



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

ICTR-95-1B-I
9-MARCH-2000
(619-614)
TRIAL CHAMBER III

619
[Signature]

ORIG: Eng.

Before: Judge Lloyd George Williams, Presiding
Judge Yakov Ostrovsky
Judge Pavel Dolenc

Registrar: Dr. Agwu Ukiwe Okali

Decision of: 9 March 2000

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THE PROSECUTOR
versus
MIKA MUHIMANA

Case No. ICTR-95-1B-I

DECISION ON THE PROSECUTOR'S MOTION FOR ORDERS FOR
PROTECTIVE MEASURES FOR VICTIMS AND WITNESSES

Counsel for the Prosecutor:
Mr. Charles Adeogun-Phillips
Mr. Wallace Kapaya
Ms. Boi-Tia Stevens

Counsel for Mika Muhimana:
Prof. Nyabirungu mwene Songa

Case No. ICTR-95-1B-I

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”)

SITTING as Trial Chamber III, composed of Presiding Judge Lloyd George Williams, Judge Yakov Ostrovsky, and Judge Pavel Dolenc (the “Trial Chamber” or the “Chamber”);

NOTING the Indictment dated and filed on 22 November 1995 against Mika Muhimana (the “Accused”) and confirmed on 28 November 1995 by Judge Navanethem Pillay;

BEING NOW SEIZED of a Motion by the Office of the Prosecutor for Orders for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, filed on 13 December 1999 (the “Motion”);

HAVING HEARD the arguments of the parties on 2 March 2000.

PLEADINGS BY THE PARTIES

Prosecutor’s Submissions

1. The Prosecutor submitted that the persons for whom protection is sought fall into three categories: victims and potential prosecution witnesses who reside in Rwanda and who have not affirmatively waived their right to protective measures; victims and potential prosecution witnesses who reside outside Rwanda in other African countries and who have not affirmatively waived their right to protective measures; and victims and potential prosecution witnesses who reside outside the continent of Africa and who have requested that they be granted protective measures.
2. For the victims and potential prosecution witnesses who fall into these categories, the Prosecutor, in the Motion, requested the following orders:
 - a. An order requiring that the names, addresses, whereabouts of, and other identifying information concerning all victims and potential prosecution witnesses falling into the categories specified in paragraph 2 of the Motion (paragraph 1 above) be sealed by the Registry and not included in any records of the Tribunal.
 - b. An order that the names, addresses, whereabouts of, and other identifying information concerning all victims and potential prosecution witnesses falling into the categories specified in paragraph 2 of the Motion (paragraph 1 above) be communicated only to the Victims and Witness Support Unit personnel by the Registry in accordance with the established procedure and only in order to implement protection measures for these individuals.
 - c. An order requiring, to the extent that any names, addresses, whereabouts of, and other identifying information concerning such victims and potential prosecution witnesses is contained in existing records of the Tribunal, that such identifying information be expunged from those documents.

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d. An order prohibiting the disclosure to the public or the media, of the names, addresses, whereabouts of, and other identifying data in the supporting material or any other information on file with the Registry, or any other information which would reveal the identity of such victims and potential prosecution witnesses, and this order shall remain in effect after the termination of this trial.

e. An order prohibiting the Defence and the Accused from sharing, discussing or revealing, directly or indirectly, any document or any information contained in any document, or any other information which could reveal or lead to the identification of any individual falling into the categories specified in paragraph 2 of the Motion (paragraph 1 above) to any person or entity other than the Accused, assigned Counsel or other persons working on the immediate Defence team, as designated by the assigned Counsel or the Accused.

f. An order requiring the Defence to provide to the Trial Chamber and the Prosecutor a designation of all persons working on the immediate Defence team who will, pursuant to paragraph 3(e) of the Motion (paragraph 2(e) above), have access to any information referred to in paragraphs 3(a) through 3(d) of the Motion (paragraphs 2(a) through 2(d) above) and requiring Defence Counsel to advise the Chamber in writing of any change in the composition of this team and requiring Defence Counsel to ensure that any member departing from the Defence team has remitted all documents and information that could lead to the identification of persons falling into the categories specified in paragraph 2 of the Motion (paragraph 1 above).

g. An order prohibiting the photographing, audio and/or video recording, or sketching of any prosecution witness at any time or place without leave of the Trial Chamber and parties.

h. An order prohibiting the disclosure to the Defence of the names, addresses, whereabouts of, and any other identifying data which would reveal the identities of victims or potential prosecution witnesses, and any information in the supporting material on file with the Registry, until such time as the Trial Chamber is assured that the witnesses have been afforded an adequate mechanism for protection and allowing the Prosecutor to disclose any material provided to the Defence in a redacted form until such a mechanism is in place; and in any event, that the Prosecutor is not required to reveal the identifying data to the Defence sooner than seven (7) days before the victim or witness is to testify at trial unless the Chamber decides otherwise pursuant to Rule 69(A) of the Rules.

i. An order that the Accused or his Defence Counsel shall make a written request, on reasonable notice to the Prosecution, to the Trial Chamber or a Judge thereof, to contact any protected victim or potential prosecution witness or any relative of such person. At the direction of the Trial Chamber or a Judge thereof, and with the consent of such protected person or the parents or guardian of that person if that person is under the age of 18, to an interview by the Defence, the Prosecution shall undertake the necessary

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arrangements to facilitate such contact.

- j. An order requiring that the Prosecutor designate a pseudonym for each prosecution witness, which will be used whenever referring to each such witness in Tribunal proceedings, communications and discussions between the parties to the trial, and the public until such time that the witness decides otherwise.
3. At the hearing, the Prosecutor modified her request made in paragraph 3(f) of the Motion (paragraph 2(f) above) to require Defence to provide a designation of all persons working on the immediate Defence team with access to certain information to the Registrar rather than to the Prosecutor and the Trial Chamber.
 4. Additionally, the Prosecutor modified her request set out in paragraph 3(h) of the Motion (paragraph 2(h) above) so that the Prosecutor would not be required to reveal the identifying data to the Defence sooner than twenty-one (21) days, rather than seven (7) days, before the witness is to testify at trial.

Defence Response

1. The Defence objected only to the seven (7) day period proposed in the Prosecutor's request for an order for non-disclosure of identifying data, made in paragraph 3(h) of the Motion (paragraph 2(h) of the Prosecutor's Submissions above). Once the Prosecutor agreed to modify the seven day period to twenty-one (21) days, the Defence raised no objections to the protective measures sought by the Prosecutor.

DELIBERATIONS

1. Article 21 of the Statute of the Tribunal (the "Statute") and Rules 69 and 75 of the Rules of Procedure and Evidence of the Tribunal (the "Rules") provide for protection of victims and witnesses. Rule 75(A) of the Rules establishes that a Trial Chamber may "order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused." Article 20 of the Statute sets out the rights of the accused, including, *inter alia*, the right "[t]o have adequate time and facilities for the preparation of his or her defence..." (Art. 20(4)(b)) and the right "[t]o examine, or have examined, the witnesses against him or her..." (Art. 20(4)(e)). The Trial Chamber is sensitive to the need to safeguard both, the rights of the accused and the security and privacy of victims and witnesses. It is with this in mind that the Chamber considers the Prosecutor's present requests.
2. The Trial Chamber notes that the Defence does not object to the granting of the protective measures proposed by the Prosecutor. Therefore, the Chamber will only discuss certain modifications that it will make to the sought orders.
3. The Chamber will grant the Prosecutor's request made in the latter part of paragraph 3(f) of the Motion, namely that "Defence Counsel [be required] to ensure that any member

departing from the Defence team has remitted all documents and information that could lead to the identification of [the protected] persons....” However, the Chamber modifies the proposed order so that the words “all documents and information” are replaced with the words “all materials”. This modification is made in recognition of the fact that the term “information” could be understood to include intangibles that, naturally, cannot be remitted.

- 4. While the Defence did not object to the order sought by the Prosecutor in paragraph 3(j) of the Motion, the Chamber cannot accept that it would be the witness who could have the ultimate control over how long a pseudonym is to be used. Were that the case, the witness could insist on the use of the pseudonym even after the Tribunal would consider it appropriate to cease its use. For this reason, the Chamber modifies the order proposed in paragraph 3(j) of the Motion by deleting the words “...until such time that the witness decides otherwise” and replacing them with the words “until such time as the Tribunal orders otherwise.”


FOR THESE REASONS, THE TRIBUNAL

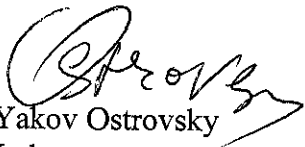
- 1. **GRANTS** the measures sought by the Prosecutor in paragraphs 3(a) through 3(e), 3(g), and 3(i) of the Motion.
- 2. **GRANTS**, the Prosecutor’s requests made in paragraph 3(f) of the Motion, as modified at the hearing and by the Trial Chamber above, so that the order reads: “The Defence is required to provide to the Registrar a designation of all persons working on the immediate Defence team who will, pursuant to paragraph 3(e) of the Motion, have access to any information referred to in paragraphs 3(a) through 3(d) of the Motion and to advise the Registrar in writing of any change in the composition of this team, and the Defence Counsel is further required to ensure that any member departing from the Defence team has remitted all materials that could lead to the identification of persons specified in paragraph 2 of the Motion.”
- 3. **GRANTS**, with the modifications made at the hearing and by the Chamber, the Prosecutor’s request made in paragraph 3(h) of the Motion for an order prohibiting the disclosure, in advance, to the Defence of the names, addresses, whereabouts of, and any other identifying data, including any information in the supporting material on file with the Registry, which would reveal the identities of victims or potential prosecution witnesses, and requiring the Prosecutor to make such a disclosure, including of any material provided to the Defence in a redacted form, not later than twenty-one (21) days before the witness is to testify at trial, unless the Chamber decides otherwise pursuant to Rule 69(A) of the Rules.
- 4. **GRANTS**, the Prosecutor’s request made in paragraph 3(j) of the Motion, as modified above, for an order requiring the Prosecutor to designate a pseudonym for each prosecution witness, which will be used whenever referring to each such witness in Tribunal proceedings, communications and discussions between the parties to the trial,


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and the public until such time as the Tribunal orders otherwise.

Arusha, 9 March 2000.


Lloyd George Williams
Presiding Judge


Yakov Ostrovsky
Judge

Pavel Dolenc
Judge


(Seal of the Tribunal)