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UNITED NATIONS  NATIONS UNIES
International Criminal Tribunal for Rwanda
TRIAL CHAMBER I

OR: ENG

Before: Judge Navanethem Pillay, Presiding
Judge Asoka de Zoysa Gunawardana
Judge Erik Møse

Registry: Ms Aminatta N'gum

Decision of: 9 May 2000

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THE PROSECUTOR
v.
GEORGES RUGGIU

Case No. ICTR-97-32-I

DECISION ON THE DEFENCE 'S MOTION
FOR WITNESS PROTECTION

The Office of the Prosecutor:
William T. Egbe

Counsels for Mr Ruggiu:
Mohamed Aouini
Jean - Louis Gilissen

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

SITTING as Trial Chamber I, composed of Judge Navanethem Pillay, Presiding, Judge Asoka de Zoysa Gunawardana and Judge Erik Møse;

CONSIDERING the Defence motion, filed on 11 April 2000, for an order granting protective measures to a witness;

CONSIDERING the Prosecutor's response filed on 19 April 2000, in which the Prosecutor states that she has no objection to the grant of the order;

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

NOTING that the motion was considered on the basis of the written briefs of the Parties, pursuant to Rule 73 of the Rules;

HEREBY DECIDES 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 victim's 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 Section, 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, being mindful at all times of guaranteeing the full respect of the rights of the accused, may 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.
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 Victims and Witnesses Support Section. In order to determine the appropriateness of such protective measures, the Tribunal shall evaluate the general security situation affecting the witnesses concerned.

5. In the present case, the Defence argued that the personal history, fears and social background of the witness, along with the sensitive and particular character of this case, constitute exceptional circumstances justifying special protective measures for this witness.

6. In consideration of the above, the Trial Chamber considers that there are good grounds to provide protective measures for the Defence witness.

The Non-Disclosure of the Identity of Witnesses

7. The Defence requests for the non-disclosure of the identity of its witness.

8. 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.

9. In relation to the non-disclosure of witness identity, the Trial Chamber 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 Tadić* (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.

10. In the present case, the Trial Chamber finds that there exist exceptional circumstances warranting the non-disclosure of the identity of the witness.

THE TRIBUNAL

HEREBY ORDERS that:

1. The public and the media shall not make audio or video recordings or broadcasts and shall not take photographs or make sketches of the Defence witness in the courtroom or on the premises of the Tribunal.
2. The Defence witness shall enter, testify and exit the courtroom out of public view.
3. The name and identity of the Defence witness shall not be disclosed except to the Chamber and to the Prosecution. The Defence shall be authorised to assign the pseudonym "AB" to the witness for use in the proceedings of the Tribunal and in discussions between the Parties.
4. The name and any other identifying information concerning the Defence witness shall be sealed by the Registry and shall not be disclosed except to the Victims and Witnesses Support Section.
5. Where the name, the address, any locations or any other identifying information regarding the Defence witness appears in the Tribunal's public records, such information shall be expunged from the said records.
6. The same protective measures that apply to the Defence witness shall also apply to the person who, under exceptional circumstances, has been authorized to accompany the witness.

DIRECTS the Registry to provide the witness with the escort chosen.

Arusha, 9 May 2000

Navanethem Pillay
Navanethem Pillay
Presiding Judge

Asoka de Zoysa Gunawardana
Asoka de Zoysa Gunawardana
Judge

Erik Møse
Erik Møse
Judge



Seal of the Tribunal