

ICTR-95-1A-I
27-SEP-1999
(271-267)

271
A.

Case No. ICTR-95-1A-I



UNITED NATIONS
NATIONS UNIES



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

TRIAL CHAMBER I

OR:ENG

Before: Judge Erik Møse, Presiding
Judge Asoka de Z. Gunawardana
Judge Mehmet Güney

Registry: Ms Marianne Ben Salimo

Decision of: 17 September 1999

THE PROSECUTOR
VERSUS
IGNACE BAGILISHEMA

Case No. ICTR-95-1A-I

1999 SEP 27 P 3: 27
ICTR
ORIGINAL REGISTRY
RECEIVED

DECISION ON THE PROSECUTOR'S MOTION
FOR WITNESS PROTECTION

The Office of the Prosecutor:

Ms Jane Anywar Adong
Mr. Charles Adeogun-Phillips
Mr. Wallace Kapaya

Counsel for the Accused:

Mr. François Roux

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS	
NAME / NOM:	AMINATIA L.R. N'GUM
SIGNATURE:	<i>[Signature]</i> DATE: 28/09/99

6. h.

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber I, composed of Judge Erik Møse, Presiding, Judge Asoka de Z. Gunawardana and Judge Mehmet Güney;

BEING SEIZED of a motion, filed on 15 June 1999 by the Prosecutor, for orders for protective measures for victims and witnesses to crimes alleged in the indictment;

HAVING RECEIVED, on 13 September 1999, a Defence reply to the Prosecutor's request for orders for protective measures for victims and witnesses to crimes alleged in the indictment;

HAVING HEARD the parties at an audience held to that end on 16 September 1999;

WHEREAS during the hearing the Prosecutor withdrew measures k, l, and m from her request and disclosed the materials marked 'confidential' to the Defence;

WHEREAS consequently the Defence did not object to the measures as sought by the Prosecutor;

CONSIDERING the Prosecutor's brief in support of the motion, the Affidavits of Maxwell Nkole and Remi Abdulrahman, and the annexes attached thereto;

— TAKING INTO ACCOUNT Articles 20 and 21 of the Statute and Rules 66, 69 and 75 of the Rules of Procedure and Evidence (the "Rules");

AFTER HAVING DELIBERATED,**The Legal Basis**

1. The Prosecutor brought her motion before the Tribunal based on the provisions of Article 21 of the Statute and Rules 69 and 75 of the Rules.

2. The said Article 21 of the Statute obliges the Tribunal to provide in its rules for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity. Thereupon, Rule 75 of the Rules 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 of the Tribunal's Victims and Witnesses Unit, order appropriate measures for the privacy and protection of victims or witnesses, provided that these measures are consistent with the rights of the accused.

3. The Tribunal wishes to reiterate that, in accordance with Article 20(4)(e) of the Statute, the accused has the right to examine, or have examined, the Prosecutor's witnesses.

4. Thus, the Tribunal, being mindful at all times of guaranteeing the full respect of the rights

Case No. ICTR-95-1A-I

of the accused, shall therefore order, pursuant to Rule 75 of the Rules, any appropriate measures for the protection of victims and witnesses so as to ensure a fair determination of the matter before it. However, this is subject to the proviso that, in accordance with Rule 69(C), the identity of the victims and witnesses shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the Prosecution and the Defence.

5. It should be noted, though, that measures for the protection of witnesses are granted on a case by case basis, and take effect once the particulars and locations of the witnesses have been forwarded to the Witnesses and Victims Support Unit.

6. The Tribunal recalls that the appropriateness of protective measures for witnesses should not be based solely on the representations of the parties. Indeed, their appropriateness needs also to be evaluated in the context of the entire security situation affecting the concerned witnesses.

7. In this case, notice is taken of the annexures presented by the Prosecutor in support of her motion, namely, the United Nations High Commissioner for Human Rights Field Operation in Rwanda ("HRFOR") Status Report (HRFOR/STRPT/33/1/24 January 1997/E), the HRFOR Status Report (HRFOR/STRPT/56/1/28 August 1997/E), the HRFOR Status Report of 27 February 1997, and other concordant reports issued by various sources which all tend to describe a particularly volatile security situation at present in Rwanda and in neighbouring countries. This volatile security situation risks to endanger the lives of those persons who may have, in one way or another, borne witness to the events of 1994 in Rwanda.

8. The Tribunal sees the fears of the Prosecutor as being well founded. Therefore, taking into account the representations of the parties and being aware of the present security situation affecting the prosecution witnesses, it considers there to be sufficient factual grounds for the protective measures sought by the Prosecutor.

On the non-disclosure of the identity of a witness

9. The Prosecutor in her motion requests for the non-disclosure of the identity of prosecution witnesses.

10. Pursuant to Rule 69 of the Rules, under exceptional circumstances, either of the Parties may apply to a Trial Chamber to order the non-disclosure of the identity of a witness who may be in danger or at risk, until the Chamber decides otherwise. However, this is subject to Rule 69(C) whereby the identity of the witness shall be disclosed in sufficient time prior to trial to allow adequate time for preparation of the defence.

11. On the question of anonymity, the Tribunal takes note of the reasoning of the Trial Chamber of the International Tribunal for the Former Yugoslavia (the "ICTY") in its Decision of 10 August 1995 on the prosecutor's motion for protective measures for victims and witnesses, in the case The Prosecutor versus Tadić (IT-94-I-T). It was held therein that for a witness to qualify for protection of his identity from disclosure to the public and media, there must be real fear for the safety of the witness or her or his family, and that there must always be an objective

J. K.

Case No. ICTR-95-1A-I

basis to underscore this fear. Furthermore, the ICTY in the case held that the judicial concern motivating a non-disclosure order may be based on fears expressed by persons other than the witness.

12. In the present case, the Tribunal, following this reasoning, and considering the submissions of the Prosecutor and the concurrence of the Defence in this matter, is of the opinion that the arguments presented in support of the Prosecutor's motion do demonstrate the existence of exceptional circumstances warranting the non-disclosure of the identity of witnesses deemed to be in danger or at risk.

FOR ALL THE ABOVE REASONS,

THE TRIBUNAL

HEREBY DECIDES the following:

1. The Prosecutor shall furnish the Registrar with all the particulars pertaining to her affected witnesses.
2. The Registrar, after receiving the information concerning the witnesses from the Prosecutor, shall take all possible measures to ensure the availability of the said witnesses to the Tribunal.
3. The names and identities of the Prosecutor's witnesses shall be forwarded by the Prosecutor to the Registrar only in confidence, and they shall not be disclosed to the media or the public until such time as the said witnesses are under the protection of the Tribunal.
4. The Registrar shall not reveal the names and identities of these witnesses either to the media or the public without the express consent of the Prosecutor.
5. In cases where the names, addresses, locations and other identifying information of the Prosecutor's witnesses appear in the Tribunal's public records, this information shall be expunged from the said records.
6. The names, addresses, locations and other identifying information of the Prosecutor's witnesses contained in the supporting materials of the Prosecutor shall not be disclosed to the public or media.
7. The public and the media shall not make audio or video recordings or broadcastings and shall not take photographs or make sketches of the Prosecutor's witnesses who are under the protection of the Tribunal, without its authorization.

h. h. v.

Case No. ICTR-95-1A-I

8. The Prosecutor shall be permitted to designate pseudonyms for each of its witnesses for use in the proceedings of the Tribunal, during discussions between the parties, in public and official proceedings.
9. The Defence Counsel and any representative acting on his behalf shall notify the Prosecutor prior to any contact with any of the Prosecutor's witnesses, and the Prosecutor shall make arrangements for such contacts.
10. The Prosecutor is authorized to withhold disclosure to the Defence of the identity of the witnesses and to temporarily redact their names, addresses, locations and other identifying information from the supporting material on file with the Registry, until such time as the said witnesses are under the protection of the Tribunal.

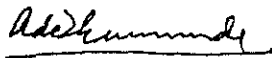
RECALLS that, pursuant to Rule 69(C) of the Rules, the identity of the witnesses shall be disclosed by the Prosecutor to the Defence in sufficient time prior to the trial to allow adequate time for preparation of the defence.

DIRECTS the Registrar to execute this decision immediately and to report back in writing to the Trial Chamber on its implementation.

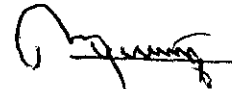
Arusha, 17 September 1999.



Erik Møse
Presiding Judge



Asoka de Z. Gunawardana
Judge



Mehmet Güney
Judge