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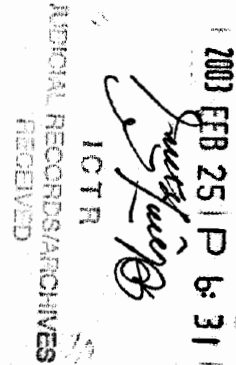


International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Or.: Eng.

TRIAL CHAMBER I

Before: Judge Andréia Vaz
Registrar: Adama Dieng
Date: 25 February 2003



THE PROSECUTOR

v.

PROTAIS ZIGIRANYIRAZO

Case No. ICTR-2001-73-I

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

The Prosecution

Silvana Arbia
Jonathan Moses
Adelaide Whest
Gregory Townsend
Adesola Adeboyejo

Defence Counsel

John Philpot

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

SITTING as Judge Andréia Vaz, designated by the Trial Chamber pursuant to Rule 73(A) of the Rules of Procedure and Evidence of the Tribunal ("the Rules");

BEING SEIZED, pursuant to Rules 73, 65 and 79 of the Rules of the following documents (the "Motion") a Motion for Orders for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment and Brief in support thereof filed by the Prosecutor on 16 May 2002 and an Addendum to the Motion filed on 10 September 2002;

CONSIDERING the Defence Responses to the Motion filed on 28 May 2002 and 16 September 2002;

NOW CONSIDERS the matter solely on the basis of the briefs of the Parties pursuant to Rule 73(A) of the Rules.

SUBMISSIONS OF THE PARTIES

1. The Prosecutor requests the Chamber to grant protective measures for potential Prosecution witnesses as warranted by a real and substantial fear that they suffer being threatened, assaulted or killed if their identities are made known. In support of her request, the Prosecutor submits the following material:

i) An Affidavit by Mr Samuel Akorimo, Commander of the Investigations at the Office of the Prosecutor in Kigali, dated 9 May 2001, attributing fears expressed by potential witnesses to the general security situation in Rwanda and specifically in the prefectures of Gisenyi, Ruhengeri, Kibuye and Cyangugu.

ii) Press Releases, Newspapers Articles, Reports published by various Organisations between 1997 and August 2001.

These documents describe the volatile nature of the security situation in Rwanda following the events of 1994. They attribute it mainly to 'Hutu rebels' infiltrating the country in its Western prefectures from neighbouring countries. They describe these rebels as former members of the Rwandan Armed Forces and *Interahamwe* militia members who fled Rwanda after the events of 1994. Some of these documents further relate security concerns in respect of Rwandan witnesses appearing before the Tribunal.

iii) Press Releases, Newspapers Articles and Reports published by various Organisations between 1998 and June 2001.

These documents describe the volatile nature of the security situation in the Great Lakes Region since 1994. They pertain mainly to the war in the Democratic Republic of Congo, as fuelled by the participation of 'Hutu rebels' originating from Rwanda, as described above.

2. The Prosecutor submits that the persons who need protection, in light of the above, are:

i) The victims and potential Prosecution witnesses who presently reside in Rwanda and in other countries in Africa who have not affirmatively waived their right to protective measures;

ii) The victims and potential Prosecution witnesses who reside outside Africa and who have requested protective measures.

3. The Prosecutor requests 13 protective measures for them. Most of these pertain to the non-disclosure of their identity to the public and, until 21 days prior to their appearance at trial, to the Defence and the Accused. These measures will be reviewed in the deliberations.

4. The Defence responds:

(i) That the Prosecutor has not proved the existence of exceptional circumstances warranting the measures sought, for the following reasons:

(a) The Chamber cannot rely on Mr Akorimo's Affidavit. Indeed, Mr Akorimo should testify in court pursuant to Rule 90 of the Rules, thus enabling the Defence to cross-examine him. On the other hand, his statement was not sworn before a person authorised to administer oaths. It therefore has no probative value.

(b) The Affidavit is misleading: some of the witnesses whose pseudonyms are given do not reside in the prefectures of Gisenyi and Ruhengeri or in Kigali-Ville. The Defence believes that SGH is in fact Omar Serushago, a genocide convict currently serving his sentence rendered by the Tribunal in a prison in Mali, and that SGM is currently residing in Paris.

(c) The other evidence submitted is insufficient and largely irrelevant to any specific danger currently facing Prosecution witnesses. Specifically, the supposedly volatile security situation in Rwanda, in the Great Lakes Region is too broad an argument in support of the specific security situation of the witnesses. It is not either documented by updated evidence.

(ii) That the measures sought relating to non-disclosure of the witnesses' identity are not effective;

(iii) That the measures sought should not automatically apply to all witnesses, as identified at paragraph 2 above, but only to those who have been identified at this stage;

(iv) That the request for a full disclosure 21 days prior to the witnesses' testimony would affect their right to properly prepare themselves in a timely manner prior to the witnesses' appearance at trial.

APPLICABLE LAW

5. Pursuant to Article 21 of the Statute, the Tribunal "shall provide in its rules of procedure and evidence for the protection of victims and witnesses". The Accused's right to a public hearing, envisioned in Article 20 of the Statute, is conditional upon the latter disposition. In accordance with the Statute, Rule 69(A) of the Rules provides that, "in exceptional circumstances, either of the parties may apply to a Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk, until the Chamber decides otherwise" while, pursuant to Rule 75(A)

of the Rules, “[a] judge or a 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.”

DELIBERATIONS

6. In accordance with the applicable law above recalled, the Chamber shall bear in mind, in deciding this matter, both the need to safeguard the rights of the Accused and the security and the privacy of those victims and witnesses who are in danger or at risk.

7. In respect of the Defence objection to Mr Akorimo’s statement, the Chamber notes that Rule 89(C) of the Rules allows for certain discretion in respect of the admission of evidence, subject to assessment of its probative value. This principle applies at the pre-trial stage.¹ According to the statement, Mr Akorimo is Commander of the Investigations within the Office of the Prosecutor. These functions have not been disputed by the Defence. Mr Akorimo states that, among his duties, he is “required to monitor and assess security developments in the Republic of Rwanda and elsewhere as they may impact upon ICTR investigations and witness protection.”² In light of the above, the Chamber finds that Mr Akorimo’s statement has probative value and is admissible. This objection and the ancillary request for a hearing on the Motion are therefore dismissed.

8. The Chamber declares itself satisfied, on the basis of the material referred-to at Sub-paragraphs 1 (ii) and 1 (iii) above, that the security situation in Rwanda and the Great Lakes region has been volatile from 1994 up to August 2001. As contended by the Defence, however, this material is not relevant in respect of the current situation in Rwanda and the Great Lakes region.

9. The Chamber however derives from Mr Akorimo’s statement (See Sub-paragraph 1 (i) above) the persistence of the volatile nature of the security situation affecting Rwanda. It is satisfied that this volatile security situation accounts for fears expressed by the witnesses. It further notes that according to Mr Akorimo, “witnesses who participate in ICTR investigation and prosecution processes face a very high potential for reprisals in the form of death threats and actual physical harm” and that this specifically applies to the witnesses in the present case.³

10. Contrary to the Defence objection summarised at paragraph 4 (iii) above, the Chamber declares itself satisfied, in the light of the above, that protective measures are warranted in respect of all the potential Prosecution witnesses presently residing in African countries who have not affirmatively waived their right to protective measures and to all other potential Prosecution witnesses, upon their request. These measures shall therefore not be restricted, as suggested by the Defence, to the potential witnesses identified at this stage by the Prosecutor.

¹ *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-DP, Decision on the Prosecutor’s Request for the Extension of the Suspect’s Detention, 4 November 2002, para. 9.

² Commander Akorimo’s Statement, para. 3.

³ Commander Akorimo’s Statement, para. 8 & 9.

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11. Turning to the potential issues raised by the Defence at para. 4 (c) above and, specifically, to the Defence objection in respect of Omar Serushago, the Chamber agrees that the non-disclosure measures herein ordered should not extend to the latter, should he be, as the Defence suggests, a potential Prosecution witness in the present case.

12. The Chamber now turns to the measures sought by the Prosecutor.

13. The Defence generally objects to all measures pertaining to the non-disclosure of the witnesses' identities, on the grounds that such measures have supposedly proved ineffective. This objection lacks specificity. Besides, the Tribunal relies on all concerned parties for proper compliance with the orders rendered. This comprises municipal authorities and the Parties themselves who may seize the Chamber should any issue arise in respect of the execution of any non-disclosure orders herein granted. The Prosecution could further request, as the case may be, other protection measures, if warranted, pursuant to Rule 75 of the Rules. This objection is therefore dismissed.

14. Having reviewed the orders requested by the Prosecutor along with all other Defence objections to these measures, the Chamber decides to grant the Orders below which, in its view, conform to the practice of the Tribunal and strike proper balance between the rights of the Accused and the need to safeguard the protection of the witnesses.

15. The Chamber has dismissed proposed orders aiming at prohibiting the Accused individually or any member of the Defence team from personally possessing any material which includes or might lead to discovery of the identity of any protected witness, including any copy of a witness prior statement even in redacted form, unless the Accused is, at the time of the possession, in the presence of his Counsel. Such measures were deemed unnecessarily restrictive in respect of the rights of the Accused to have adequate facilities for the preparation of his defence and to be fully involved in his defence.

16. As in the *Mpambara* Case (No. ICTR-2001-65-I, Decision on the Prosecutor's Motion for Witness Protection Measures of 30 May 2002, para. 24) the Chamber however clarifies that the Defence is to personally ensure that the Accused does not disclose to anyone else, other than the immediate Defence team, any material comprising identifying information in respect of protected witnesses, or any such information.

17. Finally, contrary to the Defence objection summarized at para. 4(iv) above, the Chamber has accepted to order non-disclosure of the protected witnesses' identifying details until 21 days prior to their testimony. Indeed, pursuant to Rule 66(A)(ii) of the Rules, the Defence has already received or will receive, on a continuous basis,⁴ a copy of the statements of the witnesses the Prosecutor intends to call at trial, subject to redactions aimed at protecting the identity of the witnesses hereby protected. By the time the Defence receives full disclosure, it will therefore already have material on the

⁴ See, in this respect, *The Prosecutor v. Pauline Nyiramasuhuko et Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, *Décision relative à la requête de la Défense en communication de preuves*, para. 40 *in fine*.

basis of which to prepare a defence. This is in conformity with Rule 69 (C) of the Rules.

FOR THESE REASONS,

THE TRIBUNAL

HEREBY GRANTS the following protective measures in respect of all victims and Prosecution witnesses or potential Prosecution witnesses presently residing in Africa who have not affirmatively waived their right to protective measures and to all other Prosecution witnesses and potential witnesses, upon their request:

I. ORDERS that the names, addresses, whereabouts of, and other identifying information concerning the persons hereby protected, wherever occurring in the records of the Tribunal, be placed under seal by the Registry;

II. ORDERS that the names, addresses, whereabouts of, and any other identifying information concerning all persons hereby protected be disclosed only to the Witness and Victims Support Section personnel by the Registry in accordance with the established procedure and only in order to implement protection measures for these individuals;

III. ORDERS that any names, addresses, whereabouts of, and any other identifying information concerning all persons hereby protected contained in existing records of the Tribunal be placed under seal;

IV. PROHIBITS the disclosure to the public or the media of the names, addresses, whereabouts of, and any other information which would reveal the identity of any person hereby protected including, but not limited to, information comprised in the supporting material or otherwise on file with the Registry and **DECIDES** that this order shall remain in effect after the termination of this trial;

V. PROHIBITS the Defence and the Accused from sharing, discussing or revealing, directly or indirectly, any documents or any information contained in any documents, or any other information subject to the above non disclosure orders, to any person or entity other than the Accused, assigned Counsel or other persons working on the immediate Defence team, as specified in Order VI;

VI. ORDERS the Defence:

(i) To provide the Witness and Victims Support Section of the Tribunal with a designation of all persons working on the immediate Defence team who will have access to any protected information pursuant to the non-disclosure Orders above,

(ii) To advise that Section in writing of any change in the composition of this team and,

(iii) To ensure that any member departing from the immediate Defence team has remitted all materials that could lead to the identification of any person hereby protected;

VII. PROHIBITS the public and media from making any audio or video recording, as well as taking photographs or making sketches of persons hereby protected, unless authorised to do so by the Chamber, or with the consent of the witness;

VIII. PROHIBITS the disclosure to the Defence of the names, addresses, whereabouts of, and any other identifying data which would reveal the identities of any of the witnesses or potential witnesses protected pursuant to this Decision, and any such information in the supporting material on file with the Registry, until twenty-one (21) days before the witness testifies at trial;

IX. ORDERS that the Accused or his Defence Counsel, notify the Prosecution in writing and on reasonable notice of their wish to contact any person hereby protected. Upon receipt of such request, the Prosecution shall immediately, with the prior consent of the person sought to be contacted, undertake the necessary arrangements to facilitate such contact. If the person sought to be contacted is under the age of 18, the Prosecution shall obtain the prior consent of a parent or legal guardian of that person, authorising such contact;


X. ORDERS the Prosecutor to designate a pseudonym for each person hereby protected, which will be used whenever referring to him or to her in Tribunal proceedings, communications and discussions between the parties to the trial, and the public;

XI. PROHIBITS any member of the immediate Defence team from attempting to make an independent determination of the identity of any person hereby protected or encouraging or otherwise aiding any person to attempt to determine the identity of any such person;

XII. CLARIFIES that Orders V and XI above shall not be construed as preventing the Defence from carrying out normal investigations, in so far as these are not intentionally aiming at unveiling the identity of witnesses known to be protected.

XIII. DISMISSES the Motion and related requests in all other respects.

Arusha, 25 February 2003,


Andrézia Vaz
Judge

(Seal of the Tribunal)