

ICTR-98-41-T
02-09-2003
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
(16183-16180)

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TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 1 September 2003

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

2003 SEP -2 A 9: 31
ICTR
ORIGINAL RECORDS/ARCHIVES

DECISION ON KABILIGI MOTION FOR PROTECTION OF WITNESSES

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

SITTING as Trial Chamber I, composed of Judge Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the “Requête en extreme urgence aux fins de protection de témoins”, filed by the Defence for Kabiligi on 24 February 2003;

HEREBY DECIDES the motion.

1. This motion for special measures protecting the identity of witnesses to be called on behalf of the Defence for Kabiligi is brought under Article 21 of the Statute and Rule 75 of the Rules of Procedure and Evidence (“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. Rule 75 of the Rules elaborates several specific witness protection measures that may be ordered, including sealing or expunging names and other identifying information that may otherwise appear in the Tribunal's public records, assignment of a pseudonym to a witness, and permitting witness testimony in closed session. Subject to these measures, Rule 69(C) requires the identity of witnesses to be disclosed to the Prosecution in adequate time for preparation.

2. Measures for the protection of witnesses are granted on a case by case basis. The jurisprudence of this Tribunal and of the International Criminal Tribunal for the Former Yugoslavia requires that the witnesses for whom protective measures are sought must have a real fear for the safety of the witness or her or his family, and there must be an objective justification for this fear. These fears may be expressed by persons other than the witnesses themselves. A further consideration is trial fairness, which favours similar or identical protection measures for Defence and Prosecution witnesses.¹

3. The Defence for Kabiligi has submitted that Defence witnesses do fear for their safety and that these fears are justified by the dangers and insecurities described in the reports of journalists and human rights organizations attached as annexes to the motion. A confidential annex to the motion contains statements by witnesses expressing their subjective fears concerning their security, and the reasons therefor. The Chamber follows previous decisions regarding protection for defence witnesses and accepts the existence of these fears amongst Defence witnesses, and their objective justification.² Accordingly, the Trial Chamber finds that the conditions for ordering witness protection measures are satisfied.

4. Many of the measures sought by the Defence for Kabiligi are substantially identical to those previously ordered in respect of Prosecution witnesses; the interests of trial fairness and

¹ *Prosecutor v. Eliézer Niyitegeka*, Decision (Defence Motion for Protective Measures for Defence Witnesses), 14 August 2002, p. 4; *Prosecutor v. Elizaphan Ntakirutimana and Gerard Ntakirutimana*, Decision on Witness Protection, 22 August 2000.

² See e.g. *Prosecutor v. Eliézer Niyitegeka*, Decision (Defence Motion for Protective Measures), 14 August 2002, p. 4; *Prosecutor v. Laurent Semanza*, Decision on the Defence Motion for Protection of Witnesses (Rule 75), 24 May 2001, p. 3; *Prosecutor v. Ferdinand Nahimana*, Decision on the Defendant's Motion for Witness Protection, 25 February 2000, p. 3; *Prosecutor v. Georges Ruggiu*, Decision on the Defence's Motion for Witness Protection, 9 May 2000, p. 3. Such measures have not been granted where, unlike the present motion, no evidence of the security situation of witnesses has been submitted to the Chamber. *Prosecutor v. Gacumbitsi*, Décision relative à la requête de la défense aux fins de mesures de protection en faveur des témoins à décharge, 25 August 2003, p. 2-3.

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administrative simplicity strongly favour the adoption of identical measures, which are enumerated below in language customarily adopted in such orders.³

5. The Defence for Kabiligi requests in paragraph 82(b) that the Registry, having received the confidential information regarding Defence witnesses, take all appropriate measures to safeguard the legal status of individuals in the countries in which they reside and, in particular, to prevent their repatriation to Rwanda. The Chamber is of the view that these measures need not be the subject of a special direction in a witness protection order; they are already necessary corollaries of the mandate of the Registry and the obligations of States, as defined in the Statute and the Rules. In the absence of specific instances of non-cooperation, there is no need for directions to comply with the obligations of States under Article 28.

FOR THE ABOVE REASONS, THE CHAMBER

HEREBY ORDERS that:

1. The Defence for Kabiligi shall be permitted to designate pseudonyms for each of the witnesses for whom it claims the benefits of this Order, for use in trial proceedings, and during discussions between the Parties in proceedings.
2. The names, addresses, whereabouts, and other identifying information concerning the protected witnesses shall be sealed by the Registry and not included in any non-confidential Tribunal records, or otherwise disclosed to the public.
3. In cases where the names, addresses, locations and other identifying information of the protected witnesses appear in the Tribunal's public records, this information shall be expunged from the said records.
4. The names and identities of the protected witnesses shall be forwarded by the Defence for Kabiligi to the Registry in confidence, and they shall not be disclosed to the Prosecution unless otherwise ordered.
5. No person shall make audio or video recordings or broadcastings and shall not take photographs or make sketches of the protected witnesses, without leave of the Chamber or the witness.
6. The Prosecution and any representative acting on its behalf, shall notify the Defence for Kabiligi in writing prior to any contact with any of its witnesses and, if the witness consents, the Defence for Kabiligi shall facilitate such contact.
7. The Prosecution team in this case shall keep confidential to itself all information identifying any witness subject to this order, and shall not, directly or indirectly, disclose, discuss or reveal any such information.
8. The Prosecution shall provide the Registry with a designation of all persons working on the Prosecution team in this case who will have access to any identifying information concerning any protected witness, and shall notify the Registry in writing

³ The witness protection orders governing Prosecution witnesses are contained in two decisions: *Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, Decision on the Prosecution Motion for Harmonisation and Modification of Protective Measures for Witnesses, 29 November 2001; *Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, Decision on Defence Motion for Reconsideration of the Trial Chamber's Decision and Scheduling Order of 5 December 2001, 18 July 2003.

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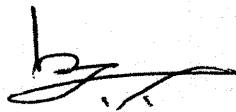
of any such person leaving the Prosecution team and to confirm in writing that such person has remitted all material containing identifying information.

9. The Defence for Kabiligi may withhold disclosure to the Prosecution of the identity of the witness and temporarily redact their names, addresses, locations and other identifying information from material disclosed to the Prosecution, in accordance with paragraph 10 below.
10. The information withheld in accordance with paragraph 9 shall be disclosed by the Defence for Kabiligi to the Prosecution thirty-five days prior to commencement of the Defence case, in order to allow adequate time for the preparation of the Prosecution pursuant to Rule 69(C) of the Rules.

Arusha, 1 September 2003



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

