 when, save for prayers in paragraph 6 and 7 of the prosecutor's motion, the defence raised no objection to orders sought by the prosecutor in paragraph 1,2,3,4,5, 8 and 9.

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;

**THE ARGUMENTS**

(i)The Prosecution has, for the protection of their victims and witnesses, filed a motions before the Tribunal for a non-disclosure order of their identities as well as for other related relief. 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 ;

Witp1kan.eng



Case No. ICTR-96-12-T

(ii) Invoking the provisions of Rule 69(A), 72 and 75 of the Rules and Article 21 of the Statute 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 and victims have been afforded complete measures of protection of their identity as well as all identifying information in their previous statements or in the supporting documentation which may reveal their identities;

(iii) the Defence Counsel, in his written and oral submissions made on 26 June, 1997, has no objection to the Prosecutor's requests save for prayers sought in paragraph 6 and 7 of the prosecutors motion.

(iv) the Defence further argues that the prosecutor has not shown, as required by Rule 69 of the Rules, 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 Gisenye prefecture, where the accused, Anotole Nsengiyumva is alleged to have committed the crimes for which he is charged and further that, going by the affidavit of the commander of investigations for the International Criminal Tribunal for Rwanda, the killings are precipitated by property disputes or revenge directed at returnees.

(v) 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 especially that the accused cannot prepare his defence without first knowing the prosecution witnesses.

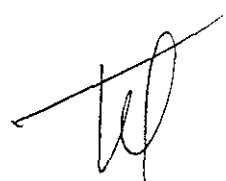
## DELIBERATIONS

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

Measures for the non-disclosure of the identity of victims and witnesses to the public and the media as provided for by the general provisions of Rule 69(A) of the Rules, and also more specifically by Rule 75(B) of the Rules have not been objected to by the Defence and 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;

Witp1kan.eng



Case No. ICTR-96-12-T

**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**

In the light of Rule 69(C) of the Rules which 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;

In view 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;

**FOR THESE REASONS,**

**THE TRIAL CHAMBER**

**DECIDES that:**

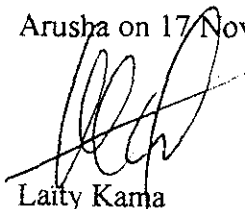
- (1) The names and addresses of persons for whom pseudonyms were used in supporting documentation, as well as their location and all other identifying information shall not be disclosed to the public or to the media.
- (2) The public and the media shall not make video or audio recordings or broadcastings 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.

Case No. ICTR-96-12-T

- (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.
- (7) Subject to the provisions in Rules 69(A) and 69(C) 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 sufficient time prior to the trial in order to allow the Defence a sufficient amount of time to prepare itself.

Rendered orally on 26 June 1997, and done in

Arusha on 17 November 1997.



Laity Kama

Presiding Judge



Tafazzal Hossain Khan

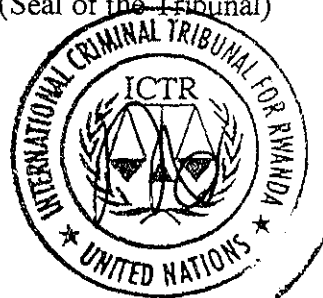
Judge



William H. Sekule

Judge

(Seal of the Tribunal)



Witp1kan.eng

