

- 0311

ICTR-98-41-T  
5-6-2002  
(9816-9807)

9816  
#m



**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

UNITED NATIONS  
NATIONS UNIES

**TRIAL CHAMBER III**

Original: English

Before: Judge Lloyd George Williams, Q.C., Presiding  
Judge Pavel Dolenc  
Judge Andréia Vaz

Registrar: Mr. Adama Dieng

Date: 5 June 2002

**THE PROSECUTOR**  
v.  
**THÉONESTE BAGOSORA**  
**GRATIEN KABILIGI**  
**ALOYS NTABAKUZE and**  
**ANATOLE NSENGIYUMVA**

Case No. ICTR-98-41-T

10173  
2002 JUN -5 P 4: 21  
J. Williams  
P. Dolenc  
A. Vaz  
A. Dieng

**DECISION ON THE PROSECUTION MOTION FOR SPECIAL  
PROTECTIVE MEASURES FOR WITNESS "A" PURSUANT TO RULES  
66(C), 69(A) AND 75 OF THE RULES OF PROCEDURE AND EVIDENCE**

The Office of the Prosecutor:

Defence Counsel

Mr. Chile Eboe-Osuji  
Mr. Drew White  
Mr. Segun Jegede  
Ms. Christine Graham

Mr. Raphaël Constant  
Mr. Jean Yaovi Degli  
Mr. Kennedy Ogetto  
Mr. Gershom Otachi Bw'Omanwa  
Mr. Clemente Monterosso  
Mr. André Tremblay

The International Criminal Tribunal for Rwanda (the “Tribunal”), sitting today as Trial Chamber III composed of Judges Lloyd George Williams, Q.C., Presiding, Pavel Dolenc, and Andréia Vaz (the “Chamber”);

**BEING SEISED OF** the Prosecution Motion For Special Protective Measures For Witness A, filed on 28 December 2001, to which is attached Annexes A, AA, and BB, containing, respectively: the “Confidential” Affidavit of Gilbert Morissette, Investigator with the Office of Prosecutor in Kigali, Rwanda; A Summary of Transcripts of Witness Interviews, which provide a precis of Witness A’s anticipated testimony; and a handwritten declaration from Witness A indicating that the contents of the transcripts of his testimony are accurate and indicating his intention to testify if appropriate security measures are implemented for him and his family (collectively, hereinafter the “Motion”).

**CONSIDERING** Nsengiyumva’s Defence Response to the Prosecution Motion for Special Protective Measures for Witness, filed on 21 January 2002 together with the Defence Book of Authorities In Support of Defence Response to the Motion, filed on 31 January 2002 (collectively, hereinafter, the “Nsengiyumva Response”); and the Defence Motion for Leave to Rely on the Nsengiyumva Response, filed on 19 February 2002;

**CONSIDERING** the Response of the Defence for Aloys Ntabakuze to the Prosecutor’s Motion Entitled: “Prosecution Motion for Special Protective Measures for Witness A,” filed on 29 January 2002 (hereinafter, the “Ntabakuze Response”);

**CONSIDERING** the Brief in Response filed on 6 February 2002 on behalf of the Accused Bagosora (hereinafter, the “Bagosora Response”);

**CONSIDERING** Kabiligi’s Brief in Response to the Prosecutor’s Motion to Obtain Exceptional Protective Measures for Witness A, filed on 18 February 2002 (hereinafter, the “Kabiligi Response”)

**NOW DECIDES** the matter pursuant to Rule 73 (A) on the basis of the written briefs of the parties.

## I.

### SUBMISSIONS

#### A. SUBMISSIONS OF THE PROSECUTOR

1. The Prosecutor brings the instant Motion to obtain special protective measures for a witness she wishes to refer to by the pseudonym “Witness A.” The Prosecutor requests the following fourteen measures of protection: (a) assignment of the pseudonym “A” to the witness; (b) leave to refer to the witness as “A” in all proceedings before the Tribunal and in communications among the parties; (c) leave to communicate the Morissette Affidavit, which delineates the particulars of Witness A’s current whereabouts and security situation and the circumstances warranting the additional protective measures, *in camera* and to withhold it from disclosure to the Defence; (d) leave to withhold from the Defence the disclosure of the redacted transcripts of Witness A’s statement until thirty-five days before the witness is to appear at trial; (e) leave to withhold the disclosure of the unredacted relevant portions of the witness’s transcript statement until fifteen days before the witness is to appear at trial (f)

leave to communicate to the Chamber *in camera*, the portions of Witness A's transcript statement for which protection from disclosure is sought pursuant to Rule 66(C), without having to disclose same to the Defence; (g) exclusion of the public at all hearings wherein protective measures for the witness are to be considered; (h) leave to withhold from disclosure to the public any records that identify Witness A; (i) leave to present Witness A's testimony via two-way closed circuit television; (j) an injunction prohibiting the recording of the witness's image on video; (k) an order closing to the public all portions of the trial proceeding where the testimony may reveal his identity or that of his relatives or compromise the security of any ongoing investigations; (l) leave to withhold from disclosure Witness A's identity until fifteen days before he is to testify; (m) leave to forever withhold from disclosure the witness's present whereabouts and personal particulars; and (n) an oral hearing of the Motion *in camera*. The Prosecutor contends that the "additional" protective measures are necessary to assuage the fears of Witness A, whose fear of retribution including physical injury and death to his family members would prevent him from testifying.

2. As the legal basis for the relief sought, the Prosecutor relies on Rules 66(C), 69(A), and 75 of the Tribunal's Rules of Procedure and Evidence. The Prosecutor invokes Rule 66(C) in stating that in light of the exigencies, it would violate public interest and prejudice her ongoing investigations "of other persons" if the identifying data about Witness A were revealed. The Prosecutor incants the five-variable balancing test pronounced by the International Tribunal for the Former Yugoslavia in the matter of the *Prosecutor v. Tadic*, IT-94-I, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses (10 August 1995). The Prosecutor submits that the circumstances regarding Witness A qualify him for the special protective measures sought in the Motion. Witness A, who currently enjoys "special protective measures of the Office of the Prosecutor," would likely be exposed to "serious danger, including the strong possibility that he and members of his family may be killed," if his co-operation with the Office of the Prosecutor were to be disclosed.

3. Considering the five variables pronounced in *Tadic*, the Prosecutor submits the following factual predicate in support of the additional protective measures she seeks. First, citing to an ongoing conflict between the present government of Rwanda and elements of its former government, the Prosecutor expostulates that there is real fear regarding the safety of Witness A and that of his family members. Second, Witness A's testimony is of such estimable relevance and importance to the Prosecutor's case that it would be "unfair" for the Chamber to require that the Prosecutor dispense with his testimony. Third, there is no *prima facie* evidence suggesting that Witness A is untrustworthy. Fourth, there is no effective long-term witness protection program in place in Arusha, Tanzania, as would ensure the safety of Witness A and that of his family. Fifth, and finally, the special protective measures the Prosecutor seeks do not go beyond what is strictly necessary to address the exigencies in this case and will visit no prejudice upon the Accused.

## **B. SUBMISSIONS OF THE DEFENCE FOR NSENGIYUMVA**

4. In the Nsengiyumva Response, the Defence challenges the legal and factual basis for the Motion. First, the Defence stresses that Rule 69 (A) permits the non-disclosure of a witness's identity only upon demonstration of the existence of "exceptional circumstances," provided, of course, pursuant to Rule 69(C), the witness's identity is nevertheless disclosed to the Defence in sufficient time in advance of trial to afford it adequate time to prepare its case. The Defence also states that the Prosecutor's reliance on Rule 75 is similarly misplaced

because the Rule requires that any protective measures granted be consonant with the rights of the Accused. Finally, in this regard, the Defence maintains that Article 19 of the Tribunal's Statute dictates that "the rights of the accused must always prevail over witness protection."

5. Second, the Defence contends that the Motion must fail because the Prosecutor has not provided any evidence substantiating the existence of exceptional circumstances as would justify the exotic relief she now seeks. Notably in this regard, the Defence indicates that any threats to the safety of Witness A must be established in detail, including the nature of the threats and their source, so as to accord the Accused Nsengiyumva a fair opportunity to distance himself from such allegations. The disclosure to the Defence of the particulars of the circumstances causing Witness A's alleged fears would not further compromise his security situation since the Defence does not know his identity. At the very least, argues the Defence, they must be given an opportunity to inspect any affidavits submitted in support of the Motion. Indeed, argues the Defence, the Prosecutor has not made any allegation connecting the Accused Nsengiyumva to the unsubstantiated allegations of instability in Rwanda, which she tenders as the justification for the reinforced and extraordinary protective measures she seeks. Similarly, the Prosecutor fails to substantiate her conclusory claim that disclosure of the unredacted version of the statement of Witness A will necessarily jeopardise her ongoing investigations.

6. The Defence further claims that the Motion is merely an attempt by the Prosecutor to appease the paranoid fears of Witness A, a difficult witness who is holding the Prosecutor and the Accused to ransom on the basis of imagined threats with no grounding in objective facts. Referring to the ICTY 3 June 2000 Decision on Motion by the Prosecutor for Protective Measures in the matter of *Prosecutor v. Brdanin and Talic*, the Defences stresses that in order to warrant the extraordinary protective measure of anonymity, the Prosecutor must demonstrate that the witness is either in real danger or that there is a genuine risk to the witness's security. In this respect, any subjective fear expressed by the potential witness himself are not by themselves sufficient to establish the necessary predicate for the granting of exceptional protective measures pursuant to Rule 69.

7. Moreover, the Defence examines each of the five variables pronounced in *Prosecutor v. Tadic*, and finds that the Prosecutor has failed to demonstrate the required factual elements as would warrant the grant of the exotic relief she seeks in the Motion. Among other palpable lacunae in the Motion, the Defence notes that the Prosecutor's mere incantation of the "ongoing conflict" between present and former Rwandan government factions falls far short of demonstrating an objective and real basis for fearing for the safety of Witness A. Similarly, the Defence contends that the Prosecutor is being disingenuous when she states that Witness A will provide highly relevant and important testimony that is indispensable to her case since it is not known at this stage whether other witnesses can testify about the same events. Therefore, claims the Defence, the Motion should be dismissed as premature. Moreover, the Defence contends that the Prosecutor's conclusion about the inadequacy of the current protective measures and of the witness protection regime in general, is of no legal moment because to date there have been no reported cases of witnesses suffering any harm as a result of testifying before the Tribunal.

8. Moreover, the Defence argues that facts precipitating the Tribunal's decisions in the matters of the *Prosecutor v. Nahimana et al.*, ICTR-96-11-T and *Prosecutor v. Musema*, ICTR-96-13-I are distinguishable from the present circumstances in one important respect;

the Prosecutor in those cases demonstrated the materiality and significance of the potential witness's testimony and presented evidence of objective facts supporting the witnesses' fears of reprisals for testifying in documents that were *disclosed* to the Defence. The Prosecutor's request that the material supporting the Motion remain veiled from the Defence, is tantamount to an *ex-parte* proceeding in derogation of the fundamental due process rights of the Accused guaranteed pursuant to Articles 19 (1) and 20 (4) of the Tribunal's Statute. More important, the request that the Prosecutor continue to withhold from the Defence the full, unredacted statements and transcripts of Witness A beyond the already severely truncated period of thirty-five days prior to testimony as prescribed in the Chamber's extant Decision on witness protection, works grave prejudice on the Defence's right to effectively prepare for cross-examination.

9. In their concluding arguments, the Defence raises the spectre that the alleged trend of sacrificing the fundamental rights of the accused to a fair and public trial on the altar of witness protection where the Prosecutor is permitted to rely on the testimony of anonymous witnesses, threatens to eviscerate any notion of the fair administration of justice at the Tribunal.

10. In the Nsengiyumva Motion for Leave, the Defence requests that the Chamber permit it to rely upon the submission made in the Nsengiyumva Response notwithstanding that it was filed 21 January 2002, i.e., beyond the five day period prescribed in Rule 73(D), owing to delays in receiving the translation of the Motion.

### C. SUBMISSIONS OF THE DEFENCE FOR NTABAKUZE

11. Reiterating many of the same legal and factual arguments advanced in the Nsengiyumva Response, the Ntabakuze Response makes the following additional submissions. First, and most significantly, contends the Defence, the Prosecutor has failed to meet her obligation under Rule 69(C) of proving that the disclosure of Witness A's unredacted statement is contrary to the interests of justice.

12. Equally alarming, claims the Defence, is that it is impossible to intelligently respond to the Motion without the benefit of the transcripts of the witness's statements and the supporting affidavits describing circumstances regarding the basis for Witness A's security concerns. In this vein, the Defence concludes that what scarce factual allegations that the Prosecutor provides in support of the Motion are nothing more than conjecture. The generalised and subjective fears expressed by the Witness are no different from those harboured by all witnesses coming before this Tribunal and throughout the world. Such nondescript fears cannot, therefore, form the basis for the unprecedented protective measures the Prosecutor seeks in order to allegedly facilitate the appearance of Witness A.

13. The Defence also contests what they perceive as the Prosecutor's unfair attempt to insinuate, on the barest allegations, that the Accused are somehow malevolent and dangerous.

14. The Defence believes that this Tribunal's decisions in the matter of the *Prosecutor v. Nahimana*, on which the Prosecutor relies, are inapposite and therefore not instructive in the instant circumstances. Notably, the Chamber in the *Nahimana* case ordered the Registry to provide it with clarifications about its capacity to provide adequate protection measures for the witnesses at issue. In this regard, the Defence requests that the Chamber order the

Registry to appear before it to provide specific information about its capacity to provide protection to Witness A.

15. Finally, remonstrates the Defence, if the Prosecutor's allegation that Witness A will provide critical eyewitness testimony about highly relevant matters is to be taken at face value, it is all the more imperative for the Defence to receive his unredacted statement at the very earliest opportunity so as to mount an effective cross-examination. Given the alleged importance of Witness A's testimony, it would visit unjust and irreparable prejudice on the Defence to be denied the right to receive his unredacted statement until fifteen days before his testimony. Moreover, contends the Defence, the Prosecutor provides no insight as to how and why the additional twenty days of delayed disclosure to the Defence of Witness A's full statements will provide any additional measure of protection. Accordingly, the Prosecutor has failed to show that the extraordinary additional protective measures she seeks are strictly necessary, i.e., will not unduly restrict the rights of the Defence based upon the whim of a reluctant witness or upon the arbitrary judgement of the Prosecutor.

#### **D. SUBMISSIONS OF THE DEFENCE FOR BAGOSORA**

16. Joining its voice to the chorus of many of the arguments advanced by the Defence for Nsengiyumva and Ntabakuze, the Bagosora Defence also makes the following additional submissions. First, the Defence protests that the manner in which the Motion was brought, depriving the Defence of disclosure of the very affidavits by which it can determine the propriety of the additional protective measures sought for Witness A, strips of the ability to respond to the Motion on its factual and substantive merits. In essence, the Motion invites the Defence to engage in an illusory role since the essential part of the Motion has not been disclosed to the Defence. The Prosecutor has enfeebled if not completely obviated the participation of the Defence. Consequently, the Defence will be relegated to a purely "fictional" role in the proceedings.

17. This exotic process whereby the Defence is deprived of the very information it needs to address the Motion, threatens to place into question any notions of a just or equitable trial. Furthermore, the Defence fears that the Prosecutor is embarking on a dangerous course whereby she will only disclose to the Defence the portions of her witnesses' statements she wishes to disclose. The Prosecutor has placed the Defence in a factual desert without the means to determine whether there exist "exceptional circumstances" with regard to Witness A and whether the measures she seeks are strictly necessary in light of those factual circumstances. In any event, the Defence strenuously contests the existence of exceptional circumstances warranting such far-reaching curtailment of the rights of the Accused to a fair and equitable trial.

18. The Bagosora Defence stresses that there has not been a single reported case since the establishment of the Tribunal in which witnesses for the Prosecutor have been injured or killed as a result of testifying before the Tribunal. In significant contrast, the Defence notes that defence witnesses, including the brother and sister of the Accused Bagosora, were assassinated in Cameroon and Belgium, and a witness in the matter of the *Prosecutor v. Ruzindana*, was killed several days before he was to give testimony on behalf of the defence. Against such a factual backdrop, the Chamber has no objective facts to give credence to the subjective fears expressed by the Prosecutor's witness upon which the request for extraordinary protective measures is based.

19. The Defence further decries the protective measures the Prosecutor now seeks as a further abrogation of the rights of the Accused in this cases, which rights had already been severely limited by reason of this Chamber's decisions of 29 November 2001 and 5 December 2001 by permitting the Prosecutor to withhold disclosure of the full statements of her witnesses up until thirty-five days before their appearance at trial. By requesting to withhold unredacted statement of Witness A even beyond the thirty-five days prescribed by the previous decisions to a mere fifteen days before testimony will effectively prevent the Defence from mounting any real cross-examination of the witness.

#### **E. SUBMISSIONS OF THE DEFENCE FOR KABILIGI**

20. The Defence for Kabiligi levels primarily the same arguments advanced by his other colleagues against the Motion. First, after reciting the language of the various Rules upon which the Motion purports to be based, the Defence notes the palpable absence of allegations supporting the Prosecutor's expedient conclusion that "exceptional circumstances" exist with respect to Witness A warranting the unprecedented measures of additional protection she seeks. The Defence further notes that the Chamber's Decision of 5 December 2001 was rendered without the benefit of a principled finding that "exceptional circumstances" existed to warrant the grant of delayed disclosure of the identities and unredacted statements of all the witnesses for the prosecution.

21. The Defence further expresses surprise at the Prosecutor's bald claim pursuant to Rule 66 (C) that, more than five years after the arrest of the Accused, she continues to lead an investigation with respect to the same matter. The Defence contends that the Prosecutor's claim does not stand examination given that in all national jurisdictions all criminal investigations have a beginning and an end, which end is ordinarily marked by the commencement of the trial proceedings. In addition, the Defence protests that it is unfair for the Prosecutor to continue her investigations in this case after the commencement of trial.

## **II.**

### **DELIBERATIONS**

22. Rule 75(A) empowers the Chamber to limit the time when disclosure of witness statements and identity is to be made to the opposing party. At the outset, the Chamber notes that the following provisions of the Tribunal's Statute and Rules are applicable to the determination of the propriety of the additional measures of Protection the Prosecutor seeks in the Motion in respect to Witness A: Articles 19(1), 20(4)(b) and 21 of the Statute; and Rules 66, 69 and 75. The Chamber is mindful of its previous decision, namely, Decision and Scheduling Order on the Prosecution Motion for Harmonisation and Modification of Protective Measures for Witnesses, dated 5 December 2001, wherein it determined, among other things, that adequate protection would be afforded to the prosecution's protected witnesses if the Prosecutor were allowed to withhold the disclosure to the Defence of their unredacted statements and other identifying data until thirty-five days in advance of a given witness's testimony.

23. Some of the additional protective measures sought on behalf of Witness A are not, strictly speaking, "special" in that they are part of the ordinary compliment of protection measures accorded to all vulnerable witnesses for whom there has been a showing of

“exceptional circumstances” pursuant to Rule 69(A). Indeed, by reason of this Chamber’s Decision of 29 November 2001, the following four types of protective measures denominated by the letters (a), (b), (h), and (m) in paragraph No. 1 of the Prosecutor’s submissions above are already in place with respect to Witness A. Accordingly, there is no necessity for the Chamber to consider them anew. Similarly, there is no necessity for the Chamber to consider the propriety of the protective measures sought in items bearing the letters (g), (j) and (k), since all of these measures are implicit in or inevitably follow from the measures already in place. Finally, the order sought in item (n) in paragraph No. 1 above, is moot because the Chamber is not hearing oral argument of this Motion, thus obviating the need for an *in camera* proceeding.

24. In essence, there are only six measures of relief sought by the Prosecutor which legitimately merit consideration as “additional” or “special” measures of protection in regard to Witness A, namely, measures enumerated at (c); (d); (e); (f); (i); and (l) in paragraph No. 1 above. The Chamber will address the propriety of each of these additional measures in turn.

25. Whereas to the Prosecutor’s prayer that the contents of the Morissette Affidavit, including, the whereabouts of Witness A, remain forever confidential and not be disclosed to the Defence, in item (c) above, the Chamber is satisfied that the current security situation of Witness A as indicated in the Affidavit of Investigator Morissette provides sufficient basis upon which the relief may be granted. Witness A’s fears of reprisals for his anticipated testimony in this case as well as for the assistance he provided and hopes to provide to the Prosecutor in respect to ongoing investigations require that his whereabouts remain forever inviolate as against the Defence and the public. Lack of knowledge about the current whereabouts of the witness can in no way hamper the preparation of cross-examination of the witness. What is important are the substantive matters to which the witness will testify.

26. With respect to measure (c) in the Prosecutor’s list of requested relief, although the Defence is eloquent in its arguments that the Prosecutor must disclose the confidential contents of the Affidavit submitted in support of the Motion, the unequivocal provisions of Rule 66(C) militate in favour of the opposite conclusion. As a threshold matter, the Chamber notes that Rule 66(C) permits the Prosecutor to withhold from disclosure to the Defence and provide to the Chamber on an *ex parte* basis, information she believes “may prejudice further or ongoing investigations.” The Chamber believes that the contents of the Affidavit of Investigator Morissette adequately provide the factual predicate for the granting of the requested relief by demonstrating the unique position and significance of the information Witness A has already provided and will continue to provide in respect to several ongoing investigations by the Office of the Prosecutor into allegations of crimes falling within the subject matter jurisdiction of this Tribunal. The Chamber therefore rejects the Defence contention that nondisclosure of the confidential contents of the supporting Affidavit, which is likely to compromise the viability of the Prosecutor’s ongoing investigations, will deprecate the integrity of this Tribunal in providing a fair and equitable trial to the Accused or relegate the Defence to playing a merely illusory role in these trial proceedings.

27. The Prosecutor seeks in item (d) to disclose the redacted version of Witness A’s transcript statement thirty-five days before he is to appear at trial. As a related order, the Prosecutor seeks in item (e) to communicate the unredacted statement of Witness A no earlier than fifteen days before trial. These are the most contentious of the measures sought. The additional facts provided in the Motion do not present any cogent arguments or factual justification for extending the period during which Witness A is to remain anonymous to the



Defence. Significantly in this regard, the Prosecutor does not advance any factual or legal support for her request that the period of non-disclosure should be extended beyond the thirty-five days before testimony prescribed in the Decision of 5 December 2001. In particular, the Prosecutor does not indicate how or why the additional period of twenty days of anonymity is strictly necessary to ensure more effective protection of Witness A. See *Prosecutor v. Dusko Tadic*, IT-94-1, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses (10 August 1995). This lacunae in the Prosecutor's arguments is particularly troubling when one considers that she is asking for extraordinary measures of witness protection with respect to a witness she believes will provide unique and significant testimony at trial.

28. Under Articles 19, 20, and 21 of the Statute, the Tribunal must safeguard the rights of the Accused to a fair and equitable trial, including the right to be provided adequate time and facilities to prepare effective cross-examination of the witnesses against him. Accordingly, the Chamber declines to grant the additional measure of anonymity because the Prosecutor has provided no justification demonstrating that such additional measures are strictly necessary to ensure the security of Witness A. The Prosecutor shall be required to abide by the previous order, requiring her to disclose the unredacted version of Witness A's statements no later than thirty-five days before the witness is scheduled to appear to give testimony, save the present address and location of the witness.

29. Finally, with regard to item (i), the Chamber is convinced, on the basis of the confidential contents of the Affidavit, that given the absence of a fully-fledge witness protection program at the seat of the Tribunal in Arusha, Tanzania, the current security circumstances of Witness A, including real and objectively substantiated threats on his life, eminently entitle him to the additional protection that can be accorded to him by permitting him to testify via satellite on closed circuit television from the Hague, where the security facilities are more conducive to assuring the safety of the witness. The Chamber's Decision of 5 December 2001 determined the threshold level of protective measures to which the prosecutor's protected witnesses were entitled based upon a showing of exceptional circumstances. In the instant Motion, the Prosecutor, through the Affidavit and confidential supporting materials demonstrates further specific factual circumstances which purportedly entitle Witness A to an enhanced period during which his identity will not be disclosed to the Defence. The Chamber finds that the Affidavit supporting the Motion provides objective facts substantiating the basis of Witness A's fear for his safety and that of his family.

30. While the Chamber notes that Rule 73 arguably requires parties to file their response to motions no later than five days after receiving same, however, the Chamber is sensitised to the systemic delays the parties experience in receiving translations. Accordingly, in the exercise of its discretion, the Chamber will grant the Defence Motion for Leave to Rely on the Nsengiyumva Response. In addition, this relief permitting Nsengiyumva to rely on the untimely filed submissions will be extended to benefit all other Defendants.

31. Accordingly, for the foregoing reasons the Tribunal

**GRANTS** the Defence Motion For Leave to Rely on the Nsengiyumva Response, and further extends the application of this Order to the benefit of the other Defendants in this case.

**GRANTS** the Prosecutor's Motion to the following limited extent:

a. Pursuant to Rule 66 (C) the Prosecutor shall have the right to withhold from disclosure the Affidavit of Investigator Morissette which was tendered in support of the instant Motion;

b. Pursuant to 69 (A) the Prosecutor shall be permitted to introduce the testimony of Witness A via two-way closed circuit television from the Hague to be broadcast live to the seat of the Tribunal in Arusha, Tanzania in the presence of all the parties;


c. Pursuant to the Decision on the Prosecution Motion for Harmonisation and Modification of Protection Measures for Witnesses, dated 5 December, and Rule 66 (C) the Prosecutor shall disclose to the Defence in a language they understand the transcripts of the statements of Witness A, redacting out only those portions of the transcripts that are susceptible of revealing the whereabouts of Witness A or of compromising the ongoing investigations in which Witness A is providing assistance to the Prosecutor, no later than thirty-five (35) days before the date that Witness A is scheduled to give testimony via closed circuit television;

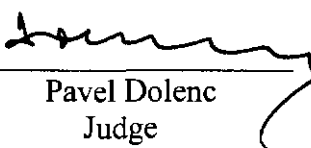
d. All hearings where Witness A is to present testimony that is likely to compromise the security of the ongoing investigations of the Prosecutor shall be closed to the public;


e. Pursuant to Rules 75 and 66 (C) the whereabouts of witness A shall never be disclosed to the public, the Defence or the Accused.

**DENIES** the Motion in all other respects.

Arusha, 5 June 2002

  
Lloyd G. Williams, Q.C.,  
Presiding Judge

  
Pavel Dolenc  
Judge

  
Andresa Vaz  
Judge

[Seal of the Tribunal]