



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

ORIG: Eng.

Before: Judge Yakov Ostrovsky, designated by Trial Chamber III from among its members pursuant to Rule 73(A) of the Rules of Procedure and Evidence

Registrar: Dr. Agwu Ukiwe Okali

Decision of : 19 May 2000

THE PROSECUTOR
versus
GRATIEN KABILIGI
and
ALOYS NTABAKUZE

Case No. ICTR-97-34-I

DECISION ON MOTION BY THE OFFICE OF THE PROSECUTOR FOR ORDERS FOR PROTECTIVE MEASURES FOR VICTIMS AND WITNESSES

Counsel for the Prosecutor:

Mr. Chile Eboe-Osuji
Mr. Frederic Ossogo
Ms. Holo Makwaia

Counsel for the Accused:

Mr. Jean Yaovi Degli
Mr. Clemente Monterosso

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the
"Tribunal")**

SITTING in the person of Judge Yakov Ostrovsky, designated by Trial Chamber III from among its members pursuant to Rule 73(A) of the Rules of Procedure and Evidence (the "Rules");

BEING SEIZED of a Motion by the Office of the Prosecutor for Orders for Protective Measures for Victims and Witnesses, dated and filed on 12 July 1999 (the "Motion");

HAVING HEARD the parties on 17 May 2000.

PLEADINGS BY THE PARTIES

Prosecutor's Submissions

1. The Prosecutor submitted that the persons for whom protection is sought fall into three categories: victims and potential prosecution witnesses who reside in Rwanda and who have not affirmatively waived their right to protective measures; victims and potential prosecution witnesses who reside outside Rwanda in other African countries and who have not affirmatively waived their right to protective measures; and victims and potential prosecution witnesses who reside outside the continent of Africa and who have requested that they be granted protective measures.
2. For the victims and potential prosecution witnesses who fall into these categories (the "Protected Persons"), the Prosecutor, in the Motion, requested the following orders:
 1. An order requiring that the names, addresses, whereabouts of, and other identifying information concerning all Protected Persons be sealed by the Registry and not included in any records of the Tribunal, and an order that such identifying information be communicated only to the Victims and Witness Support Unit personnel by the Registry in accordance with the established procedures and only in order to implement protection measures for these individuals.
 2. An order requiring that any names, addresses, whereabouts of, and any other identifying information concerning the Protected Persons that are contained in the records of the Tribunal, that such identifying information be expunged from those documents.
 3. An order prohibiting the disclosure to the public or the media of any data in the supporting material, or any other information on file with the Registry which would reveal the identity of the Protected Persons, and this order shall remain in effect after the termination of this trial.
 4. An order prohibiting the photographing, audio and/or video recording, or sketching of any Protected Person at any time or place without the leave of the Trial Chamber and the parties;
 5. An order requiring that the Prosecutor designate a pseudonym for each Protected Person, which will be used whenever referring to each such person in Tribunal proceedings, communications and discussions between the parties to the trial, and the public.
 6. An order 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 have access to any information which identifies, or could

lead to the identification of, any Protected Person and requiring Defence Counsel to advise the Trial Chamber and the Prosecutor in writing of any change in the composition of this team, and further 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 the Protected Persons.

7. An order prohibiting the immediate Defence team and the Accused (Gratien Kabiligi and Aloys Ntabakuze) from sharing, discussing or revealing, directly or indirectly, any document or any information contained in any document, or any other information which could lead to the identification of any Protected Person to any person or entity other than the Accused, assigned Counsel or other persons working on the immediate Defence team, as designated by the assigned Counsel or the Accused.
8. An order prohibiting the disclosure to the Defence of the names, addresses, whereabouts of, and any other identifying data which would reveal the identities of the Protected Persons, and any other information on file with the Registry, until such time as the Trial Chamber is assured that the Protected Persons have been afforded an adequate mechanism for protection and permitting the Prosecutor to disclose any material provided to the Defence in a redacted form until further orders of the Trial Chamber.
9. An order 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 Person 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.
10. An order prohibiting any member of the immediate Defence team from attempting to make an independent determination of the identity of any Protected Person or encouraging or otherwise facilitating any person to attempt to determine the identity of any such person.
11. An order prohibiting the Accused from personally possessing any material which includes or might lead to discovery of the identity of any protected witness, including but not limited to any copy of a statement of a witness even if the statement is in a redacted form, unless the Accused is, at the time of the possession, in the presence of his Counsel, and further, instructing the Detention Center authorities to ensure compliance with the prohibition set out in this paragraph.

Defence Response

The Counsel for the Accused Kabiligi did not oppose the requested protective measures with the exception of the measure sought in paragraph 3(k) of the Motion which the Counsel requested the Chamber not to grant.

The Counsel for the Accused Ntabakuze submitted that in order to prepare an effective defence, it is necessary to have the identities of Prosecution witnesses well in advance (perhaps six months) of the trial.

FINDINGS

Article 21 of the Statute of the Tribunal (the "Statute") and Rules 69 and 75 of the Rules provide for protection of victims and witnesses. Rule 75(A) of the Rules establishes that a Judge may "order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused." Article 20 of the Statute sets out the rights of the accused, including, *inter alia*, the right "[t]o have adequate time and facilities for the preparation of his or her defence..." (Art. 20(4)(b)) and the right "[t]o examine, or have examined, the witnesses against him or her..." (Art. 20(4)(e)). The Tribunal is sensitive to the need to safeguard both, the rights of the accused and the security and privacy of victims and witnesses. It is with this in mind that the Prosecutor's present requests are considered.

The order for disclosure to the Prosecutor of the identities of all members of the Defence team sought in paragraph 3(f) of the Motion is unnecessarily restrictive and its grant cannot be justified in the absence of further evidence. The requested order will be modified and granted in the following form: an order requiring the Defence to provide to the Registrar a designation of all persons working on the immediate Defence team who will have access to any information which identifies, or could lead to the identification of, any Protected Person and to advise the Registrar in writing of any change in the composition of this team

The Prosecutor's request made in the latter part of paragraph 3(f) of the Motion, namely that "Defence Counsel [be required] to ensure that any member departing from the Defence team has remitted all documents and information that could lead to the identification of" the Protected Persons has merit. This requested order will be granted with the modification that the words "all documents and information" are replaced with the words "all materials". This change is made in recognition of the fact that the term "information" could be understood to include intangibles that, naturally, cannot be remitted.

The order sought by the Prosecutor in paragraph 3(h) of the Motion will be granted in the following form: an order prohibiting the disclosure, in advance, to the Defence of the names, addresses, whereabouts of, and any other identifying data, including any information in the supporting material on file with the Registry, which would reveal the identities of the Protected Persons, and requiring the Prosecutor to make such a disclosure, including of any material provided earlier to the Defence in a redacted form, not later than twenty-one (21) days before the protected witness is to testify at trial,

unless the Trial Chamber decides otherwise pursuant to Rule 69(A) of the Rules. The order in such form will respect the rights of the Accused and will keep the identifying data from the Defence only so long as necessary for the protection of victims and witnesses.

An order prohibiting the Accused from possessing any material that includes or might lead to discovery of the identity of any protected witness is unnecessary since the order sought in paragraph 3(g) of the Motion already provides sufficient protection in this regard. Consequently, the Prosecutor's request made in paragraph 3(k) of the Motion will be denied.

FOR THESE REASONS, THE TRIBUNAL

1. **GRANTS** the measures sought by the Prosecutor in paragraphs 3(a) through 3(e), 3(g), and 3(i) through 3(j) of the Motion.
2. **GRANTS** the Prosecutor's requests made in paragraphs 3(f) and 3(h) of the Motion, as modified above.
3. **DENIES** the Prosecutor's request made in paragraph 3(k) of the Motion

Arusha, 19 May 2000.

Yakov Ostrovsky
Judge

[Seal of the Tribunal]