

ICTR-98-44-I
27-6-2003
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**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

UNITED NATIONS
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Original : English

TRIAL CHAMBER III

Before : Judge Lloyd G. Williams, Q.C., Presiding

Registrar: Mr. Adama Dieng

Date: 27 June 2003

THE PROSECUTOR

vs.

JOSEPH NZIRORERA

CASE NO. ICTR-98-44-I

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**DECISION ON THE DEFENCE MOTION
FOR INTERVIEW WITH WITNESS G**

Office of the Prosecutor

Mr. Kenneth C. Flemming
Ms. Amanda Reichman
Kirsten Keith

Defence Counsel

Mr. Peter Robinson

The International Criminal Tribunal for Rwanda (the "Tribunal"), sitting today as Judge Lloyd George Williams, Q.C., Presiding, designated by the Trial Chamber pursuant to Rule 73 of the Rules of Procedure and Evidence (the "Rules");

BEING SEISED OF the Defence Motion for Interview with Witness "G" (the "Motion"), filed 25 September 2002 by the Defence for the Accused Nzirorera;

CONDIDERING the Prosecutor's Response to the Motion, filed on 16 October 2002;

CONSIDERING the Defence Motion to Strike the Prosecutor's Response to the Motion, filed 24 October 2002 (the "Defence Motion to Strike");

CONSIDERING the Prosecutor's Response to the Defence Motion to Strike, filed 31 October 2002;

CONSIDERING the Defence Reply to the Prosecutor's Response to the Defence Motion to Strike, filed 4 November 2002;

RECALLING the Decision on the Prosecutor's Motion for Protective Measures for Witnesses, dated 12 July 2002 (Trial Chamber II, JJ. Kama, Presiding, Sekule and Güney) (the "July 2002 Protection Order");

RECALLING the Decision on the Prosecutor's Application to Add Witness X to Its List of Witnesses and for Protective Measures, dated 14 September 2001 in the matter of *Prosecutor v. Nahimana, et al.*, Case No. ICTR-99-52-I (Trial Chamber I, JJ. Pillay, Presiding, Møse, and Gunawardana)(the "Media Case Protection Order").

DISCUSSION

1. In the Motion the Defence for the Accused Nzirorera requests that the Tribunal enter an order directing the WVSS-P to make arrangements so that they may interview a protected witness who is designated by the pseudonym "G" in the context of this case. The same witness was previously designated as Witness "X" in the proceedings in the Media Case, i.e., *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-I. The Defence claims that the interview of Witness G is imperative because it is believed that he possesses "important exculpatory information" with respect to the Accused Nzirorera.
2. The Defence invokes the July 2002 Protection Order, which provides in relevant regard:

Requiring that the accused or his Defence Counsel shall make a written request, on reasonable notice, to the Prosecution, to the Chamber or a Judge thereof, to contact any protected victim or potential Prosecution witness or any relative of such person; and requiring that when such interview has been granted by the Chamber or a Judge thereof, with the consent of such protected person . . . that the Prosecution shall undertake all necessary arrangements to facilitate such interview.



3. The Defence also contends that it has made two written requests upon reasonable notice to the Prosecutor requesting that she facilitate the Defence's interview with Witness G. In response to one request, sent to the Prosecutor on 22 July 2002, the Prosecutor indicated in a letter dated 25 July 2002 that she would be filing a motion seeking special protective measures in respect to Witness G. However, as of the date of the Motion, no such motion was filed and no such special protective measures were issued.

4. In opposition to the Motion, the Prosecutor contends that the order sought by the Defence would contravene the Media Case Protective Order, which among other things: "... Witness X shall be subject to all measures of protection granted to other Defence and Prosecution Witnesses in the present case." In addition, the Prosecutor submits that an order to interview Witness G without the consent of the Prosecution would render the extant witness protection orders nugatory.

5. In the Defence Motion to Strike, the Defence requests that the Tribunal disregard the Prosecutor's Response to the Motion because it was filed out of time.

6. Having considered the July 2000 Protection Order and the Media Case Protection Order, the Chamber finds that the Defence may request the assistance of the Prosecutor in facilitating an interview of Witness G. Necessarily, such an interview may take place only upon the consent of Witness G. Witness G is not currently subject to any extraordinary protective measures. Rather, Witness G, is subject only to the ordinary panoply of witness protective measures granted to all vulnerable witnesses. Witness G is, however, the beneficiary of certain "stringent security measures," with respect to appearing in Arusha for purposes of testifying before this Tribunal. *See* Media Case Protection Order at para. 9.

7. The July 2000 Protection Order envisioned that the Defence may seek leave from the Chamber to interview witnesses for the prosecution, upon reasonable prior written notice to the Chamber and to the Prosecutor. Moreover, by virtue of the July 2000 Protection Order, the Prosecutor is under an affirmative obligation to "undertake all necessary arrangements to facilitate such interview." In addition, it must be noted that the Motion does not seek to divulge the identity of the witness, which is the thrust of the extant witness protection orders.

8. Finally, the Chamber has considered the Defence Motion to Strike and finds it to be without merit.

9. Accordingly, the Chamber

GRANTS the Motion and finds that the Defence may pursue an interview of Witness G, subject to Witness G's consent to such an interview by the Defence; and further

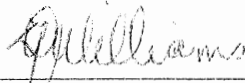
ORDERS the Prosecutor to collaborate with the WVSS-P to undertake all necessary arrangements to facilitate the interview of Witness G by the Defence for Nzirorera; and further



DENIES the Defence Motion to Strike in its entirety.

The foregoing constitutes the Decision and Order of the Chamber.

Arusha, 27 June 2003



Lloyd G. Williams, Q.C., Presiding
Designated Judge

[Seal of the Tribunal]

