

ICTR-99-46-I  
07-09-2000  
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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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**TRIAL CHAMBER III**

Original: English

Before: Judge Lloyd George Williams, Presiding  
Judge Yakov Ostrovsky  
Judge Pavel Dolenc

Registrar: Dr. Agwu U. Okali

Date: 7 September 2000

**THE PROSECUTOR**  
v.  
**EMMANUEL BAGAMBIKI and**  
**SAMUEL IMANISHIMWE**

**THE PROSECUTOR**  
v.  
**ANDRÉ NTAGERURA**

**Case No. ICTR-99-46-I**

JUDICIAL RECORDS/ARCHIVES  
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ICTR

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**DECISION ON THE MOTION BY EMMANUEL BAGAMBIKI'S DEFENCE  
SEEKING ORDERS FOR PROTECTIVE MEASURES FOR ITS WITNESSES**

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Office of the Prosecutor:

Mr. Léonard Assira  
Ms. Liliane Rasendra  
Mr. Richard Karegyesa  
Ms. Alexandra Harvey

Counsel for the Bagambiki:

Mr. Vincent Lurquin

7. The Defence requests that the Chamber grant leave to the Registrar to seek the assistance of UNHCR and of States in which potential Defence witnesses reside, so that all necessary measures be taken to ensure that the said witnesses are available to testify before the Tribunal.

8. The Chamber notes that Article 28 of the Statute provides for co-operation of States with the Tribunal upon request by a Trial Chamber and that the Rules provide for the protection of victims and witnesses. *See* Rules 69 and 75. However, the Chamber ought not to interfere with the sovereign prerogative of States to control the sojourn of aliens in their territories or encourage individuals to commit illegal acts, such as prolonging their stay in the territory of a State where their presence is unlawful, nor can the Tribunal protect people against the lawful consequences of illegal acts. Finally, the Chamber recognises the right of individuals to leave the territory of a State. Subject to this, the Chamber directs the Registry to seek the co-operation of States and UNHCR in facilitating the testimonies of Defence witnesses.

9. The Defence seeks leave to disclose to the Prosecution the identity of protected witnesses only within adequate time for preparation of the prosecution. Rule 75(A) provides that a Chamber may order appropriate measures to safeguard the privacy and security of witnesses, provided that these measures are consistent with the rights of the accused. Such measures may include the temporary non-disclosure of the identity of witnesses. In accordance with Rule 69(C), however, the witnesses' identities are to be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the prosecution.

10. The Chamber is of the opinion that twenty-one days prior to testifying is adequate time for the Prosecutor's preparation. This is the same period of time that the Chamber ordinarily prescribes for the disclosure of identities of protected Prosecution witnesses. The Chamber therefore grants leave to the Defence to disclose the identities of its protected witnesses only when they come under protection of the Tribunal or no later than twenty-one days before each such witness is to testify at trial, whichever comes first.

11. Finally, the Defence seeks to reserve the right to request the Chamber to amend or seek additional protective measures in the future. Such an order is unnecessary and premature, and the Chamber will consider the issue if it arises.


12. **FOR THESE REASONS, THE TRIBUNAL:**


(a) **DIRECTS** the Registry to seek the co-operation of States and UNHCR in facilitating the testimony of Defence witnesses, subject to the limitations set out in paragraph 8 of this Decision.

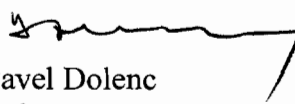
(b) **ORDERS** that the names and addresses of protected Defence witnesses and other information which could be used to identify them be disclosed solely to the staff of the Witness and Victim Support Section for the sole purpose of implementing protective measures for the said persons.

- (c) **ORDERS** that the names and addresses of protected Defence witnesses, including their whereabouts and other information which could be used to identify them, be kept under seal at the Registry.
- (d) **PROHIBITS** the disclosure to the public or the media of the names and addresses of protected Defence witnesses as well as their whereabouts and other identifying information appearing in the Defence case-files, and to ensure that the prohibition remains in force after completion of the trial.
- (e) **PROHIBITS** the public and media from making any audio or video recording, as well as taking photographs or making sketches of protected Defence witnesses, unless authorised to do so by the Chamber.
- (f) **PROHIBITS** the Prosecutor and any representative acting on her behalf from discussing or revealing to any person or entity, directly or indirectly, any documents or any information contained in such documents, or other identifying information likely to reveal or help to identify a protected Defence witness.
- (g) **ORDERS** the Prosecutor and any representative acting on her behalf to inform the Defence of any need to contact any of the protected Defence witnesses so that it may take necessary measures to that end.
- (h) **PROHIBITS** any member of the prosecution team from making any attempt to verify the identity of a protected Defence witness, or to aid and abet, in any way, whomsoever attempts to verify the identity of such a person.
- (i) **GRANTS** leave to the Defence to use, for each protected Defence witness that it intends to call, a pseudonym by which such witness will be known at trial, as well as in communications and discussions between the parties to the case, and vis-à-vis the public.
- (j) **GRANTS** the Defence leave to withhold from disclosure to the Prosecution the identities of protected Defence witnesses and to temporarily redact their names, addresses, whereabouts and any other identifying information in all records of the Registry until such time as the protected witnesses are placed under the protection of the Tribunal or no later than twenty-one (21) days before each such witness is to testify at trial, whichever comes first.

Arusha, 7 September 2000.

  
Lloyd George Williams  
Judge, Presiding

  
Yakov Ostrovsky  
Judge

  
Pavel Dolenc  
Judge

Seal of the Tribunal