

ICTR-95-1A-T  
(16-DEC-1999)  
(562-559)

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UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER I

OR: ENG

Before: Judge Erik Møse

Registry: Ms Marianne Ben Salimo

Decision of: 16 December 1999

ICTR  
CRIMINAL REGISTRY  
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THE PROSECUTOR  
v.  
IGNACE BAGILISHEMA

Case No. ICTR-95-1A-T

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DECISION ON THE DEFENCE MOTION  
FOR WITNESS PROTECTION

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The Office of the Prosecutor:  
Ms Jane Anywar Adong  
Mr Charles Phillips  
Mr Wallace Kapaya

Counsel for the Accused:  
Mr François Roux  
Mr Maroufa Diabira  
Ms Héleyn Uñac

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the 'TRIBUNAL'),**

**SITTING** as Trial Chamber I, composed of Judge Erik Møse, pursuant to Rule 75(A) of the Rules of Procedure and Evidence (the Rules);

**CONSIDERING** the motion, dated 30 November 1999, by the Defence, for orders for protective measures for defence witnesses and the Prosecution's brief in reply thereto, dated 13 December 1999;

**CONSIDERING** Articles 20 and 21 of the Statute (the "Statute") and Rules 66, 69 and 75 of the Rules;

**HEREBY DECIDES** upon the said defence motion.

**The Legal Basis**

1. The defence motion is based on Article 21 of the Statute and Rules 69 and 75 of the Rules.
2. 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 witnesses identity. To this end, 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 Support 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 shall 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, in order to allow adequate time for preparation of the prosecution and the defence cases.
4. 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. In order to determine the appropriateness of such protective measures, the Tribunal shall evaluate the general security situation affecting the witnesses concerned.
5. The defence motion is well founded and the Tribunal considers that there are good grounds for protective measures for defence witnesses.

### **The Non-Disclosure of the Identity of Witnesses**

6. The Defence requests non-disclosure of the identity of defence witnesses.
7. 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 in order to allow adequate time for the preparation of the prosecution case.
8. In relation to the non-disclosure of witness identity, the Tribunal concurs with the reasoning of the International Criminal Tribunal for the Former Yugoslavia in its Decision of 10 August 1995 on the Prosecutor's motion for protective measures for victims and witnesses, in The Prosecutor versus Tadic (IT-94-I-T). In that case, the Trial Chamber held that for a witness to qualify for the 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 basis to underscore this fear. It further held that the judicial concern motivating a non-disclosure order may be based on fears expressed by persons other than the witness.
9. In the present case, the Tribunal finds that there exist exceptional circumstances warranting the non-disclosure of the identity of witnesses.
10. The measures requested by the Defence have been examined in view of the submissions of the Prosecution and the current practice of the Tribunal. Defence requests in paragraphs (e) and (f) of the motion are not granted. The remaining requests of the Defence are accepted, although requests in paragraphs (h) and (i) are granted only in modified form.

**FOR ALL THE ABOVE REASONS,**

**THE TRIBUNAL**

**HEREBY ORDERS that:**

1. The names and identities of the protected defence witnesses shall be forwarded by the Defence to the Registrar in confidence.
2. The names, addresses, whereabouts and other identifying information concerning protected defence witnesses, shall be sealed by the Registry and not included in any Tribunal records.
3. In cases where the names, addresses, locations and other identifying information of the protected defence witnesses appear in the Tribunal's public records, this information shall be expunged from the said records.

4. The names, addresses, locations and other identifying information of the protected defence witnesses contained in the materials of the Defence, shall not be disclosed to the public or to the media.
5. The public and the media shall not make audio or video recordings or broadcastings and shall not take photographs or make sketches of the protected defence witnesses.
6. The Defence is permitted to designate pseudonyms for each of its protected witnesses for use in the proceedings of the Tribunal or during discussions between the parties.
7. The Prosecution team and any representative acting on its behalf, shall notify the Defence prior to any contact with any of the protected defence witnesses, and the Defence shall make arrangements for such contacts.
8. The Defence is authorised to withhold disclosure to the Prosecution, of the identity of the protected witnesses and to temporarily redact their names, addresses, locations and other identifying information from any material on file with the Registry, until such time as the said witnesses are under the protection of the Tribunal.
9. The identity of the protected witnesses shall be disclosed by the Defence to the Prosecution, in sufficient time in order to allow adequate time for the preparation of the Prosecution's case.
10. These orders may only be varied with leave of the Trial Chamber.

Arusha, 16 December 1999.



Erik Møse  
Judge