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

UNITED NATIONS
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TRIAL CHAMBER III

Original: English

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

Registrar: Mr. Adama Dieng

Date: 10 July 2002

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

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Case No. ICTR-98-41-I

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

The Office of the Prosecutor:

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

Defence Counsel

Mr. Raphaël Constant
Mr. Jean Yaovi Degli
Mr. Kennedy Ogetto
Mr. Gershon 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 Witnesses ZA, ZF and ZZ filed on 12 February 2002, to which are attached the supporting Affidavits of Investigators Kadri, Foy and Sanogo, which were provided for *in camera* review only. (Collectively, hereinafter the "Motion");

CONSIDERING the Defence Response to the Motion, filed by Counsel for Nsengiyumva on 19 February 2002, in which the Defence adopts the legal authorities cited and submission made in the "Defence Response to the Prosecution Motion for Special Protective Measures for Witness A," filed on 21 January 2002; and the Defence Supplementary Book of Authorities in Support of the Defence Response to the Motion, filed 5 March 2002 (collectively hereinafter, the "Nsengiyumva Response");

CONSIDERING the Réponse de la Défense de Aloys Ntabakuze à la Requête du Procureur Intitulée "Prosecutor Motion for Special Protection Measures for Witnesses ZA, ZF, et ZZ," filed on 6 March 2002 (hereinafter, the "Ntabakuze Response");

CONSIDERING the Mémoire en Réplique, filed by the Defence for Bagosora on 19 March 2002 (hereinafter the "Bagosora Response");

CONSIDERING the Brief in Reply to the Prosecution Motion for Special Protective Measures for Witnesses ZA, ZF, and ZZ, filed by the Defence for Kabiligi on 19 March 2002 (hereinafter, the "Kabiligi Response");

RECALLING the Chamber's Decision on the Prosecution Motion for Harmonisation and Modification of Protective Measures for Witnesses, dated 29 November 2002 (hereinafter the "Decision of 29 November 2001"); and the Chamber's Decision and Scheduling Order On the Prosecution Motion For Harmonisation and Modification of Protective Measures For Witnesses, dated 5 December 2001, wherein the Chamber ordered the Prosecutor to disclose unredacted statements of all her protected witnesses no later than thirty-five days in advance of any given witness's date of testimony (hereinafter the "Decision of 5 December 2001").

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 filed the instant Motion requesting that the following eleven special protective measures be applied with respect to her protected witnesses known by the pseudonyms ZA, ZF and ZZ. The Motion requests the following eleven orders: (a) of non-disclosure of the affidavits of Investigators Kadri, Foy, and Sanogo, which describe the

security circumstances of the witnesses and to which are attached the respective unredacted versions of the witnesses' statements; (b) not requiring the Prosecutor to produce the redacted versions of the witnesses' statements in a form other than how they have already been disclosed; (c) permitting the Prosecutor to disclose the unredacted versions of the statements of the witnesses fifteen days before they are to give testimony in this case; (d) permitting the Prosecutor to withhold the disclosure of the identity of the witnesses until fifteen days before testimony; (e) enjoining the disclosure of the witnesses' current whereabouts and their particulars forever; (f) closure to the public of all proceedings where the protective measures for the witnesses are to be discussed; (g) closure to the public of all court proceedings wherein the witnesses give testimony that is likely to reveal either their own identities or that of their relatives; (h) closure to the public of all proceedings where the testimony of the subject witnesses may reveal information that may compromise the ongoing investigations of the Prosecutor; (i) concealment from the public of all records containing the identity of the witnesses; (j) prohibiting the recording of the images of the witnesses during the proceedings; and (k) an oral hearing of the Motion.

2. The Motion is founded upon the legal authority of Rules 66 (C), 69 (A) and 75. The Prosecutor contends that extra measures of protection, particularly, the request for extended period of anonymity, are necessary to secure the safety of the witnesses and integrity of her ongoing investigations.

3. As the factual basis for the relief she seeks in the Motion, the Prosecutor recites the following facts. First, the Prosecutor expostulates that the Chamber's Decision of 5 December 2001 necessitated the additional protective measures with respect to the above mentioned witnesses because it replaced the disclosure time periods prescribed in the Rules and in the protective measure orders which were harmonised and supplanted by the Decision. Second, claims the Prosecutor, it was necessary to submit the statements of Witnesses ZA, ZF, and ZF to an extraordinarily high degree of redaction to ensure their security and safety and to preserve the soundness of her ongoing investigations in this case and in other matters. The Prosecutor concedes that as a result of the necessarily high degree of redaction it is not surprising that the Defence finds the statements of these witnesses incomprehensible.

4. The Prosecutor indicates that in the current security circumstances, where the witnesses are afforded a limited measure of protection by the Office of the Prosecutor, primarily in the form of anonymity, the disclosure of the witnesses' identities or of their participation in the investigations conducted by the Prosecutor, will expose them to "serious danger and intimidation, including the strong possibility that they or members of their families may be killed." Without an order guaranteeing their extended anonymity, maintains the Prosecutor, the witnesses are "unlikely" to testify. Moreover, asserts the Prosecutor, the witnesses are entitled to the extended measure of anonymity because they qualify for such protection pursuant to the five-pronged test pronounced by the International Criminal Tribunal for the Former Yugoslavia in the matter of *Prosecutor v. Tadic*, IT-94-1, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses (10 August 1995).

5. Applying the *Tadic* factors, first the Prosecutor contends that the witnesses concerned suffer from real and justified fear that they or their families will be subject to retribution if their identity is revealed. Second, the Prosecutor asserts that the testimony of the witnesses here at issue bears sufficient indicia of relevance and importance to the Prosecutor's case so as to render it unfair to compel the Prosecutor to proceed without the benefit of their

testimony. In this vein, the Prosecutor posits that the witnesses will bring eyewitness testimony about the activities of the Accused that are directly relevant to the charges in the Indictments. More important, the Prosecutor submits that she may not be able to adduce sufficient evidence in support of one or more counts of the Indictments if she must proceed without the "crucial" evidence that Witnesses ZA, ZF and ZZ possess. Third, the Prosecutor avers that she is not aware of any *prima facie* evidence impugning the trustworthiness of the subject witnesses. Fourth, the inherent limitations of the protection afforded by the Witness and Victims Service Section of the Tribunal militates in favour of granting the relief she seeks. Fifth, and finally, the Prosecutor claims that the relief she seeks, i.e., the extended period where she would be allowed to withhold the disclosure of the identity to the Defence, is "strictly necessary," "minimally intrusive," and constitutes a "legitimate balancing" of the rights of witnesses and the rights of the Accused in the interest of justice. Since no other means exists to ensure the safety of the witnesses and to protect the integrity of her investigations, the Prosecutor claims that the Accused will suffer no undue or avoidable prejudice to their rights to a fair trial.

6. To provide further precedential support for the relief she seeks the Prosecutor relies on and provides for the Chamber a copy of the decision of Chamber I of this Tribunal in the matter of *The Prosecutor v. Nahimana, Ngeze and Barayagwiza*, ICTR-99-52-I, Decision on the Prosecutor's Application to Add Witness X to Its List of Witnesses and for Protective Measures (14 September 2001), in which the same relief was granted to the Prosecutor as is now sought in the instant Motion.

7. The Prosecutor also prays that the Chamber review *in camera* the supporting affidavits of Investigators Kadri, Foy and Sanogo and that they not be disclosed to the Defence because they contain the details of the whereabouts and current security situations of protected witness ZA, ZF and ZZ.

B. SUBMISSIONS OF THE DEFENCE FOR NSENGIYUMVA

8. In the Nsengiyumva Response, Counsel for the Accused first remonstrate that the Prosecutor has failed to disclose to the Defence the full statement for one of the subject witnesses, namely, ZA, as required by the provisions of Rule 66 (A) (ii). For this reason, contends the Defence they are not disposed to prepare an adequate defence to the Motion. With respect to Witness ZF, the Defence claims that the statement has been so overly redacted that its disclosure to the Defence constitutes a violation of the Tribunal's process as well as an abrogation of Article 20 (4) (b) of the Statute and Rule 66 (A) (ii). Finally, the Defence asserts that statement of Witness ZZ has yet to be disclosed to Counsel for the Accused Nsengiyumva despite the expiry of the time limit prescribed for such disclosure in Rule 66 (A) (ii). For these reasons, the Defence maintains, that the Prosecutor cannot be said to have fulfilled her disclosure obligations. Consequently, submits the Defence, the Chamber in upholding its mandate to ensure a fair trial, should disregard the statements of the subject witnesses and deem them inadmissible.

9. The Defence further claims, as a matter of overall policy, that the Chamber should not countenance the disclosure by the Prosecutor of statements in a form that is unintelligible, incomplete, and useless to the Defence in the preparation of their cases. To permit such disclosures with an "exceptionally high degree of redaction" which are not justified, would substantially prejudice the integrity of the proceedings in this Tribunal.

10. Similarly, the Defence contends that the Prosecutor has advanced no cogent reason why she should be permitted to withhold from the Defence the affidavits of the Investigators, Kadri, Foy and Sanogo, which describe the current security and safety circumstances of the subject witnesses, particularly when such affidavits provide the very factual basis for the relief she seeks in the Motion. Failure to disclose the supporting affidavits flouts principles of natural justice as subsumed in Article 20 (4) (a) of the Statute of the Tribunal, which requires that an accused be informed of the nature and cause of charges against him. Adherence to natural justice does not countenance that a court may receive evidence or hear representations of one party on an *ex parte* basis. Accordingly, any information that is to be used as the basis for this Chamber's adjudication on the issues raised in the Motion must necessarily be disclosed to the Defence to afford it a fair opportunity to comment upon it or to present contradicting information.

11. In further support of its contentions that the Prosecutor should not be allowed to withhold from the Defence the affidavits submitted in support of the Motion, the Defence invokes Rule 69 (C), which obliges the Prosecutor to demonstrate to the Chamber and to the Defence the "exceptional circumstances" warranting the protective measures she seeks. In this vein, the Defence demurs that the Prosecutor has failed to tender any factual evidence in support of her bare conclusion that the subject witnesses may be killed if their co-operation in her investigations were to be revealed. The Defence dismisses the Prosecutor's conclusion as lacking basis in fact, alarmist, and sensational.

C. SUBMISSION OF THE DEFENCE FOR NTABAKUZE

12. In the Ntabakuze Response, the Defence contends that it is left bereft of means to respond to the Motion without knowing the "circumstances" of the subject witnesses as they are explained in the supporting affidavits. In this connection, the Defence argues that the Prosecutor's claims about the fears and present precarious security circumstances of the witnesses are nothing more than pure conjecture, supposition and hypothesis. In addition, the Defence contends that the legal arguments the Prosecutor has invoked in support of her motion similarly lack specificity and are inapposite. For example, the Defence remonstrates that the two decisions in the matter *Nahimana, et al.*, are inapposite, because in that case the Chamber first conferred with the section for the protection of victims and witnesses to determine what measures of special protection were "strictly necessary," to ensure the safety of the witnesses concerned. In essence, claims the Defence, the conclusion and the relief sought by the Prosecutor would render the proceedings inequitable. In like manner, the Defence contends that the Prosecutor's reliance on Rule 66 (C) is misplaced because once the trial date is fixed it is presumed that all investigations in the matter of Ntabakuze terminated.

13. Invoking Articles 20 (4) (a) and (b) of the Statute, the Defence further warns that, if the Chamber were to grant the measures the Prosecutor seeks it would deprive the Defence of the tools necessary to exercise its fundamental right to have the means and time necessary to mount an effective cross-examination of the Witnesses ZA, ZF, and ZF. This would transform the proceedings into a "trial by ambush," because the Defence would not be able, in the short time allotted, to conduct the necessary investigations to uncover information that may be used to impeach the credibility of witnesses, particularly where the Prosecutor purports they are indispensable to her case. In this connection, the Defence protests what it perceives as the complete lack of logic in the arbitrary request of the Prosecutor that she be

permitted to withhold the disclosure of unredacted witness statements and identifying information until fifteen days before testimony.

14. Finally, at several passages the Defence level arguments revisiting and challenging the Chamber's previous decision which permitted the Prosecutor to withhold the unredacted statements of her witnesses from a date measured not from sixty days before the commencement of trial as required by Rule 69 (C), but from the anticipated date that the witness is to appear to testify. The Defence continues to maintain that it must have disclosure of unredacted witness statements before trial, as required by law, otherwise, claims the Defence, the trial proceedings will be inequitable.

D. SUBMISSION OF THE DEFENCE FOR BAGOSORA

15. In the Bagosora Response, Counsel for the Accused indicates that his arguments in opposition to the instant Motion are the same as those he levelled against the Prosecutor's Motion with respect to Witness A. Reiterating several of the same arguments of the Defence for Nsengiyumva and Ntabakuze, the Defence for Bagosora adds the following principal arguments.

16. First, the Defence remonstrates that none of the factual allegations the Prosecutor makes in support of the Motion are verifiable because the Prosecutor has not disclosed to the Defence the materials upon which the allegations are founded. Moreover, the Defence notes that there is a complete failure by the Prosecutor to demonstrate the "exceptional circumstances", as required under Rule 69 (C) which could justify the extraordinary measures of protection she seeks. In this vein, the Defence notes that the Prosecutor neglects to substantiate the allegation of the existence of the state of armed conflict in Rwanda or of how such a situation justifies the fears of the witnesses or how the measures she seeks will address these concerns.

17. Finally, the Defence for Bagosora adds that the Chamber by virtue of its decisions of 29 November and 5 December 2001 has already restricted the rights of the Accused wherein the Prosecutor is permitted to disclose the complete statements of her protected witnesses thirty-five days before the testimony of a given witness. The Defences posits that no legitimate interest would be served by permitting the Prosecutor to further withhold disclosure of the identity of Witnesses ZA, ZF, and ZZ until fifteen days before testimony. Notable in this regard is the Prosecutor's failure to indicate how the fifteen-day disclosure measure would foster greater safety of the witnesses. Such an order, expostulates the Defence, would accomplish nothing other than depriving the Defence of the time necessary to prepare its cross-examination of the subject witnesses.

E. SUBMISSION OF THE DEFENCE FOR KABILIGI

18. The Defence for Kabiligi joins in several of the arguments advanced by his colleagues representing the other three co-Accused. In addition the Defence advances the following arguments and observations.

19. Complaining about the Chambers Decisions of 29 November and 5 December 2001, the Defence decries what they perceive as an attempt by the Prosecutor to carve out yet another exception to the strict application of the requirements of Rule 69, which obligates her to disclose to the Defence unredacted statements for her protected witnesses before the

commencement of trial. By interposing the instant Motion, the Defence contends, the Prosecutor seeks nothing less than an absolute change in the rules regulating trial in favour of a trial by dissimulation, a game of “hide and go seek”.

20. Addressing the Prosecutor’s contention that it is necessary to conceal the identity of the witnesses from the public pursuant to Rule 66 (C), the Defence expresses some surprise that five years after the arrest of the Accused Kabiligi the Prosecutor has not yet terminated her investigation on the matter. This, states the Defence, throws into question the basis for the Indictment and causes some concern about the conditions under which Kabiligi will be judged since these continuing investigations may uncover last-minute-witnesses.

21. The Defence also adds that the Prosecutor never served it with copies of the redacted statements of ZA and ZF and that they have only recently, i.e., on 26 February 2002, received the redacted statement of ZZ.

II.

DELIBERATIONS

22. As a threshold matter, the Chamber notes that some of the “special” protective measures sought on behalf of Witnesses ZA, ZF, and ZZ are not, in fact, extraordinary 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). The Tribunal has on previous occasions accorded to all of the Prosecutor’s protected witnesses the following protective measures either by explicit order or by implication from an order: (f) closure to the public of all hearings where the protective measures are to be considered; (g) closure to the public of all trial proceedings where the protected witnesses are to give testimony that is susceptible to revealing their identities or that of their families; (i) non-disclosure to the public of all Tribunal records disclosing any identifying data; and (j) injunction preventing the recording of the witnesses’ image on video tape. These measures are already in place with respect to all protected witnesses of the Prosecutor by reason of previous orders of this Chamber. *See* Decision of 29 November 2001.

23. Accordingly there remain only seven protective measures sought by the Prosecutor which merit consideration as “special” measures of protection in regard to protected Witnesses ZA, ZF and ZZ, namely: (a) the request that the Defence *never* be made privy to the confidential contents of the affidavits of Investigators Kadri, Foy and Sanogo submitted in support of the Motion, which recites, among other information, the personal particulars of the witnesses current whereabouts and security situation and the exceptional circumstances warranting extended anonymity; (b) that the Prosecutor be not required to disclose another version of the redacted statements of the subject witnesses and (c) the prayer that the Prosecutor be permitted to withhold the unredacted versions of the witnesses’ statements until fifteen days in advance of the scheduled date that the subject witnesses are to appear to give testimony; and (d) permitting the Prosecutor to withhold until fifteen days before testimony the identity of the witnesses; (e) forever enjoining the revelation to the public and to the Defence the current whereabouts and personal particulars about the witnesses; (h) closure to the public of all proceedings wherein the testimony of the witnesses may prejudice ongoing investigations; and (k) an oral hearing of the Motion. The Chamber will address, in turn, the propriety of each of these additional measures of protection.

24. 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.

25. With respect to item (a) in the Prosecutor's list of requested relief, although the Defence maintain that dictates of natural justice and Article 20 (4) (a) of the Tribunal's Statute mandate that the Prosecutor must disclose the contents of the affidavits of the investigators submitted in support of the Motion, adherence to the object and purpose of provisions of Rule 66 (C) calls for the contrary result. 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" Although the affidavits of the investigators do not, strictly speaking, fall within the category of documents described in Rule 66 (A) or 66 (B), the Chamber believes that the facts contained within them qualify for protection under Rule 66 (C). Accordingly, the Chamber is satisfied, for the time being, that the contents of the affidavits of Investigators Kadri, Foy and Sanogo, insofar as they disclose information that may compromise both the safety of the witnesses concerned and the integrity of the Prosecutor's ongoing investigations, adequately qualify for the application of the relief envisioned in Rule 66 (C). In order to be entitled to the relief provided under Rule 66 (C) the Prosecutor must specifically demonstrate to the Chamber how the matters she seeks to withhold from disclosure to the Defence will compromise her ongoing investigations.

26. In the instant case the Prosecutor has made only a generalised showing that the information contained in the statements of Witnesses ZA, ZF and ZZ, may imperil her ongoing investigations. However, to the extent that the Prosecutor has not specifically demonstrated how her proposed redactions to the witnesses statements will ensure the integrity of her investigations, the Chamber invites the Prosecutor to submit the information contained in the redacted portions of the three witness statements to the Chamber for consideration *in camera* to determine the propriety pursuant to Rule 66 (C) of withholding the redacted matters from the Defence. In this connection, the Chamber also notes with some concern that it appears that the Prosecutor may have unilaterally redacted from the statements information she believes may endanger her ongoing investigations. Such redactions should only have been made with the prior leave of the Chamber pursuant to the mandates of Rule 66 (C).

27. For similar reasons, the Chamber finds that it is appropriate to grant the related relief requested in item (h) above, closing to the public proceedings where the witnesses testify about information that is likely to compromise the Prosecutor's ongoing investigations. Parenthetically, the Chamber notes that Rule 79 (A) (iii) preserves for the parties the right to request such relief at the appropriate time during the course of the proceedings.

28. As regards item (b) in the list above, the Prosecutor submits and the sworn Affidavits of Investigators Kadri, Sanogo and Foy aver that no lesser degree of redaction would ensure the continued safety of the witnesses and the integrity of ongoing investigations. As conceded by the Prosecutor, the Chamber finds that the redacted versions of the statements of these witnesses in the form already disclosed to the Defence reveals large portions of missing text. Although the exigencies of the witnesses' current situation may require some degree of redaction to the witnesses' statements to ensure their anonymity and continued safety as well as to protect the integrity of ongoing investigations in which these witnesses are co-operating, the Prosecutor has not satisfied the Chamber that such a *high* degree of redaction is strictly necessary to achieve those objectives. Accordingly, pursuant to Rules 75 and 66 (C), the

Prosecutor shall submit to the Chamber the unredacted versions of the witness statements indicating those portions she believes should be redacted in the interest of protecting the witnesses' safety and preserving the integrity of her ongoing investigations. Pending the receipt of the Prosecutor's proposed redactions together with an explanation of why such redactions are necessary, the Chamber is constrained to hold in abeyance the Defence request to receive a more integral copy of the witnesses statements in advance of the thirty-five days prescribed by this Chamber in the Decision of 5 December 2001.

29. With respect to Witness ZZ, the Chamber orders the immediate disclosure to the Defence for Nsengiyumva of this witness statement in its currently redacted form. Moreover, the Prosecutor is to forthwith, if he has not already done so, disclose the redacted copies of the statements of ZA and ZF in their current forms to the Defence for Kabiligi. To the extent the Chamber finds that there is no reason excusing the failure of the Prosecutor to make this disclosure on a timely basis as required by the provisions of Rule 66 (A) (ii), the Chamber censures the Prosecutor for that lapse.¹

30. Moreover, in connection with the requested relief in item (e) above, the Chamber is satisfied, on the basis of the confidential contents of the affidavit of Investigator Sanogo, the current security circumstances of Witnesses ZF, including threats on his life and that of his family members, which are stated in the Investigator's affidavit, eminently qualify him for the additional protection in the form of forbidding disclosure to the Defence and to the public of his current whereabouts and personal particulars. The Defence has advanced no satisfactory claim that the absence of such information will hinder them in preparing effective cross-examination of the subject witness. Witness ZF's fear of reprisal for his anticipated testimony in this case as well as for his co-operation with the Prosecutor in respect to ongoing investigations strictly require that his current whereabouts remain forever inviolate as against the Defence and the public. However, such extraordinary measures of protection are not justified with respect to Witnesses ZA and ZZ. Other than making bare claims that the witness's fear for his safety, the sworn Affidavits of Investigators Kadri and Foy, respectively, set forth no objective facts substantiating the seemingly subjective fears of witnesses ZA and ZZ.

31. Under Articles 19, 20 and 21 of the Statute, the Tribunal has a mandate to 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 them. In its Decision of 5 December 2001, the Chamber determined that thirty-five days in advance of testimony was the measure of anonymity that was strictly necessary to provide adequate protection to the Prosecutor's protected witnesses as a general matter. In the Motion, the Prosecutor adduces additional and more specific information about the current security and safety situations with respect to Witnesses ZA, ZF and ZZ. The additional facts do not, *per se*, justify extending the period wherein the witnesses are to remain anonymous to the Defence as requested in items (c) and (d) above. Notably in this vein, the Prosecutor does not submit a single argument demonstrating how or why an extension of the period of anonymity from thirty-five days to fifteen days in advance of testimony will provide some additional and strictly necessary measure of safety or security to the subject witnesses. *See Prosecutor v. Dusko Tadic*, IT-94-1, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses (10 August 1995). Accordingly, the Chamber shall not vary its

¹. The Affidavit of Investigator Foy indicates that the redacted version of the statements of Witness ZZ had not previously been disclosed but would be produced shortly.

existing order requiring the Prosecutor to disclose the unredacted version of statements of the subject witnesses no later than thirty-five days before the witness is to testify. *See* Decision of 5 December 2001.

32. Finally, the Chamber finds that the written submissions of the parties with respect to the Motion provide a sufficient basis upon which it may be decided. In accordance with Rule 73 (A), the Prosecutor's request for an oral hearing of the Motion is denied.

33. Accordingly, for the foregoing reasons the Tribunal **GRANTS** the Motion to the following limited extent:

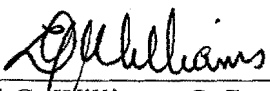
a. Pursuant to the Decision of 5 December 2001 and Rule 66 (C) and Rule 75 (A), within five (5) days of receiving notice of this Decision, the Prosecutor shall file with the Chamber the "unredacted" versions of the statements of Witnesses ZA, ZF and ZZ, indicating where she proposes to redact those portions of the transcripts or statements that are susceptible of revealing the current whereabouts of Witness ZF only, or of compromising the ongoing investigations in which Witnesses ZA, ZF and ZZ are providing assistance to the Prosecutor, and indicating for each of her proposed redactions how the information may compromise her further or ongoing investigations.

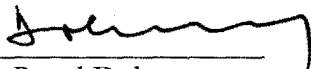
b. Pursuant to Rule 66 (C) The Prosecutor shall have the right to withhold from disclosure the Affidavit of Investigators Kadri, Foy and Sanogo that were tendered in support of the instant Motion until further orders of the Chamber;

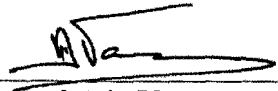
DENIES the Motion in all other respects; and further

ORDERS the Prosecutor to Disclose to the Defence the redacted version of the statements of Witness ZZ to the Defence for Nsengiyumva and the redacted statements of witnesses ZA and ZF to the Defence for Kabiligi no later than five (5) days of the receiving notice of this Decision.

Arusha, 10 July 2002


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


Pavel Dolenc
Judge


Andréia Vaz
Judge

[Seal of the Tribunal]