

ICTR-2001-62-1

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(313-171)

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UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER I

OR: ENG

Before: Judge Asoka de Z. Gunawardana

Date: 13 March 2001

JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR

v.

SAMUAL MUSABYIMANA

Case No. ICTR-2001-62-I

**CONFIRMATION OF THE INDICTMENT AND
ORDER FOR NON-DISCLOSURE**

The Office of the Prosecutor:

Silvana Arbia

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[Signature]
13.03.2001.

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (Tribunal),

SITTING as Judge Asoka de Z. Gunawardana, designated by the President of the Tribunal pursuant to Rule 28 of the Tribunal's Rules of Procedure and Evidence (Rules);

HAVING RECEIVED on 2 March 2001 an indictment against SAMUAL MUSABYIMANA (the Accused), filed by the Prosecutor with the Registry on 21 February 2001 as revised on 13 March 2001, pursuant Articles 17(4) and 18(1) of the Statute of the Tribunal (Statute) and Rules 47(A), (B) and (E) (the Indictment);

HAVING RECEIVED the Supporting Materials comprising of excerpts of statements of Prosecution witnesses, and portions of documentary materials;

BEING SEIZED of the "Prosecutor's Ex Parte Motion for Non-Disclosure of the Names of Witnesses and Other Identifying Information in the Indictment, Supporting Materials and Witness Statements" (Motion), filed 28 February 2001;

HAVING HEARD the Prosecutor during *ex parte* hearings held on 9 and 13 March 2001 pursuant to Rule 47(D);

NOW CONSIDERS the matter.

The Facts

1. The indictment charges the Accused with four different crimes within the Tribunal's jurisdiction. The charges are genocide pursuant to Article 2(3)(a) of the Statute, or alternatively complicity in genocide pursuant to Article 2(3)(e), conspiracy to commit genocide pursuant to Article 2(3)(b), crimes against humanity for extermination, pursuant to Article 3(b).

2. The scope of the review of an indictment, pursuant to Article 18(1) of the Statute read with Rule 47(E), is to examine in respect of each count whether the alleged crime as set out in the concise statement of facts falls within the jurisdiction of the Tribunal and whether a *prima facie* case exists on the evidence submitted by the Prosecution.

3. The Motion, for purposes of facilitating the arrest and transfer of the Accused and of protecting the victims and witnesses, requests to the Tribunal to:

(a) Order that there be no public disclosure of the indictment or any part thereof, or information pertaining to it until it is served on the Accused.

(b) Order non-disclosure of the names of witnesses and other identifying information in the supporting materials and witness statements to the Accused and/or the Counsel for the Accused.

(c) Order that the indictment be not disclosed to the media or included in any public record of the Tribunal until such time when it is served on the Accused.

(d) Order that the material in support of the indictment, witness statements and any other document to be disclosed to the Accused be so disclosed upon

redaction of any information that tend[s] or is likely to disclose the identity or address of witnesses.

(e) Order the non-disclosure of the names or related information of other co-suspects in the indictment and that the disclosure of Supporting Materials and Witness Statements be so disclosed only upon redaction of any information that tend[s] or is likely to disclose the identity or address of such co-suspect.

(f) Any other order or orders as the Confirming Judge or Trial Chamber may find just in the interest of justice.

4. Pursuant to Rule 53, a Judge, in exceptional circumstances and in the interests of justice, may order the non-disclosure to the public of any documents or information, including an indictment or part thereof, or any part of any documents or information until such indictment is served on the Accused, or until further orders.

The Findings

5. In relation to the confirmation, the Tribunal finds that the Prosecutor has established a *prima facie* case against the suspect in respect of all four counts set out in the indictment.

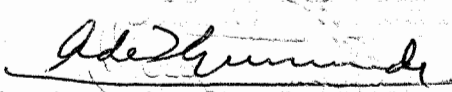
6. In relation to the non-disclosure, the Tribunal is of the view that the fact that the Accused has not been apprehended yet constitutes an exceptional circumstance under Rule 53(A). Further, that the non-disclosure of the indictment and supporting materials to the Accused, his counsel, and the public, including media, and the non-disclosure of the identity of victims and witnesses is necessary to facilitate the arrest and transfer of the Accused and to ensure the safety of victims and witnesses.

7. However, since the present indictment charges only one person, the Tribunal cannot order the non-disclosure of co-suspects, as sought in paragraph 7(e) the Motion.

8. **For the above reasons, the Tribunal:**

- (a) **CONFIRMS** the indictment submitted by the Prosecutor against SAMUAL MUSABYIMANA, dated 13 March 2001, and all four counts contained therein;
- (b) **DIRECTS** the Registrar to prepare certified copies of the indictment bearing the seal of the Tribunal and translate the indictment into a language that the Accused understands if known;
- (c) **ORDERS**, pursuant to Rule 53, the non-disclosure to the public, including media or any public record, of the indictment or any part thereof or information pertaining to the indictment until it is served on the Accused;

Arusha, 13 March 2001.


Judge Asoka de Z. Gunawardana