

ICTR-01-72-1
(801-798)

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UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER III

OR: ENG

Before: Judge Pavel Dolenc

Registrar: Adama Dieng

Date: July 10 2001

JUDICIAL RECORDS/ARCHIVES
ICTR
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THE PROSECUTOR

v.

Simon BIKINDI

Case No. ICTR-2001-72-I

ORDER FOR NON-DISCLOSURE

The Office of the Prosecutor:

Stephen Rapp

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (Tribunal),

SITTING as Judge Pavel Dolenc, designated by the President of the Tribunal pursuant to Rule 28 of the Tribunal's Rules of Procedure and Evidence of the Tribunal (Rules);

BEING SEIZED of the Prosecutor's "Application for Review and Confirmation of an Indictment and Related Orders" dated 27 June 2001 and filed on 4 July 2001 (Application);

CONSIDERING the Indictment against Simon Bikindi (Accused) dated 27 June 2001, filed with the Registry on 4 July 2001, and confirmed by Judge Dolenc on 5 July 2001;

HAVING HEARD the Prosecutor in *ex parte* hearings on 5 and 6 July 2001;

HAVING REVIEWED the Prosecutor's proposed redactions;

CONSIDERING Articles 18(2) and 21 of the Statute of the Tribunal (Statute) and Rule 47(H)(i), 53, 54, 66, 69 and 75;

SUBMISSIONS OF THE PROSECUTOR

1. In paragraph 17 of the Application, the Prosecutor requests the Tribunal to make the following orders:
 - b. ORDER, pursuant to Rules 53(C) and 66(C) of the Rules of Procedure and Evidence, for non-disclosure to the accused and/or his Counsel of the names of witnesses and of any information that may tend or is likely to disclose the identity or address of witnesses contained in the supporting materials to the indictment or any related document and that such documents only be so disclosed in redacted form until further order of the Court.
 - c. ORDER, pursuant to Rule 53 of the Rules of Procedure and Evidence, for the non-disclosure to the public, including the media or any public record, of the indictment, the supporting materials and other documents which form part of the Indictment, including any decision made by Your Honor confirming the Indictment, or any part thereof or information pertaining to the indictment and that such documents be placed under seal and kept confidential until further order of the Court.

FINDINGS

2. The Prosecutor refers to Rule 53 in its entirety and does not specify particular provision applicable for each of the requested measures. The English version of Rule 53 provides:

Rule 53: Non-disclosure

- (A) *In exceptional circumstances, a Judge or a trial Chamber may, in the interests of justice, order the non-disclosure to the public of any documents or information until further order.*

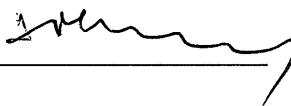
- (B) *When confirming an indictment the Judge may, in consultation with the Prosecutor, order that there be no public disclosure of the indictment until it is served on the accused, or, in the case of joint accused, on all the accused.*
- (C) *A Judge or Trial Chamber may, in consultation with the Prosecutor, also order that there be no disclosure of an indictment, or part thereof, or of all or any part of any particular document or information, if satisfied that the making of such an order is required to give effect to a provision of the Rules, to protect confidential information obtained by the Prosecutor, or is otherwise in the interests of justice.*
2. Rule 53(B) provides for non-disclosure to the public of the indictment or any information pertaining to it *until it has been served upon the accused*. In paragraph 17(c) of the Application, the Prosecutor seeks to have this measure extended until “further Order of the Court”. For the reasons advanced by the Prosecutor, notably that non-disclosure will facilitate the arrest of the accused, the Tribunal finds that such measures are justified until these documents have been served on the accused. However, the Tribunal finds no support for the extension of these measures pertaining to the Indictment and the Act of Confirmation after this time.
 3. In paragraph 17(c) of the Application, the Prosecutor requests this Tribunal to order the non-disclosure to the public and to the media of the supporting materials and other documents accompanying the Indictment. Pursuant to Article 33(3)(c) of the Directive for the Registry, such materials are “strictly confidential” unless or until otherwise ordered by the Chamber. Therefore, these materials, including the 34 witness statements and the annotated indictment, will not be disclosed by the Registry to the accused, his representatives, the public or the media unless or until otherwise ordered by the Tribunal.
 4. The Tribunal finds that English version of Rule 53(C) does not preclude a reviewing judge from granting the requested order and does not limit non-disclosure only to the public. Rather, this Rule also encompasses non-disclosure to the defence. Further, 53(C) does not require exceptional circumstances as prerequisite for an order of non-disclosure. For the purpose of this decision therefore the Tribunal applies Rule 53(C).
 5. Non-disclosure under Rule 53(C) may be ordered to give effect to a provision of the Rules or to protect confidential information obtained by the Prosecutor or to facilitate the interest of justice. In the present circumstances, the Tribunal finds that non-disclosure to the defence of certain information is necessary to give effect to the provisions of Rules 69(A) and 75 and thereby serves the interests of justice.
 6. Rule 69(A) provides for non-disclosure, *in exceptional circumstances*, to the accused and his counsel of the identity of witnesses who may be in danger or at risk. Non-disclosure of this information to the defence is an exception to the general obligation of the Prosecutor under Rule 66(A) to disclose all supporting materials, including witness statements, to the defence within a specified period of time after the initial appearance. Therefore, an order for non-disclosure pursuant Rule 53(C) cannot be used as a substitute for an order under Rule 69(A) because the latter requires the existence of exceptional circumstances and of a likelihood of danger or risk for particular witnesses, which the present Application does not allege. However, an order for non-disclosure of the

identifying information of witnesses under Rule 53(C) is a provisional measure which may be used during an interim period to permit the Prosecutor to request a specific order for non disclosure pursuant to Rule 69(A). The provisional use of Rule 53(C) is in the interest of justice since it protects the anonymity of witnesses that might be at risk or danger.

7. Rule 75(A) and (B) provides for non-disclosure to the public and to the media of identifying information of witnesses during pretrial proceedings, preparations for trial and during the trial. It is in the interest of justice to extend this protection to the early stages of these proceedings, pursuant to Rule 53, in order to preserve the Trial Chamber's ability to make meaningful orders under Rule 75 where necessary. It is therefore appropriate to grant the Prosecutor's request in this respect.

8. For the reasons above the Tribunal:
 - (a) **ORDERS** non-disclosure to the public or to the media of the Indictment, the act of Confirmation and related Orders including the present Order, or any part thereof or any information pertaining to it, until it has been served on the accused;
 - (b) **ORDERS** non-disclosure to the public and to the media of the identity, whereabouts and any other information that is likely to disclose the identity or address of the 34 witnesses identified by pseudonyms proposed by the Prosecutor;
 - (c) **ORDERS** non-disclosure to the accused and his counsel the names and other identifying information of the same witnesses;
 - (d) **ORDERS** that the names and other identifying information be expunged from the 34 witness statements as approved by the Tribunal, until further order of the Tribunal;
 - (e) **ORDERS** the assignment to the 34 witnesses of the pseudonyms as proposed by the Prosecutor;
 - (f) **ORDERS** that the disclosure to the defence of any of the 34 witness statements be made in redacted form pursuant to Orders (c), (d) and (e) above, until such time as the Prosecutor is obliged to disclose the unredacted statements pursuant to Rule 66(A) or until further Order of the Tribunal;
 - (g) **DENIES** the motion in all other respects.

Arusha, 10 July 2001.



Judge Pavel Dolenc

Seal of the Tribunal