

ICTR-2000-60-1

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International Criminal Tribunal for Rwanda

TRIAL CHAMBER III

OR: ENG

Before: Judge Pavel Dolenc

Registry: Dr. Agwu U. Okali
John Kiyeyeu

Date: 17 July 2000

THE PROSECUTOR
v.
PAUL BIENGIMANA

Case No. ICTR-2000-60-I

JUDICIAL RECORDS ARCHIVES
RECEIVED
ICTR

2000 JUL 17 P 2:53

**CONFIRMATION OF THE INDICTMENT AND
ORDER FOR NON-DISCLOSURE OF THE INDICTMENT
AND PROTECTION OF VICTIMS AND WITNESSES**

The Office of the Prosecutor:

Silvana Arbia
Simone Monasebian
Sola Adeboyejo

1. **THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (Tribunal),

SITTING as Judge Pavel Dolenc, designated by the President of the Tribunal pursuant to Rule 28 of the Tribunal's Rules of Procedure and Evidence (Rules);

HAVING RECEIVED on 10 July 2000 an indictment against Paul Bisengimana (the Accused), filed by the Prosecutor with the Registry in English only on the same date, pursuant Articles 17(4) and 18(1) of the Statute of the Tribunal (Statute) and Rules 47(A), (B) and (E) (the Indictment);

HAVING RECEIVED the supporting materials comprising of excerpts of statements of thirty-six witnesses, assigned pseudonyms, and portions of the following documents:

(a) Legislative Acts of Rwanda on the structure of the *communes*, dated 23 November 1963, 26 September 1974 and 30 January 1975; No. 10/75 of 11 March 1975 on the structure of the *préfectures*; and on the creation of the *gendarmerie*, dated 23 January 1974;

(b) G-2 Department circular, dated 21 September 1992;

(c) Reports of Special Rapporteurs R. Degni-Segui and B. W. Ndiaye;

(d) Final Report of the Commission of Experts, dated 9 December 1994;

(e) A letter to commander of UNAMIR, dated 30 December 1993;

(f) UNAMIR Information Notice, dated December 1994;

(g) The International Response to Conflict and Genocide, Vol. I, March 1996;

(h) A. Guichaoua : Les crises politiques au Burundi et au Rwanda, 1995;

BEING SEIZED of the "Prosecutor's Ex Parte Motion for Non-Disclosure of the Names of Witnesses and Other Identifying Information in the Indictment, Supporting Materials and Witness Statements" (Motion), filed 10 July 2000 in regard to the Accused;

HAVING HEARD the Prosecutor during an *ex parte* hearing held on 11 July 2000 pursuant to Rule 47(D);

NOW CONSIDERS the matter.

FINDINGS

2. The indictment charges the Accused with eleven different crimes within the Tribunal's jurisdiction, which are contained in twelve counts. The charges are genocide pursuant to Article 2(3)(a) of the Statute, or alternatively complicity in genocide pursuant to Article 2(3)(e), conspiracy to commit genocide pursuant to Article 2(3)(b), direct and public incitement to commit genocide pursuant to Article 2(3)(c), five crimes against humanity committed by murder, extermination, torture, rape, and other inhumane acts pursuant to Article 3(a), (b), (f), (g), and (i), respectively, and three war crimes committed by murder, outrages upon personal dignity, and pillage, pursuant Article 4(a), (e), and (f), respectively. Each count of the indictment charges the Accused with both individual criminal responsibility under Article 6(1)

of the Statute and command criminal responsibility under Article 6(3), except Counts 3 and 9. Count 3 (conspiracy to commit genocide) only charges the Accused with individual criminal responsibility under Article 6(1). Count 9 (crime against humanity-other inhumane acts) only charges the Accused with command criminal responsibility under Article 6(3).

3. The Motion (at para. 7), for purposes of facilitating the arrest and transfer of the Accused and of protecting the victims and witnesses, requests to the Tribunal to:

(a) Order that there be no public disclosure of the indictment or any part thereof, or information pertaining to it until it is served on the subject.

(b) Order non-disclosure of the names of witnesses and other identifying information in the supporting materials and witness statements to the accused and/or the Counsel for the accused.

(c) Order that the indictment be not [be] disclosed to the media or included in any public record of the Tribunal until such time when it is served on the accused.

(d) Order that the material in support of the indictment, witness statements and any other document to be disclosed to the accused be so disclosed upon redaction of any information that tend[s] or is likely to disclose the identity or address of witnesses.

(e) Order the non-disclosure of the names or related information of other co-suspects in the indictment and that the disclosure of Supporting Materials and Witness Statements be so disclosed only upon redaction of any information that tend[s] or is likely to disclose the identity or address of such co-suspect.

(f) Any other order or orders as the Confirming Judge or Trial Chamber may find just in the interest of justice.

4. The scope of the review of an indictment, pursuant to Article 18(1) of the Statute and Rule 47(E), is to examine for each count whether the alleged crime as set forth in the concise statement of facts falls within the jurisdiction of the Tribunal and whether there exists sufficient evidence to provide a reasonable ground for the Prosecutor's determination that a suspect committed a crime with which he is charged. The review is a *prima facie* test. Thus, a reviewing Judge is not authorised to enter into legal issues that could be in dispute with regard to the charges. For example, a reviewing judge may not inquire into the legal nature of criminal conspiracy, multiple charges, alternative charges as principal or as an accomplice on the same factual basis, etc.

5. Pursuant to Rule 53, a Judge, in exceptional circumstances and in the interests of justice, may order the non-disclosure to the public of any documents or information, including an indictment or part thereof, or any part of any documents or information until indictment is served on the accused or until further order.

6. Pursuant to Rule 75(A) and (B) and Rule 69(C), a Judge may order appropriate measures to safeguard the security of witnesses, including the non-disclosure of their identity or whereabouts or persons associated with them by expunging the names and identifying information from the Tribunal's records. In such a case the identity of witnesses shall be

disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence or prosecution.

7. The Tribunal finds that the Prosecutor has shown a sufficient basis to establish a *prima facie* case. This finding takes into consideration the elements of genocide, crimes against humanity, and war crimes. The general framework of these crimes includes the occurrence of a non-international armed conflict in Rwanda, widespread and systematic mass killings, mutilations, rapes, tortures, persecutions and other inhuman acts that took place against Tutsis with the intent to destroy them and Hutu political opponents, as persons protected by provisions of common Article 3 to the Geneva Conventions, on ethnic, racial or political grounds. This finding relies upon the respective reports of Special Rapporteurs, legislative acts of Rwanda, other documents and statements of witnesses, which the Prosecutor refers to as supporting materials, and also the previous judgements of this Tribunal.

8. With regard to the alleged specific acts and omissions of the Accused, the Tribunal finds that the Prosecutor has shown sufficient evidence to establish a *prima facie* case based on the witness statements.

9. With regard to the charge of conspiracy to commit genocide, the Tribunal notes that the Prosecutor has not presented supporting material that directly shows the formation of an express agreement. The Tribunal, however, finds that the mode and means with which the genocide allegedly was prepared and executed in Rwanda, and particularly in Gikoro *commune* where the Accused was *Bourgmestre*, and in neighbouring Bicumbi *commune*, show sufficient grounds to establish a *prima facie* case for the charge of conspiracy to commit genocide, and that the genocide was planned on the state and on the local level, including the participation of the Accused.

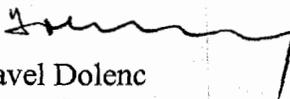
10. The Tribunal finds that the fact that the Accused has not been apprehended yet constitutes an exceptional circumstance under Rule 53(A). The Tribunal finds that the non-disclosure of the indictment and supporting materials to the public, including the media, until the indictment is served upon the Accused, is necessary to facilitate the arrest and transfer of the Accused. The temporary non-disclosure of the identities of the victims and witnesses to the public, the Accused, and his counsel is necessary to ensure the safety of victims and witnesses, which have been named in the indictment and who are named in the supporting materials. These protection measures extend to cover victims as well as witnesses in accordance with the Prosecutor's requests. See Motion, at para. 7(b), (d) and (f). These measures are in accordance with Rules 52(B) and (C), 75(A) and (B)(i)(a), (b), and (d), and 69(A) and (C).

11. Pursuant to Articles 15 and 17 of the Statute, only the Prosecutor can determine if there exists a sufficient basis to investigate and prepare an indictment against a certain person. The present indictment charges only one person, Paul Bisengimana. Indeed, the indictment's concise statement of facts mentions and implicates other persons in the alleged crimes, but it does not charge anyone else. The Tribunal, therefore, cannot establish who, beside the Accused, constitutes a "co-suspect" in the present case, and cannot order the non-disclosure of co-suspects, as sought in paragraph 7(e) the Motion.

12. For the above reasons, the Tribunal:

- (a) **CONFIRMS** the indictment submitted by the Prosecutor against Paul BISENGIMANA, dated 1 July 2000, and filed 10 July 2000, and all twelve counts;
- (b) **DIRECTS** the Registrar to prepare certified copies of the indictment bearing the seal of the Tribunal and translate the indictment into a language that the Accused understands;
- (c) **ORDERS** the non-disclosure to the public, including media or any public record, of the indictment or any part thereof or information pertaining to the indictment until it is served on the Accused;
- (d) **ORDERS** the non-disclosure to the Accused and/or his Counsel names or any other identifying information of the witnesses and victims from the supporting materials and witnesses' statements;
- (e) **ORDERS** that, until further ordered, the supporting materials, statements of witnesses and any other documents be disclosed to the Accused and/or his Counsel upon expunging the names and any information that tends or is likely to disclose the identity or address of witnesses and victims, as approved by the Tribunal, and upon assigning them pseudonyms.
- (f) **DENIES** the Motion in all other regards.

Arusha, 17 July 2000.


Pavel Dolenc
Judge

Seal of the Tribunal

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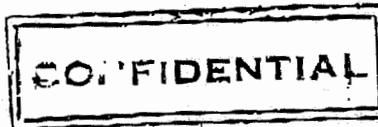


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