

ICTR-96-10A-I

(201-198)

3.12.1997

202

Kesh

Case No. ICTR-96-10A-I

ICTR
CRIMINAL REGISTRY
RECEIVED

1997 DEC -3 P 3 34

UNITED NATIONS NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER 2

OR:ENG:

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

Registry Mr. Antonie Mindua

Decision of: 27 June 1997

THE PROSECUTOR
VERSUS
ANDRE NTAGERURA

Case No. ICTR-96-10A-I

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

The Office of the Prosecutor:

Mr. Frederic Ossogo
Ms. Velentina Tsoneva

The Counsel for the Accused:
Fakhy N'Fa Kaba KONATE

Case No. ICTR-96-10A-I

THE TRIBUNAL,

SITTING AS Trial Chamber 2, composed of Judge William H. Sekule Presiding , Judge Laity Kama and Judge Tafazzal Hossain Khan;

CONSIDERING the indictment issued by the Prosecutor on 09 august 1996 against Andre Ntagerura 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 Lennart Aspegren on 10 August 1996;

HAVING NOW BEEN SEIZED of a preliminary motion filed on 24 March 1997 by the Prosecutor pursuant to the provisions of Article 21 of the statute and rule 69 and 75 of the "Rules" 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 15 July 1997, by which the Defence Counsel requests, firstly, that the measures sought by the prosecution should be considered in the light of Article 20 of the Statute and rule 66 of the Rules in that, they should not violate the rights of the accused provided under the said Article and rule.

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 27 th June 1997;

ARGUMENT BY THE PARTIES:

WHEREAS the Prosecutor has, for the protection of victims and witnesses, filed a motion before the Tribunal seeking for an order for the non-disclosure of the witnesses and victims identities as well as for other related reliefs on the grounds appearing in both her oral and written submissions;

- (i) 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;

Case No. ICTR-96-10A-I

(ii) That these attacks have been committed specifically in changugu prefecture which is an area in which the facts charged against the accused Andre Ntagerura are located, in particular within kalengeru commune.

(iii) That relying on the deterioration of the security situation throughout Rwanda, an order should be issued 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 for the protection of their identity, as well as all identifying information in their previous statements or in the supporting documentation which may reveal their identities;

The Defence Counsel, in his written and oral submissions, has opposed the Prosecutor's request on the grounds appearing hereunder ;

(i) That WHEREAS generally, 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 are not objected to by the defence, 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;

(ii) 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 as provided under Article 20 of the statute and Rule 66 of the Rules.

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

The trial chamber takes note of the provisions of Rule 69(A) of the rules and the present security situation in Rwanda as appearing in 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 chamber 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 prosecution victims and witnesses to the Defence until such time as they are under the protection of the Tribunal

The trial Chamber takes note that 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;

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

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 and that in so doing Rule 69(A) and Rule 75 do not violate Article 20 of the statute and Rule 66 of the Rules.

In the light of the reports and submissions made with regard to the security situation in Rwanda and Changugu commune in particular 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 as follows:**

- (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.

Case No. ICTR-96-10A-1

- (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 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 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 prior to the trial in order to allow the Defence a sufficient amount of time to prepare itself.
- (8) In the spirit of rule 69 of the rules and for record purposes, in future, the prosecutor is instructed to be much more precise in giving or explaining the exceptional circumstances justifying the granting of the protective measures sought.

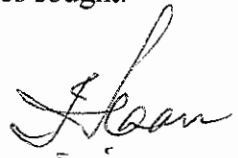
Arusha, 27 th June 1997



William H. Sekule
Presiding Judge



Laity Kama
Judge



Tafazzal Hossain Khan
Judge

