

Before: Judge Navanethem Pillay

OR: ENG

Registry: Mr. Antoine Kesia-Mbe Mindua

Decision of: 29 August 1998

**THE PROSECUTOR
VERSUS
AUGUSTIN BIZIMANA
EDOUARD KAREMERA
CALLIXTE NZABONIMANA
ANDRÉ RWAMAKUBA
MATHIEU NGIRUMPATSE
JOSEPH NZIROREA
FALICIEN KABUGA
JUVENAL KAJELIJELI**

ICTR-98-44-I

CONFIRMATION AND NON DISCLOSURE OF THE INDICTMENT

The Office of the Prosecutor:

Mr. James K. Stewart
Mr. Mohammed Dyak
Mr. Robert Petit

THE INTERNATIONAL CRIMINAL TRIBUNAL for RWANDA (the "TRIBUNAL"),

SITTING AS Judge Navanethem Pillay, designated by the President of the Tribunal according to Rule 28 of the Rules of Procedure and Evidence ("the Rules");

HAVING RECEIVED on 27 August 1998 from the Prosecutor an indictment against JOSEPH NZIROREA and seven others, together with supporting documentation, pursuant to Articles 17 and 18 of the Statute of the Tribunal, and Rule 47 of the Rules;

HAVING ALSO RECEIVED a motion pursuant to Rule 53 of the Rules wherein the Prosecutor requested an order that :

- the accused presently in detention and those to be arrested are to be served with copies of the redacted indictment until service has been effected on all the accused indicted;
- there shall be no disclosure of the indictment to the public until copies of the redacted indictment have been served on all the accused indicted or until the Tribunal orders otherwise;
- paragraphs 6.30 and 6.31 of the indictment remain undisclosed to all the accused and to the public until the Tribunal orders otherwise.

HAVING HEARD the Prosecutor during a hearing held on 28 August 1998, pursuant to Rule 47 (D) of the Rules;

AFTER HAVING DELIBERATED

1. Whereas the Prosecutor submitted that an order for nondisclosure of the indictment is necessary for the following reasons :

- the accused not yet in custody may flee and attempt to evade arrest if they learn of the existence and contents of the indictment;
- if the indictment is served on the accused presently in custody in its unredacted form information about the accused still at large would be communicated to them, thus making it difficult to arrest them;
- information contained in paragraphs 6.30 and 6.31 of the indictment, if disclosed to the public or the accused would reveal the identification of confidential informants who are still actively collaborating with the Office of the Prosecutor, if they are removed from their present locations would seriously jeopardise their safety and security and impair on going investigations conducted by the Office of the Prosecutor;
- Informant privilege is a well recognised principle of Law and it is in the interest of Justice, as well as in accordance with Rules 53(B) and (C) of the Rules that the identities of these Informants not be divulged to the Public or the accused, until such time a motion for witness protection can be heard by the Tribunal.

2. The Tribunal finds that there is sufficient material presented by the Prosecutor in the indictment and supporting documentation to provide reasonable grounds for believing that the

suspects have committed crimes within the jurisdiction of the Tribunal, and thereby convinced that a *prima facie* case has been established with respect to each and every count in the indictment in respect of each of the accused.

3. The Tribunal finds that there is merit in the Prosecutor's submissions in support of the motion for non disclosure.

HEREBY

(1) CONFIRMS the indictment dated 22 August 1998, submitted by the Prosecutor against the eight accused with respect to all counts;

(2) TAKES NOTE of the Prosecutor's request for the issue of Warrants of arrest in respect of four of the accused; and;

ORDERS,

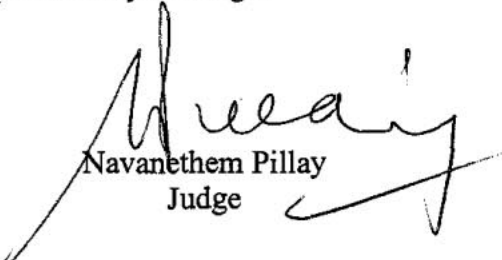
(3) pursuant to Rules 53(B) and (C) of the Rules, that there shall be no disclosure of the Indictment and Confirmation order and Warrants of arrest to the accused and to the public until such time as all the accused named therein have been arrested and transferred to the Tribunal's detention facility;

(4) pursuant to Rule 53 (C) of the Rules that, paragraphs 6.30 and 6.31 of the indictment be redacted and not disclosed to the accused or to the public until such time as the Tribunal orders otherwise;

(5) pursuant to Rule 53 (C) of the Rules, that the names and other identifying particulars of the accused still to be arrested, be redacted from the Indictment, Confirmation order and Warrants of arrest of other accused;

(6) that pending arrest and transfer to the Tribunal of all the accused, redacted copies of the Indictment, Confirmation orders and Warrants of arrest be served upon the accused for the purposes of initial appearances and other preliminary hearings.

Arusha, 29 August 1998


Navanethem Pillay
Judge

(Seal of the Tribunal)