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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER II**

Before: Judge Laïty Kama, Presiding  
Judge William H. Sekule  
Judge Mehmet Güney

Registrar: Mr Adama Dieng

Date: 27 March 2001

**The PROSECUTOR**  
v.  
**Pauline NYIRAMASUHUKO**  
and  
**Arsène Shalom NTAHOBALI**

**Case No. ICTR-97-21-T**

JUDICIAL RECORDS DIVISION  
ICTR  
2001 MAR 27 P 5: 34

**DECISION ON THE PROSECUTOR'S MOTION FOR PROTECTIVE MEASURES  
FOR VICTIMS AND WITNESSES**

The Office of the Prosecutor:  
Japhet Mono  
Ibukunolu Alao Babajide  
Manuel Bouwknecht

Counsel for Nyiramasuhuko:  
Nicole Bergevin  
Guy Poupart

Counsel for Ntahobali:  
René Saint Léger  
Michael Bailey

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS  
NAME / NOM: *Dr. MINDUA K. M. Antoinette*  
SIGNATURE: *[Signature]* DATE: *27.03.2001*

*[Handwritten signatures and date]*  
27-03-2001

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

SITTING as Trial Chamber II (the “Chamber”), composed of Judges Laïty Kama, presiding, William H. Sekule, and Mehmet Güney;

NOTING that the Prosecutor filed on 11 December 1997 a “Motion from the Prosecutor to order protective measures for the victims and witnesses of the crimes alleged in the Indictment No. ICTR-97-21-I”, but that a decision on the matter could not be found in the judicial record of the Tribunal;

NOTING that the Chamber was seized of a “Motion to re-file motion from the Prosecutor to order protective measures for the victims and witnesses of the crimes alleged in Indictment No. ICTR-97-21-I”, filed on 15 November 2000;

NOTING the “Decision on the Prosecutor’s Motion to re-file motion to order protective measures for the victims and witnesses”, dated 27 February 2001 (the “Decision of 27 February 2001”);

BEING NOW SEIZED of the “Motion by the Prosecutor for protective measures for victims and witnesses”, filed on 6 March 2000, (the “Motion”);

CONSIDERING the “Brief in support of the Motion by the Prosecutor for protective measures for victims and witnesses” (the “Brief”), attached to the Motion;

WHEREAS, acting on the Chamber’s instruction, Court Management Section advised the Parties on 15 March 2001 that the Motion would be reviewed on briefs only pursuant to Rule 73 of the Rules of Procedure and Evidence (the “Rules”), and informed Counsel for the Defence of a deadline of 21 March 2001 to reply to the Motion;

CONSIDERING the “Réponse à la requête du Procureur aux fins d’obtenir des mesures de protection pour les victimes et témoins dans le dossier de Pauline Nyiramasuhuko” filed on 20 March 2001;

NOTING that Counsel for Ntahobali did not file any reply to the Motion;

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules; in particular Articles 19 and 21 of the Statute and Rules 69 and 75 of the Rules;

**SUBMISSIONS OF THE PARTIES**

***The Prosecutor***

1. The Prosecutor requests that the Chamber orders protective measures for persons who fall into three categories; described at paragraph 3 of the Motion :

- (a) *Victims and potential prosecution witnesses who presently reside in Rwanda, and who have not affirmatively waived their right to protective measures;*



- (b) *Victims and potential prosecution witnesses who presently reside outside Rwanda but in other countries in Africa and who have not affirmatively waived their right to protective measures, and;*
- (c) *Victims and potential prosecution witnesses who reside outside the continent of Africa and who have requested that they be granted protective measures.*

2. The Prosecutor requests in paragraph 4 of the Motion that these persons be provided protection by the following orders:

- (a) *That the names, addresses whereabouts of, and other identifying information concerning all victims and potential prosecution witnesses described in Paragraph should be communicated only to the Victims and Witness Support Unit personnel by the Registry in accordance with the established procedure and only in order to implement protection measures for these individuals.*
- (b) *Requiring, to the extent that the names, whereabouts of, and other identifying information concerning such victims and potential prosecution witnesses is contained in existing records of the tribunal be expunged from those documents;*
- (c) *Prohibiting publication on the Internet as well as the disclosure to the public or the media, of the names, addresses whereabouts of, and any other identifying data in the supporting material or any other information on file with the Registry, or any other information which would reveal the identity of such victims and potential prosecution witnesses. An order that this non-disclosure order shall remain in effect after the termination of this trial;*
- (d) *Prohibiting the Defence and the Accused from sharing, discussing or revealing, directly or indirectly any document or information contained in any documents or any other information (sic) which could reveal or lead to the identification of any individuals specified in Paragraph 3; to any person or entity other than the Accused, assigned counsel or other persons working on the immediate Defence team; such persons so designated by the assigned Counsel or the Accused;*
- (e) *Requiring the Defence to provide to the Trial Chamber and the prosecutor a designation of all persons working on the immediate Defence team who pursuant to paragraph 4(d) above will have access to any information referred to in paragraphs 4(a) through 4(d) above.*
- (f) *Requiring Defence Counsel to advise the Chamber in writing of any changes in the composition of the Defence team and requiring Defence Counsel to ensure that any member departing from the team remits all documents and information that could lead to identification of persons specified in Paragraph 3 above;*
- (g) *Prohibiting the photographing, audio and/or video recording, or sketching of any prosecution witness at any time or place without leave of the Trial Chamber and the Prosecutor;*
- (h) *Prohibiting the disclosure to the defence of the names, addresses, whereabouts of, and any other identifying data which would reveal the identities of victims or potential prosecution witnesses, and any information in the supporting material on file with the Registry, until such time as the Trial Chamber is assured that the witnesses have been afforded and adequate mechanism for protection and allowing the Prosecutor to disclose any materials provided to the defence in a redacted form until*

*such mechanism is in place; and in any event, that the prosecutor is not required to reveal the identifying data to the defence sooner than seven (21) days before the victim or witness is to testify at trial; (sic)*

- (i) 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 victim or potential prosecution witnesses 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;*
  - (j) Requiring that the Prosecutor designate a pseudonym for each prosecution witness, which will be used whenever referring to each such witness in Tribunal proceedings, communications and discussions between the parties to the trial, and the public;*
  - (k) Prohibiting any member of the Defence team from attempting to make an independent determination of the identity of any protected witness or encouraging or otherwise aiding any person to attempt to determine the identity of any such person;*
  - (l) Prohibiting the Accused individually from personally possessing any material which includes or might lead to discovery the identity of any protected witness;*
  - (m) Prohibiting the Accused individually from personally possessing any material which includes, 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 assigned Counsel, and instructing the Registry authorities at UNDF to ensure compliance with the prohibition set out in the Paragraph.*
3. The Prosecutor has submitted two Affidavits, respectively from Samuel Akorimo and Remi Abdulrahman, dated 6 March 2001, and informative material in Annex A to the Brief on attacks on Tutsi refugee camps in 1997 and 1998. By doing so, the Prosecutor intends to demonstrate that there is a substantial threat to the lives and properties of potential witnesses to the crimes alleged in the Indictment if their identities were disclosed, and also, to all survivors of the genocide.
  4. The Prosecutor alleges that these threats affect not only victims and potential witnesses residing in Rwanda but also those living in the rest of the African continent and even outside the continent, due to the presence in those areas of the former Rwandan Armed Forces (ex-FAR), *Interahamwe* groups and former civil servants from the Rwandan government.
  5. More specifically, the Prosecutor relies on the risk of violence against victims and potential witnesses in Butare *préfecture*, where rebel infiltrators have freed genocide suspects from detention centres.
  6. According to the Prosecutor, the situation in Butare *préfecture* is of an exceptional nature and renders almost impossible the separation between perpetrators and victims of the genocide, so the likelihood of risk and harm from perpetrators to victims is very high.

7. Finally, the Prosecutor recalls that these measures were earlier ordered in respect of the same witnesses that will appear in this joint trial and that it is in the interest of justice and for parity of treatment that these measures should be ordered.

***The response by Nyiramasuhuko***

8. The Defence reiterates her position as developed in her own Motion for protective measures for witnesses filed on 27 November 2000 that, all potential witnesses who did not waive their right to protection should be granted protective measures, be they prosecution or defence witnesses.

*As to the Brief*

9. Regarding the allegations contained in the Prosecutor's brief, the Defence alleges that victims and potential witnesses of the 1994 events in Rwanda also face threats from the current Rwandan government. She alleges that the Prosecutor did not bring evidence in support of the fact that victims and potential witnesses residing in Rwanda and outside Rwanda would face threats from members of the ex-FAR, *Interahamwe* or former civil servant of the Rwandan government as alleged at paragraphs 3 and 4 of the Brief. The Defence also contends that the allegations of violence against Tutsi refugees in camps are not confirmed by Annex A, lack geographical precision and date back to June 1998 despite the requirements of updated information pursuant to the Decision of 27 February 2001. Consequently, the Defence requests that the allegations contained at paragraphs 3, 4, and 6 of the Prosecutor's Brief be disregarded, if the Prosecutor does not provide supplementary elements.

*As to the Affidavit by Samuel Akorimo*

10. The Defence contends that this affidavit has already been used by the Prosecutor in the matter of *the Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T. It was then signed by Samuel Akorimo and dated 8 January 2001 whereas in the current Brief, the typed date reads 6 March 2001. Consequently, even if there are slight differences between the two affidavits, the Defence contends that the description of the security situation by the affiant refers to a situation dating back to January 2001, and not March 2001. Moreover, the Defence contends that an affidavit is null and void if not signed and dated by hand by the affiant.
11. Furthermore, the Defence contends that the witnesses referred to in the Affidavit would testify in relation to allegations against her co-Accused Ntahobali, or those who will be tried jointly with her, such as Nsabimana and Kanyabashi, but not specifically in relation to allegations against the defendant herself.

*As to measures (h) and (m)*

12. The Defence contends that the names of all potential prosecution witnesses should be disclosed to the Defence at the latest during the pre-trial conference to be held on 19 April 2001, pursuant to Rule 67(A)(i). The Defence submits that this practice was followed in the so called Media and Cyangugu cases.

13. The Defence opposes measure (m) and argues that it violates the Accused's rights set out in Articles 19(1) and 20(4)(b) and (e) of the Statute. The Defence contends that an Accused should have the right to individually possess copies of prosecution witness statements to prepare its defence.

#### **AFTER HAVING DELIBERATED**

##### ***Legal basis of the Motion***

14. Pursuant to Article 21 of the Statute, the Tribunal shall provide in its Rules for the protection of victims and witnesses. Such protection measures shall include, without being limited to, the conduct of in camera proceedings and the protection of the witness's identity. Rule 75 provides, *inter alia* that a Judge or the Trial Chamber may *proprio motu*, or at the request of either party, or of the victims or witnesses or of the Victims and Witnesses Support Section, order appropriate measures for their privacy and protection, provided that these measures are consistent with the rights of the Accused.
15. According to Rule 69, 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.
16. 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" and the right "[t]o examine, or have examined, the witnesses against him or her". The Chamber also recalls Rule 69(C) whereby the identity of a witness shall be disclosed in sufficient time prior to trial to allow adequate time for the preparation of the Defence.
17. Mindful of guaranteeing the full respect of the rights of the witnesses and those of the Accused, the Chamber shall order, pursuant to Rule 75, any appropriate measures for the protection of the victims and witnesses so as to ensure a fair determination of the matter before it. The Chamber shall decide on a case by case basis and the orders will take effect once the particulars and locations of witnesses have been forwarded to the Victims and Witnesses Support Unit.
18. To determine the appropriateness of such protective measures, the Chamber has evaluated the security situation affecting concerned witnesses in light of the information contained in the supporting documents in the Brief. Having considered the Defence's objection, the Chamber has reviewed the Affidavit of Samuel Akorimo dated 6 March 2001 and signed by hand by the affiant, which tends to demonstrate the complexity of the security situation in Butare *préfecture*. The Chamber notes that it contains serious and detailed allegations of violence and threats against witnesses that could come to testify "in this present trial and other trials involving Butare *préfecture*". In that respect, the Chamber notes that the Motion is brought in the matter of *the Prosecutor v. Nyiramasuhuko and Ntahobali*, her co-accused, and that the Motion does not only concern Nyiramasuhuko. The Chamber rejects the Defence's contention that an Affidavit has also to be dated by the affiant to be valid as the signature by the affiant is sufficient and the date need not be hand written.

Further, the Chamber notes that the affiant, in his capacity as Commander in charge of the Witness Management Unit of the OTP in Rwanda, stated that he was constantly monitoring security reports prepared by members of his unit. The Chamber is satisfied that in that capacity, the affiant can present an updated assessment of the security situation in Rwanda, and in Butare *préfecture* in particular. The second affidavit by Remi Abdulrahman emphasises the threat levels in several regions of Rwanda due to attacks by infiltrators from the DRC that can also spread in Butare *préfecture*. The Chamber is convinced, on the basis of these documents, that a volatile security situation exists in Rwanda and neighbouring countries, which could endanger the lives of the witnesses who may be called to testify at trial, and therefore justifies warranting protective measures.

19. In relation to documents in support of threats for witnesses residing outside Africa (third category of witnesses according to the Motion (c)), having taken note of the Defence's remarks in that respect, the Chamber considers that the Prosecutor has not provided evidence of threats to the lives of witnesses residing outside of that region. However, the Chamber concurs with its finding in the "Decision on Pauline Nyiramasuhuko's motion for protective measures for Defence witnesses and their family members" filed on 20 March 2001. In that instance, the Chamber held that, although the Defence had not demonstrated the existence of threats or fears as regards potential witnesses residing outside Rwanda and the region, it decided that the present security situation "would affect any potential witness even if residing outside the region".
20. In relation to the non disclosure of witnesses' identity, having reviewed the supporting documents, the Chamber holds that, in the present case, exceptional circumstances do warrant non-disclosure orders based on the fears expressed by these witnesses, and has reviewed the measures requested by the prosecutor in light of the current practice of the Tribunal.
21. Pursuant to Rule 75 (B) of the Rules, the Chamber therefore grants measures (a), (b), (d),(e), (f), (g), (i), (j), (k) and (l).
22. The Chamber grants measure (c) but decides, *proprio motu*, to modify the order requesting an order prohibiting in particular "publication on the Internet". In order to prohibit all possible disclosures in any medium, measure (c) should read as follows:

*"An order prohibiting the disclosure to the public or publication in the media, including the Internet, of the names, addresses whereabouts of, and any other identifying data in the supporting material or any other information on file with the Registry, or any other information which would reveal the identity of such victims and potential prosecution witnesses. An order that this non-disclosure order shall remain in effect after the termination of this trial;"*
23. As to measure (h), the Chamber notes a discrepancy between the number of days in which the Prosecutor would be required to reveal the identity of a witness to the Defence prior, between the noun, i.e. "seven" and the number, i.e. "21" mentioned in the Motion. The Chamber concurs with the Tribunal's jurisprudence according to which the deadline for disclosure should be set at least twenty-one days prior to the day in which the witness is to testify at trial, and not in relation to a fixed date in time, considering that the schedule may vary for a variety of reasons (see "Decision on the

Prosecutor's Motion for protective measures for witnesses", filed on 6 July 2000, in *the Prosecutor v. Karemera*). The Chamber also recalls that the same order was granted to the Defence for Nyiramasuhuko in its Decision of 20 March 2001. The Chamber therefore grants measure (h) but emphasises that it should read as follows:

(h). *Prohibiting the disclosure to the defence of the names, addresses, whereabouts of, and any other identifying data which would reveal the identities of victims or potential prosecution witnesses, and any information in the supporting material on file with the Registry, until such time as the Trial Chamber is assured that the witnesses have been afforded an adequate mechanism for protection and allowing the Prosecutor to disclose any materials provided to the defence in a redacted form until such mechanism is in place; and in any event, that the prosecutor is not required to reveal the identifying data to the defence sooner than twenty-one (21) days before the victim or witness is to testify at trial;*

24. As to measure (m) opposed by the Defence, the Chamber concurs with the finding of the "Decision on the Prosecutor's Motion for protective measures for victims and witnesses", in the *Prosecutor v. Nsabimana and Nteziryayo*, dated 21 May 1999, deciding that such a request "is overly broad and may impinge Article 20(4)(b) of the Statute". The Chamber therefore denies this measure.
25. Finally, the Chamber recalls that such protective measures are granted on a case by case basis, and shall take effect only once the particulars and locations of the witnesses have been forwarded under seal to the Victims and Witnesses Support Section by the Prosecutor

**FOR THESE REASONS, THE TRIBUNAL:**

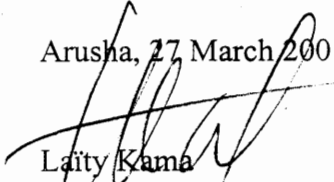
**GRANTS** measures (a), (b), (d), (e), (f), (g), (i), (j), (k) and (l).

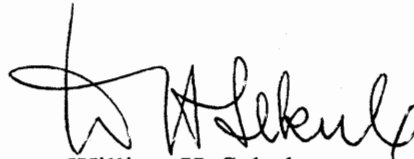
**PROHIBITS** the disclosure to the public or publication in the media including the Internet, of the names, addresses whereabouts of, and any other identifying data in the supporting material or any other information on file with the Registry, or any other information which would reveal the identity of such victims and potential prosecution witnesses (measure c);

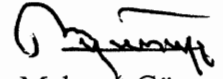
**ORDERS** that the identity of the witnesses be disclosed to the Defence twenty-one (21) days prior to the date they come to testify at trial, so as to allow adequate time for preparation of the Defence (measure h).

**DENIES** measure (m).

Arusha, 27 March 2001,

  
Laiti Kama  
Judge, Presiding

  
William H. Sekule  
Judge

  
Mehmet Güney  
Judge

