

ICTR-99-52-T  
(30555-36552)  
13/12/2002

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International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

UNITED NATIONS  
NATIONS UNIES

TRIAL CHAMBER I

Original: English

**Before:** Judge Navanethem Pillay  
Judge Erik Møse  
Judge Asoka de Z. Gunawardana

**Registry:** Mr. A. Dieng

**Order of:** 13 December 2002

THE PROSECUTOR  
V.  
Ferdinand Nahimana,  
Hassan Ngeze  
and  
Jean-Bosco Barayagwiza  
(Case No. ICTR-99-52-T)

JUDICIAL RECORDS/ARCHIVES  
ICTR  
2002 DEC 13 P 2:31  
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**DECISION ON THE DEFENCE MOTION TO RE-INSTA TE THE LIST OF WITNESSES FOR FERDINAND NAHIMANA, PURSUANT TO RULE 73ter,**

**The Office of the Prosecutor**

Mr. Steven Rapp  
Ms. Simone Monasebian  
Ms. Charity Kagwi  
Mr. W. Egbe  
Mr. William Mubiru

**Defence Counsel for Nahimana:**

Mr. Jean-Marie Biju-Duval  
Ms. Diana Ellis

**Defence Counsel for Ngeze:**

Mr. John Clifford Floyd III  
Mr. René Martel

**Defence Counsel for Barayagwiza:**

Mr. Giacomo Barletta Caldarera

**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’s Application to reinstate the list of Defence witnesses for Ferdinand Nahimana (“the accused”), filed pursuant to Rule 73*ter*, on 11 December 2002, in which the Defence requests the addition of three specific factual witnesses to the list communicated on 22 August 2002, one witness from the Defence Team for the accused and four (4) Expert witnesses;

**CONSIDERING ALSO** the *ex parte* Application filed, on 11 December 2002, by the Accused’s Co-counsel for the non-disclosure of the identity of witness Y, pursuant to Rule 69 of the Rules;

**FOLLOWING** the status conferences held on 11 and 12 December 2002, where requests similar to those raised in the said motion were discussed;

**TAKING INTO ACCOUNT** Articles 19 and 20 of the Statute of the Tribunal and Rule 69 on witness protection, Rule 73*ter* concerning Pre-Defence Conferences and the Trial Chamber’s Decision of 3 October 2002;

**HAVING HEARD** the Parties in a closed session on 11 and 12 December 2002; and having received a written summary of additional information concerning the witnesses intended to be called by the Defence, filed on 11 December 2002;

**NOW DECIDES THE MATTER AS FOLLOWS:**

From the submission of the Defence and the Prosecutor’s objection to the Defence Application made during the status conference, the Chamber is aware of the motivation for adding witnesses SM, Y and D3 and is convinced that calling witness SM will not take the Prosecution by surprise since the Prosecution listed that witness among its original 97 witnesses it intended to call.

Furthermore, in respect of witness D3, the Chamber is of the view that the Prosecution will suffer no prejudice as the witness will not be testifying until the next court session in January 2003, which gives the Prosecution more time within which to prepare its case. The Chamber is, therefore, convinced that it will be in the interests of justice to allow the Defence to call witnesses SM, Y and D3;

Regarding the Expert Witnesses, the Chamber observes that the Defence has not complied with paragraphs 6(a) and (b) of its Decision of 3 October, where the Chamber orders the Defence to “provide the Trial Chamber, the Prosecutor and other Defence Counsel, the full statement of each intended Expert Witness to be called and a Curriculum Vitae in respect of each Expert witness, not less than twenty-one days prior to the date on which the Expert is expected to testify, as provided under Rule 94*bis*” and to “indicate whether any Expert witness has testified in other cases before the Tribunal and if so, copies of transcripts of that

Expert witness's testimony in those cases, shall be filed."<sup>1</sup> The Chamber reiterates that its Decision is still operational and therefore expects the Defence to comply fully with it.

On the issue of providing an independent counsel to Witness SM, the Chamber observes that the authority relied upon by the Defence in their motion, refers to a situation where the concerned Accused is under the jurisdiction of the Tribunal and has already been assigned Counsel. However, in the present case, Witness SM is from another jurisdiction for which the Tribunal is not responsible. Additionally, the Chamber notes that, since the inception of the Tribunal, detained witnesses have always appeared without counsel. Hence, the Chamber finds no good reason to change the *status quo*.

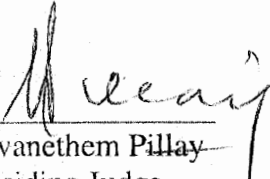
**FOR ALL THE ABOVE REASONS, THE TRIBUNAL,**

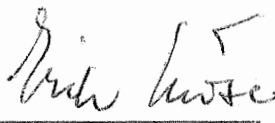
1. **GRANTS** leave to the Defence to vary its initial list of witnesses by adding Witnesses "SM" and "D3;"
2. **ORDERS THAT**, in accordance with paragraphs 1 of its Decision dated 3 October 2002, the Defence shall disclose to the Trial Chamber, the Prosecutor and other Defence Counsel, the name, identity, address and whereabouts of each witness intended to be called by the Defence. A list of the said witnesses shall be served by the Defence providing a factual summary and not merely the subject matter on which each witness will testify, the points in the indictment to which each witness will testify and the estimated time required for each witness;
3. **ORDERS** the Defence to comply with the Chamber's Decision of 3 October 2002 in respect of the Expert Witnesses. The Chamber will then make a determination whether or not they should be added to the Defence list.
4. **FOLLOWING** the ex parte hearing and considering the health concerns of Witness Y, **ORDERS THAT** his name shall not be disclosed to any party until 21 days when he is ready to testify.
5. **REITERATES** that its Decision of 3 October 2002 is still applicable in all other aspects to the added Defence witnesses.
6. **DECIDES** that should the Defence fail to comply with the deadlines imposed in this order, it will be barred from calling the witnesses concerned.
7. **DENIES** Defence's application for independent Counsel to represent the interests of Witness SM before the Chamber.


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<sup>1</sup> Decision On The Prosecutor's Motion to compel the Defence's Compliance with Rules 73ter dated 3 October 2002.

Arusha, 13 December 2002.

  
Navanethem Pillay  
Presiding Judge

  
Erik Møse  
Judge

  
Asoka de Z. Gunawardana  
Judge

The Seal of the Tribunal

