

ICTR-01-66-I
(1525-1522)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

30-06-2003

1525

TRIAL CHAMBER I

Before: Judge Erik Møse
Registrar: Adama Dieng
Date: 30 June 2003

The PROSECUTOR

v.

Athanase SEROMBA

Case No. ICTR-2001-66-I

JUDICIAL RECORDS/ARCHIVES
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DECISION ON THE PROSECUTOR'S MOTION FOR PROTECTIVE
MEASURES FOR VICTIMS AND WITNESSES

The Office of the Prosecutor

Silvana Arbia
Jonathan Moses
Adelaide Whest
Gregory Townsend
Adesola Adebeyejo

The Defence

Alfred Pognon

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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

BEING SEIZED OF the Prosecutor’s “Motion for Protective Measures For Victims and Witnesses”, filed on 14 May 2002, and its “Addendum to the Prosecutor’s Motion for Protective Measures for Victims and Witnesses”, filed on 10 September 2002;

CONSIDERING the Defence “Réplique à la requête du procureur afin de mesure de protection des victimes et témoins”, filed on 15 May 2003; and the Prosecutor’s “Reply to Seromba’s Réplique to Her Motion for Protective Measures for Victims and Witnesses”, filed on 16 May 2002;

HEREBY DECIDES the motion upon the parties’ briefs.

1. The Prosecution motion is based on Article 21 of the Statute and Rules 54, 69, 73 and 75 of the Rules. 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 69(A) provides that, 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) which requires that the identity of the victim or witness shall be disclosed to the Defence in sufficient time prior to the trial to allow adequate time for preparation of the Defence case.

2. Rule 75 of the Rules authorizes a Judge or a Chamber, *proprio motu* or at the request of either party, the victim or witness concerned, or of the Victims and Witnesses Support Unit, to order appropriate measures for the privacy and protection of victims or witnesses, provided that these measures are consistent with the rights of the accused, including the right to a fair trial, and subject to the condition imposed by Rule 69(C). If ordered, such protective measures take effect upon the transmittal of identifying information to the Witnesses and Victims Support Unit.

3. Measures for the protection of witnesses are granted on a case by case basis. In order to determine the appropriateness of such protective measures, the Tribunal shall evaluate the general security situation affecting the witnesses concerned.

4. It follows from established case law both in this Tribunal and in the International Criminal Tribunal for the Former Yugoslavia 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 there must be an objective justification for 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.

5. The Prosecution has submitted evidence in support of its motion of the volatile security situation in the parts of Rwanda in which many of the witnesses for whom protection is sought reside, and in adjacent territories of neighbouring countries. This situation could give rise to a justified and real fear that disclosure of their participation in the proceedings of this Tribunal would threaten their safety and security.

6. Accordingly, the Trial Chamber finds that in the present case there exist exceptional circumstances warranting the non-disclosure of the identity of witnesses.

7. The Prosecution requests disclosure to the Defence on a "rolling" basis, twenty-one days before the particular witness is to testify. Notwithstanding certain cases in which "rolling" disclosure has been ordered, cited by the Prosecution, the Trial Chamber notes that any justification for disclosure on such terms is significantly lessened in a trial of relatively short duration, such as the present case.


FOR THE ABOVE REASONS, THE CHAMBER

HEREBY ORDERS that:

1. The names, addresses, whereabouts, and other identifying information concerning the Prosecution witnesses in question shall be sealed by the Registry and not included in any non-confidential Tribunal records, or otherwise disclosed to the public.
2. The names and identities of the Prosecution witnesses shall be forwarded by the Prosecution to the Registrar in confidence, and they shall not be disclosed to the Defence, until such time as the said witnesses are under the protection of the Tribunal.
3. In cases where the names, addresses, locations and other identifying information of the Prosecution witnesses appear in the Tribunal's public records, this information shall be expunged from the said records.
4. No person shall make audio or video recordings or broadcastings and shall not take photographs or make sketches of the protected Prosecution witnesses, without leave of the Trial Chamber or the witness.
5. The Prosecution shall be permitted to designate pseudonyms for each of its witnesses for use in trial proceedings, and during discussions between the Parties in proceedings.
6. Defence Counsel and any representative acting on his behalf, shall notify the Prosecution prior to any contact with any of its witnesses, and the Prosecution shall make arrangements for such contacts.

7. The Defence shall provide the Registry with a designation of all persons working on the Defence team who will have access to any identifying information concerning any protected witness, and shall notify the Registry in writing of any persons leaving the Defence team and to confirm in writing that such person has remitted all material containing identifying information.
8. The Defence, or any person working for the Defence, shall not attempt to make an independent determination of the identity of any protected witness or encourage or otherwise aid any person in so doing.
9. The Prosecution is authorised to withhold disclosure to the Defence, of the identity of the witness and to temporarily redact their names, addresses, locations and other identifying information from the supporting material on file with the Registry, until such time as the said witnesses are under the protection of the Tribunal.
10. The identity of the witnesses shall be disclosed by the Prosecution to the Defence twenty-one days prior to the trial in order to allow adequate time for the preparation of the Defence, pursuant to Rule 69(C) of the Rules.

Arusha, 30 June 2003



Erik Møse
Judge
[Seal of the Tribunal]