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Case No. ICTR-96-7-1

ICTR
CRIMINAL REGISTRY
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UNITED NATIONS NATIONS UNIES

1997 DEC -3 A 11: 27

International Criminal Tribunal for Rwanda

TRIAL CHAMBER 2

OR:ENG.

Before: Judge William H. Sekule Presiding
Judge Yakov Ostrovsky,
Judge Tafazzal Hossain Khan

Registry: Ms Prisca Nyambe

Decision of: 31 October 1997

**THE PROSECUTOR
VERSUS
THEONESTE BAGOSORA**

Case No. ICTR-96-7-1

**DECISION ON THE PROSECUTOR'S MOTION FOR THE PROTECTION
OF VICTIMS AND WITNESSES**

The Office of the Prosecutor:
Mr James Stewart
Ms Luc Cote
The Counsel for the Accused:
Mr. Raphael Constant

Case No. ICTR-96-7-1

THE TRIBUNAL,

SITTING AS Trial Chamber 2, composed of Judge William H. Sekule, Presiding, Judge Yakov Ostrovsky and Judge Tafazzal Hossain Khan

CONSIDERING the indictment submitted by the prosecutor dated 5th August 1996 against Theoneste Bagosora and confirmed on 10th August 1996 by Judge Lenart Aspegren pursuant to rule 47 of the Rules of Procedure and Evidence (the 'Rules') on the basis that there was sufficient evidence to provide reasonable grounds for believing that he had committed genocide, conspiracy to commit genocide, crimes against humanity and violations of Article 3 common to the 1949 Geneva Conventions and Additional Protocol II thereto;

CONSIDERING the initial appearance of the accused Theoneste Bagosora which took place on 20th February, 1997 and the decision confirming this indictment, signed by Judge Lennart Aspegren on 10th August 1996;

CONSIDERING ALSO that, on 10 April, 1997 the Prosecutor filed a motion before this trial Chamber requesting the chamber to issue an order for protective measures in respect of victims of and witnesses to the crimes allegedly committed by the accused as appearing in the indictment.

BEING NOW SEIZED by a supplementally motion filed under the provisions of article 19, 20, and 21 of the statute and rule 69 and 75 of the rules dated 21st October, 1997 which replace the preliminary motion filed by the Prosecutor on 10th April, 1997, seeking protective measures for victims and witnesses to crimes allegedly committed by the accused as appearing in the indictment.

CONSIDERING the provisions of Articles 19 and 21 of the Statute of the Tribunal and rules 69 and 75 of the Rules regarding the protection of victims and witnesses;

CONSIDERING the defence oral and Written response to the prosecutors motion dated 27th June, 1997.

TAKING NOTE of the supplementally brief in support of the motion of the prosecutor dated 21st October 1996 which highlights on the latest security situation in Rwanda.

HAVING HEARD the parties on 31 October 1997;

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THE ARGUMENTS

(1) the Prosecutor, invoking the provisions of Article 19, 20, and 21 of the Statute and rules 69 and 75 of the Rules for the protection of victims and witnesses, requested this Chamber to order for the protection and non disclosure of the identities of the prosecution witnesses and victims as well as for other related reliefs for witnesses in category A and B ie;

Category (a) Any person residing in Rwanda who may be called as a prosecution witness during the trial of the accused unless he waives the application of the protective measures available, after having been notified about them.

(b) Any person residing outside Rwanda who may be called as a prosecution witness during the trial of the accused ,who express fear for his or her safety and indicates to the office of the prosecutor his or her desire to have the protective measures extended to him or her.

(ii) in support of both her oral and written submissions Prosecutor relied on a number of UN reports and an affidavit of Mr. Oyvind Olsen, the commander of investigations in the office of the prosecutor in Kigali dated 20th March, 1997 which is supported by a supplementary affidavit dated 21 October, 1997 which suggests that the security situation in Rwanda is volatile and that, by January through December 1996, 227 genocide survivors and their associates were killed and 56 were injured and that Gisenyi prefecture, the birth place of the accused is also insecure.

(iii) the defence counsel on his part in paragraph 52 of the objection to the motion filed by the prosecutor ,invited this Chamber to reject all except prayers made in paragraph 3 and 5 of the prosecutors motion which deals with prohibition of disclosure to the public and the media.

DELIBERATIONS

On the matter of the request for the protection and non-disclosure of the identity of victims and witnesses to the public and the media AND on the matter of the request for the temporary non- disclosure of the identity of prosecution witnesses to the defence until such time as they are under the protection of the Tribunal.

(i) In the light of reports and submissions made with regard to the security situation in Rwanda and the neighbouring countries, the Chamber is of the opinion that the security situation is precarious, unstable and volatile posing a risk to victims and potential witnesses. This trial Chamber observes that, such a situation would substantially prejudice the rights of the parties to the case.

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(ii) rule 75 provides, *inter alia*, that a Judge or a Chamber may *proprio motu* or at the request of either party, or of the victims or witnesses concerned, or the victims and witnesses unit (the "VWU"), order appropriate measures for the protection of victims and witnesses, provided that, these measures are consistent with the rights of the accused. In that vein of argument, the trial chamber is of the considered opinion that the prosecutor should disclose the identity of its witnesses in sufficient time prior to the trial to allow the defence to rebut any evidence that prosecution witnesses may raise;

(iii) by virtue of Article 21 of the statute and rule 75 of the Rules and in order to ensure a fair trial to the accused, the trial chamber is obliged to take steps to provide for all appropriate and possible measures to protect the victims and witnesses provided always that, the measures sought will not hinder the due process of the law.

(iv) the defence emphasised on the need for the prosecution to lay a basis for the measures sought. The trial Chamber is of the opinion that the prosecution in its oral submissions has provided the relevant basis in support of her request;

(v) The defence has not generally opposed the prosecutors requests for protective measures of her witnesses and that, the measures sought by the prosecutor are pertinent for justice to be achieved.

(vi) MINDFUL of this very Chamber's previous decisions on similar issues, the trial chamber is of the view that, as much as possible, similar protective measures in this motion should be granted to the victims and prosecution witnesses unless the witness or victim waives the right to avail themselves to such measures.

NOW THEREFORE

FOR THESE REASONS

THE TRIAL CHAMBER DECIDES:-

- (i) that the prosecutor should furnish particulars of the victims and witnesses in category A and B above, to the victims and witnesses support unit (VWU) thereby enabling the unit to initiate appropriate steps to implement the protective measures. Names and addresses of persons for whom pseudonyms were used in the indictment and supporting documentation, as well as their location and all other identifying information shall not be disclosed to the public or to the media.

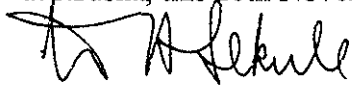
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- (ii) The names, addresses and other identifying information of the victims and witnesses, as well as their locations, shall be kept under the seal of the Tribunal and shall not be disclosed to the defence until further orders .
- (iii) The names ,addresses , whereabouts of the prosecution witnesses and any other information identifying them shall be kept under the seal of the Tribunal and not included in any of the public records of the Tribunal.
- (iv) The names, addresses, whereabouts of the prosecution witnesses and any other information identifying them shall not be disclosed to the public or the media.
- (v) The defence shall not reveal to anyone except to their immediate team, the names addresses, whereabouts of the prosecution witnesses and any other information identifying them once such information has been revealed to it by the prosecution.
- (vi) The public and the media shall not take photographs ,make audio and video recording or sketches of the prosecution witnesses who are under the protection of the tribunal, without authorisation.
- (vii) the prosecutor shall be permitted to designate pseudonyms for each of its witnesses for use during any communication inter partes and to the public as well as in the official proceedings of the Tribunal.
- (viii) the defence and or its representatives who are acting pursuant to their instructions shall notify the prosecutor of any request for contacting the prosecution witnesses, and the prosecutor shall make arrangement for such contacts.
- (ix) pursuant to rule 75 of the Rules, the prosecutor is at liberty to request a judge or the trial chamber, in cases where the names, addresses and other identifying information of victims and witnesses, as well as their locations appear in any existing files at the Tribunal, to have such information expunged from the said files.

Delivered orally on 31st October 1997

Done,

at Arusha, this 26th November 1997



William H. Sekule
Presiding Judge



Yakov Ostrovsky
Judge



Tafazzal Hossain Khan
Judge

(Seal of the Tribunal)

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