

UNITED NATIONS  NATIONS UNIES  
International Criminal Tribunal for Rwanda  
TRIAL CHAMBER I

OR: ENG

Before: Judge Navanethem Pillay, Presiding  
Judge Asoka de Zoysa Gunawardana  
Judge Erik Møse

Registry: Ms. Marianne Ben Salimo

Decision of: 23 November 1999

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THE PROSECUTOR  
v.  
HASSAN NGEZE

Case No. ICTR-97-27-I

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DECISION ON THE PROSECUTOR'S MOTION  
FOR WITNESS PROTECTION

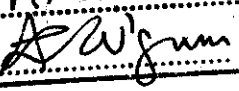
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The Office of the Prosecutor:  
William T. Egbe

Counsel for Mr. Ngeze:  
Patricia Mongo

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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NAME / NOM: AMINATTA L.R. N'GUM  
SIGNATURE:  DATE: 24/11/99.

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

**SITTING** as Trial Chamber I, composed of Judge Navanethem Pillay, presiding, Judge Asoka de Zoysa Gunawardana and Judge Eric Møse;

**CONSIDERING** the motion, filed on 22 October 1998, by the Prosecution, for orders for protective measures for victims and witnesses to crimes alleged in the Indictment, along with an Affidavit of Charles Mengalle, and the annexes attached thereto;

**CONSIDERING**, the Defence brief in reply to the Prosecution's request for orders for protective measures for victims and witnesses to crimes alleged in the Indictment, filed on 19 October 1999;

**CONSIDERING** Articles 20 and 21 of the Statute (the "Statute") and Rules 66, 69 and 75 of the Rules of Procedure and Evidence ("the Rules");

**CONSIDERING** the submissions of the Parties on this matter, heard on 18 October 1999;

**HEREBY DECIDES** the said Defence motion.

**The Legal Basis**

1. The Prosecution motion is based on Article 21 of the Statute and Rules 69 and 75 of the Rules.
2. Article 21 of the Statute obliges the Tribunal to provide in its Rules for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in-camera proceedings and the protection of the victim's identity. To this end, Rule 75 of the Rules provides, *inter alia*, that a Judge or a Chamber may *proprio motu*, or at the request of either party, or of the victims or witnesses concerned, or of the Tribunals Victims and Witnesses Support Unit, order appropriate measures for the privacy and protection of victims or witnesses, provided that these measures are consistent with the rights of the accused.
3. The Tribunal, being mindful at all times of guaranteeing the full respect of the rights of the accused, shall order, pursuant to Rule 75 of the Rules, any appropriate measures for the protection of victims and witnesses so as to ensure a fair determination of the matter before it. However, this is subject to the proviso that, in accordance with Rule 69(C), the identity of the victims and witnesses shall be disclosed in sufficient time prior to the trial, in order to allow adequate time for preparation of the Prosecution and the Defence cases.



4. Measures for the protection of witnesses are granted on a case by case basis, and take effect once the particulars and locations of the witnesses have been forwarded to the Witnesses and Victims Support Unit. In order to determine the appropriateness of such protective measures, the Tribunal shall evaluate the general security situation affecting the witnesses concerned.

5. In this case, the attachments presented by the Prosecution in support of its motion, demonstrate the particularly volatile security situation in Rwanda and in neighbouring countries, at the present time. This volatile security situation, risks to endanger the lives of those persons who may be called as witnesses at trial.

6. The Prosecution motion is well founded and the Trial Chamber considers that there are good grounds for protective measures for Prosecution witnesses.

#### **The non-disclosure of the identity of witnesses**

7. The Prosecution requests for the non-disclosure of the identity of prosecution witnesses.

8. Pursuant to Rule 69 of the Rules, under exceptional circumstances, either of the Parties may apply to a Trial Chamber to order the non-disclosure of the identity of a witness who may be in danger or at risk, until the Chamber decides otherwise. However, this is subject to Rule 69(C) whereby the identity of the witness shall be disclosed in sufficient time prior to trial in order to allow adequate time for the preparation of the defence.

9. In relation to the non-disclosure of witness identity, the Trial Chamber concurs with the reasoning of the International Criminal Tribunal for the Former Yugoslavia in its Decision of 10 August 1995 on the Prosecutors motion for protective measures for victims and witnesses, in *The Prosecutor versus Tadić* (IT-94-I-T). In that case, the Trial Chamber held that for a witness to qualify for the protection of his identity from disclosure to the public and media, there must be real fear for the safety of the witness or her or his family, and that there must always be an objective basis to underscore this fear. It further held, that the judicial concern motivating a non-disclosure order may be based on fears expressed by persons other than the witness.

10. In the present case, the Trial Chamber finds that there exist exceptional circumstances warranting the non-disclosure of the identity of witnesses.

**FOR ALL THE ABOVE REASONS,**

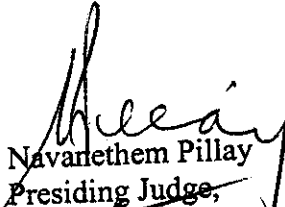
**THE TRIBUNAL**


**HEREBY ORDERS that:**


1. The names, addresses, whereabouts, and other identifying information concerning prosecution witnesses, be sealed by the Registry and not included in any Tribunal records.
2. The names and identities of the prosecution witnesses shall be forwarded by the Prosecution to the Registrar in confidence, and they shall not be disclosed to the Defence, until such time as the said witnesses are under the protection of the Tribunal.
3. In cases where the names, addresses, locations and other identifying information of the prosecution witnesses appear in the Tribunal's public records, this information shall be expunged from the said records.
4. The names, addresses, locations and other identifying information of the prosecution witnesses contained in the supporting materials of the Prosecution, shall not be disclosed to the public or to the media.
5. The public and the media shall not make audio or video recordings or broadcastings and shall not take photographs or make sketches of the prosecution witnesses who are protected witnesses, without leave of the Trial chamber.
6. The Prosecution shall be permitted to designate pseudonyms for each of its witnesses for use in the proceedings of the Tribunal, during discussions between the Parties in proceedings.
7. The Defence Counsel and any representative acting on his behalf, shall notify the Prosecution prior to any contact with any of the prosecution witnesses, and the Prosecution shall make arrangements for such contacts.
8. The Prosecution is authorised to withhold disclosure to the Defence, of the identity of the witness and to temporarily redact their names, addresses, locations and other identifying information from the supporting material on file with the Registry, until such time as the said witnesses are under the protection of the Tribunal.

9. The identity of the witnesses shall be disclosed by the Prosecution to the Defence, in sufficient time prior to the trial in order to allow adequate time for the preparation of the defence, pursuant to Rule 69(c) of the Rules.

Arusha, 23 November 1999

  
Navanethem Pillay  
Presiding Judge,

  
Asoka de Zoysa Gunawardana  
Judge

  
Erik Møse  
Judge



Seal of the Tribunal