

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: 25 February 2000

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**THE PROSECUTOR**  
v.  
**FERDINAND NAHIMANA**

Case No. ICTR-96-11-T

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**DECISION ON THE DEFENCE'S MOTION  
FOR WITNESS PROTECTION**


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The Office of the Prosecutor:

M. William T. Egbe

Counsel for Ferdinand Nahimana:

M. Jean-Marie Biju-Duval

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
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NAME / NOM: AMINATTA L.R. N'GUM	
SIGNATURE: 	DATE: 02/03/2000

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

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

**CONSIDERING** the motion filed on 17 January 2000 by the Defence for protective measures for witnesses, along with a United Nations Report on Human Rights in Rwanda and a final Report from the International Commission;

**CONSIDERING** that no objections were filed by the Prosecutor;

**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”);

**HEREBY DECIDES** the said Defence motion.

**The Legal Basis**

1. The Defence 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 Tribunal’s Witnesses and Victims Support Section, 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 Section. In order to determine the appropriateness of such protective measures, the Tribunal shall evaluate the general security situation affecting the witnesses concerned.
5. The attachments presented by the Defence in support of its motion, demonstrate the complexity of the security situation in Rwanda and the instability of the region, at the present time. The Defence submits that this precarious security situation endangers the lives of those persons who may be called as witnesses at trial, as well as the lives of their relatives.

6. The Defence further submits that there are three categories of persons who need protection:

- “Potential Defence witnesses currently residing in Rwanda, who have requested protective measures;
- Potential Defence witnesses currently residing outside Rwanda, in other African countries who have requested protective measures;
- Potential Defence witnesses residing outside Africa, who have requested protective measures”.

7. According to the Defence, protective measures are a necessary requirement to permit the discovery of the truth.

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

#### **The Non-Disclosure of the Identity of Witnesses**

9. The Defence requests for the non-disclosure of the identity of Defence witnesses.

10. 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 prosecution and the defence.

11. 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 Prosecutor’s 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.

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

13. The measures requested by the Defence have been examined in accordance with current practice of the Tribunal. Defence requests in paragraphs b), f) and k) are not granted. The request in paragraph h) is granted in modified form. The remaining requests are granted.



**FOR ALL THE ABOVE REASONS,**

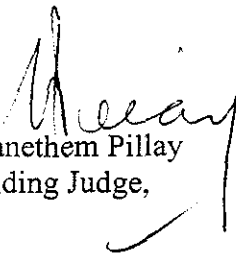
**THE TRIBUNAL**

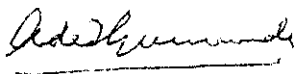
**HEREBY ORDERS** that :


1. The names, addresses and other identifying information concerning all Defence witnesses shall be forwarded by Defence, to the Registry, in confidence and shall be kept under seal by the Registry and not be included in any public records of the Tribunal;
2. Where the names, addresses or any other identifying information concerning potential Defence witnesses appear in the existing public records of the Tribunal, this information shall be expunged from the said records;
3. The names and addresses of the Defence witnesses, their whereabouts or any other identifying information contained in the supporting materials, or any other information filed with the Registry, shall not be disclosed to the public or the media;
4. The Prosecutor shall not, directly or indirectly, disclose, discuss or reveal any document or information contained in any document, or any other information identifying the potential Defence witnesses which is prohibited from being disclosed, to anyone, except members of the Prosecution team;
5. No photographs, audio or video recording, or sketches of any Defence witnesses may be taken at any time or place, without leave of the Trial Chamber and the Parties;
6. The Defence is authorised to withhold disclosure to the Prosecutor, 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;
7. The identity of the witnesses shall be disclosed by the Defence to the Prosecutor in sufficient time prior to the trial, in order to allow adequate time for the preparation of the Prosecution case, pursuant to Rule 69 (C) of the Rules ;
8. The Prosecutor and any representative acting on her behalf, shall notify the Defence prior to any contact with any of the protected Defence witnesses, and the Defence shall make arrangements for such contacts ;

9. The Defence shall be permitted to designate pseudonyms for each of its protected witnesses for use in the proceedings of the Tribunal or during discussions between the parties.

Arusha, 25 February 2000

  
Navanethem Pillay  
Presiding Judge,

  
Asoka de Zoysa Gunawardana  
Judge

  
Erik Møse  
Judge



Seal of the Tribunal