

OR: ENG

Before: Judge William H. Sekule, Presiding  
Judge Yakov Ostrovsky  
Judge Tafazzal H. Khan

Registry: Dr. Agwu Ukiwe Okali

Decision of: 21 May 1999

**THE PROSECUTOR**  
v.  
**SYLVAIN NSABIMANA and**  
**ALPHONSE NTEZIRYAYO**

Case No. ICTR-97-29-I

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**DECISION ON THE PROSECUTOR'S MOTION FOR PROTECTIVE  
MEASURES FOR VICTIMS AND WITNESSES**

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The Office of the Prosecutor:

Japhet Daniel Mono  
Don Webster  
Ibukunolu Alao Babajide  
Robert Petit

The Counsel for Alphonse Nteziryayo:

Titinga Frédéric Pacere

The Counsel for Sylvain Nsabimana:

Josette Kadji  
Charles Patie Tchacounte



**THE TRIBUNAL,**

SITTING AS Trial Chamber II, composed of Presiding Judge William H. Sekule, Judge Yakov Ostrovsky and Judge Tafazzal H. Khan;

CONSIDERING the indictment of 15 October against Sylvain Nsabimana and Alphonse Nteziryayo pursuant to Article 17 of the Statute of the Tribunal (Statute) and Rule 47 of the Rules of Procedure and Evidence (Rules), on the basis that there was sufficient evidence to provide reasonable grounds for believing that they have committed genocide, direct and public incitement to commit 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 Lennart Aspegren on 16 October 1997;

CONSIDERING the motion filed on 12 April 1999 by the Prosecutor, seeking an order for protective measures for victims of and witnesses to the crimes alleged in the indictment;

HAVING HEARD the parties at the hearing held on 18 May 1999;

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, for the protection of victims and witnesses, has 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 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;

WHEREAS, while invoking the provisions of Rule 69(A) and relying on the deterioration of the security situation throughout Rwanda, the Prosecutor applies to the Tribunal for the issue of the following orders:

- (a) Requiring that the names, addresses, whereabouts of, and other identifying information concerning all victims and potential prosecution witnesses, be sealed by the Registry and not included in any records of the Tribunal, other than the **CONFIDENTIAL** material provided to the Trial Chamber in support of this motion;



- (b) That the names, addresses, whereabouts of, and other identifying information concerning all victims and potential prosecution witnesses, be communicated only to the Victims and Witness Support Unit personnel by the Registry in accordance with the established procedure and only in order to implement protection measures for these individuals;
- (c) Requiring, to the extent that any names, addresses, whereabouts of and any other identifying information, concerning such victims and potential prosecution witnesses is contained in existing records of the Tribunal, other than the **CONFIDENTIAL** material provided to the Trial Chamber in support of this motion, that such identifying information be expunged from those documents;
- (d) Prohibiting the disclosure to the public or the media, of the names, addresses, whereabouts of, and any other identifying data in the supporting material or any other information on file with the Registry, or any other information which would reveal the identity of such victims and potential prosecution witnesses, and this order shall remain in effect after the termination of this trial;
- (e) Prohibiting the Defence 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 could reveal or lead to the identification of any victims or potential prosecution witnesses, to any person or entity other than the Accused, assigned Counsel or other persons working on the immediate Defence team. Such persons so designated by the assigned Counsel or the Accused;
- (f) Requiring the Defence to provide to the Trial Chamber and the Prosecutor a designation of all persons working on the immediate Defence team who will, pursuant to Paragraph 3(e) of the Prosecutor's motion, have access to any information referred to in Paragraphs 3(a) through 3(d) of the above mentioned motion and requiring Defence Counsel to advise the Chamber in writing of any changes in the composition of this team and requiring Defence Counsel to ensure that any member departing from the Defence team has remitted all documents and information that could lead to the identification of victims and potential prosecution witnesses;
- (g) Prohibiting the photographing, audio and/or video recording, or sketching of any prosecution witness at any time or place without leave of the Trial Chamber and parties;
- (h) Prohibiting the disclosure to the Defence of the names, addresses, whereabouts of, and any other identifying data which would reveal the identities of victims or potential prosecution witnesses, and any other information in the supporting material on file with the Registry, until such time as the Trial Chamber is assured that the witnesses have been afforded an adequate mechanism for protection and



allowing the Prosecutor to disclose any materials provided to the Defence in a redacted form until such a mechanism is in place; and in any event, that the Prosecutor is not required to reveal the identifying data to the Defence sooner than seven (7) days before the victim or witness is to testify at trial;

- (i) That the Accused or his Defence Counsel shall make a written request, on reasonable notice to the Prosecution, to the Trial Chamber or a Judge thereof, to contact any protected victim or potential prosecution witnesses or any relative of such person. At the direction of the Trial Chamber or a Judge thereof, and with the consent of such protected person or the parents or guardian of that person if that person is under the age of 18, to an interview by the Defence, the Prosecution shall undertake the necessary arrangements to facilitate such contact;
- (j) Requiring that the Prosecutor designate a pseudonym for each prosecution witness, which will be used whenever referring to each such witness in Tribunal proceedings, communications and discussions between the parties to the trial, and the public;
- (k) Prohibiting any member of the Defence team referred to in Paragraph 3(f) of the Prosecutor's motion, from attempting to make an independent determination of the identity of any protected witness or encouraging or otherwise aiding any person to attempt to determine the identity of any such person;
- (l) Prohibiting the Accused individually from personally possessing any material which includes or might lead to discovery of the identity of any protected witness;
- (m) Prohibiting the Accused individually from personally possessing any material which includes, (but not limited to) any copy of a statement of a witness even if the statement is in redacted form, unless the Accused is, at the time of the possession, in the presence of his Counsel, and instructing the Detention Centre authorities to ensure compliance with the prohibition set out in this Paragraph.

WHEREAS, the Defence Counsel for Nsabimana, during the hearing on 18 May 1999, opposed the motion generally on the ground that it failed to provide specific details;

WHEREAS, the Defence Counsel for Nteziryayo, during the hearing on 18 May 1999, opposed the motion on the ground that it was premature regarding the Accused, as no indictment against Nteziryayo has been confirmed;

CONSIDERING that the indictment against both Accused (Nsabimana and Nteziryayo) was confirmed on 16 October 1997 by a decision of Judge Lennart Aspegren;

CONSIDERING the volatile situation at present in Rwanda and the neighbouring countries, as described in many concordant reports issued by various sources;

CONSIDERING the existing exceptional circumstances which justify the special protection



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of witnesses;

CONSIDERING the general provisions of Rules 69 and 75;

CONSIDERING that granting the Prosecution's requests (e) and (k) does not lower any ethical duty owed by both parties;

CONSIDERING the rights of the Accused as formulated in Article 20 of the Statute and in particular Article 20(4)(b) and 20(4)(e);

CONSIDERING that the seven (7) days delay required in request (h) is too short to allow the Defence adequate preparation time for cross examination, in accordance with Article 20(4)(e) of the Statute;

CONSIDERING that request (m) is overly broad and may impinge Article 20(4)(b) of the Statute;

**FOR THESE REASONS,**

**THE TRIBUNAL**

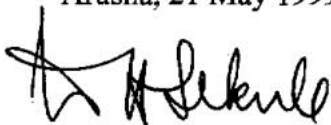
**GRANTS** the measures requested in paragraphs (a), (b), (c), (d), (e), (f), (g), (i), (j), (k) and (l) of the Prosecution motion;


**MODIFIES AND GRANTS** paragraph (h) of the Prosecution motion, as follows:


“(h) Prohibiting the disclosure to the Defence of the names, addresses, whereabouts of, and any other identifying data which would reveal the identities of victims or potential prosecution witnesses, and any other information in the supporting material on file with the Registry, until such time as the Trial Chamber is assured that the witnesses have been afforded an adequate mechanism for protection and allowing the Prosecutor to disclose any materials provided to the Defence in a redacted form until such a mechanism is in place; *or twenty-one (21) days before the victim or witness is to testify at trial, which ever comes first.*”

**DENIES** the measures sought in paragraph (m) of the Prosecution motion.

Arusha, 21 May 1999

  
William H. Sekule  
Presiding Judge

  
Yakov Ostrovsky  
Judge

  
Tafazzal H. Khan  
Judge

(Seal of the Tribunal)