

ICTR-99-52-T
(30558-30556)

3055

13/12/2002



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

UNITED NATIONS
NATIONS UNIES

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie
Tel: 255 27 2504207-11 2504367-72 or 1 212 963 2850 Fax: 255 27 2504000/2504373 or 1 212 963 2848/49

TRIAL CHAMBER 1

Or: ENG.

Before: Judge Navanethem Pillay
Judge Erik Møse
Judge Asoka de Zoysa Gunawardana

Registry: Mr. Adama Dieng

Date of Order: 12 December 2002

JUDICIAL RECORDS ARCHIVES
ICTR
2002 DEC 13 P 2-32

**THE PROSECUTOR
V.
FERDINAND NAHIMANA,
JEAN-BOSCO BARAYAGWIZA
AND
HASSAN NGEZE**

CASE NO. ICTR-99-52-T

DECISION ON THE DEFENCE MOTION FOR HASSAN NGEZE TO COMPEL
DISCLOSURE OF STATEMENT AND SUPPORTING DOCUMENTS OF PROTECTED
WITNESS ZF

The Office of the Prosecutor

Mr Stephen Rapp
Ms Simone Monasebian
Ms Charity Kagwi
Mr. W. Egbe
Mr. W. Mubiru

Defence Counsel for Hassan Ngeze

Mr. John Floyd III
Mr. René Martel

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

SITTING as Trial Chamber I, composed of Judge Navanethem Pillay, presiding, Judge Erik Møse and Judge Asoka de Zoysa Gunawardana;

BEING SEIZED OF the Defence motion, filed by Defence Counsel for Hassan Ngeze on 20 November 2002, to compel disclosure of statement and supporting documents of protected Witness ZF, who is a witness in the case of *The Prosecutor v. Theoneste Bagosora, Gratien Kabiligi and Aloys Ntabakuze, Anatole Nsengiyumva*, ICTR-98-41-T (“the Military Case”) before Trial Chamber III;

CONSIDERING the Prosecutor’s ex parte motion filed on 20 November 2002, pursuant to Rule 66 (C) of the Rules of Procedure and Evidence (“the Rules”), in which the Prosecutor, inter alia, objects to the disclosure of Witness ZF’s statement because it contains confidential protected information and states that it is entirely irrelevant to the proceedings in the case against Ferdinand Nahimana, Hassan Ngeze and Jean Bosco Barayagwiza;

DECIDES AS FOLLOWS.

Upon perusal of the motion, Trial Chamber I adduced a request to Trial Chamber III, which made the protection order in respect of Witness ZF, for relaxation of the protection Order issued in respect of Witness ZF and for disclosure of the statement and supporting materials.

Judge Lloyd Williams, the Presiding Judge of Trial Chamber III, declined to allow the disclosure of the requested statement and other materials on the following grounds:

- a) That Witness ZF is a particularly vulnerable witness, who has been the subject of threats on his life and that of the members of his family and has been granted special protective measures, including the prohibition of the parties from disclosing his current identity and whereabouts to the public;
- b) That the request by the Defence of Hassan Ngeze to obtain the disclosure of supporting materials calls for the disclosure of the very information that is subject to this Trial Chamber’s non-disclosure order;


30856


c) That a great deal of Witness ZF's testimony was taken in closed session. Thus compelling the Prosecutor to disclose his statement and supporting materials would entail the wholesale revelation of sensitive information, which may place the witness or his family at risk for reprisals. Moreover, the reason proffered by counsel for Hassan Ngeze for requiring the requested materials, namely to corroborate the Defence theory that the RPF was responsible for the downing of the presidential plane is not, strictly speaking, a matter for the determination of personal criminal responsibility of any individual accused before this Tribunal.


In view of the opinion of Trial Chamber III, with which this Chamber generally concurs, the motion to compel the Prosecutor to disclose the witness statement and supporting documents of protected witness ZF is **HEREBY DENIED**.

**FOR THE FOREGOING REASONS, THE TRIBUNAL
DENIES THE DEFENCE MOTION TO DISCLOSE THE STATEMENT OF
WITNESS ZF AND THE SUPPORTING MATERIALS THERETO.**

Arusha, 12 December 2002.


Navanethem Pillay
Presiding Judge


Erik Møse
Judge


Asoka de Z. Gunawardana
Judge

Seal of the Tribunal

