

ICTR-2001-71-T
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1262

15-09-2003
(1262-1259)

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Khalida Rashid Khan
Judge Solomy Balungi Bossa

Registrar: Adama Dieng

Date: 15 September 2003

THE PROSECUTOR

v.

Emanuel NDINDABAHIZI

Case No. : ICTR-2001-71-I

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DECISION ON DEFENCE MOTION FOR PROTECTION OF WITNESSES

The Office of the Prosecutor

Charles Adeogun-Phillips
Wallace Kapaya

The Defence

Pascal Besnier
Guillaume Marçais

E.H.

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

SITTING as Trial Chamber I, composed of Judge Møse, presiding, Judge Khalida Rashid Khan, and Judge Solomy Balungi Bossa;

BEING SEIZED of the Defence “Requête urgente en prescription de mesures de protection pour les témoins à décharge”, filed on 16 June 2003;

HEREBY DECIDES the motion.

1. This motion for special measures protecting the identity of witnesses to be called on behalf of the Defence is brought under Article 20 of the Statute and Rules 69 and 75 of the Rules of Procedure and Evidence (“the Rules”). Article 20(4)(e) guarantees the right of the Accused to examine witnesses called on his behalf. Rule 69(A) authorizes the Trial Chamber to order the non-disclosure of the identity of witnesses who may be in danger or at risk. Rule 75 enumerates 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. 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.

3. The Defence for Ndindabahizi has submitted that its prospective witnesses fear for their safety and that these fears are justified by the dangers and insecurities described in the reports of human rights organizations attached as annexes to the motion. The Defence affirms that one of its prospective witnesses has disappeared under circumstances described as suspicious by one human rights organization in an annex to the motion. The Chamber follows previous decisions regarding protection for defence witnesses and accepts the existence of these fears amongst Defence witnesses, and their objective justification.¹ Further, the Chamber notes that designated Prosecution witnesses have benefited from non-disclosure of their identities.² Accordingly, the Trial Chamber finds that the conditions for ordering witness protection measures are satisfied.

4. The measures sought by the Defence are substantially identical to those ordered in previous cases, and are granted below in language customarily adopted in such orders.³ However, the Chamber declines to issue an order limiting the disclosure of information by the Registry to officials of the Witness and Victims Support Section, as requested in paragraph b) of the motion. Members of the Registry who are not part of the Section may be called upon to undertake essential efforts in respect of these witnesses, both for their

¹ See e.g. *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 *Prosecutor v. Emanuel Ndindabahizi*, Order for Non-Disclosure, 10 July 2001; *Prosecutor v. Emanuel Ndindabahizi*, Order for Non-Disclosure, 3 October 2001.

³ See *id.*; *Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, Decision on Bagosora Motion for Protection of Witnesses, 1 September 2003.

protection and their appearance. Confidential information is handled by the Registry in a manner that restricts its dissemination to those who require such access for the proper exercise of their duties. Nor does the Chamber issue an order to States or the United Nations High Commissioner for Refugees, as requested in paragraph m). States are already bound to cooperate by virtue of Article 28 and need not be subject to an order absent a specific instance of non-cooperation. The Tribunal anticipates voluntary cooperation from its sister organizations and sees no need for such an order absent a showing of specific non-cooperation.

FOR THE ABOVE REASONS, THE CHAMBER


HEREBY ORDERS that:


1. The Defence shall designate pseudonyms for any of the witnesses for whom it claims the protections of this Order (“the Protected Witnesses”), for use in trial proceedings, and during discussions between the Parties in proceedings.
2. The names, addresses, whereabouts and other identifying information of the Protected Witnesses shall be forwarded by the Defence to the Registry in confidence, and shall not be disclosed by the Registry to the Prosecution unless otherwise ordered. This information shall be sealed by the Registry and not included in any non-confidential Tribunal records, or otherwise disclosed to the public. If any such information does appear in the Tribunal’s non-confidential records, it shall be expunged.
3. Making or publicizing photographs, sketches, or audio or video recordings of Protected Witnesses, without leave of the Chamber or the Protected Witness, is prohibited.
4. The Prosecution and any representative acting on its behalf, shall notify the Defence in writing prior to any contact with any of the Protected Witnesses and, if the witness consents, the Defence for Ndindabahizi shall facilitate such contact.
5. The Prosecution team in this case shall keep confidential to itself all information identifying any of the Protected Witnesses subject to this order, and shall not, directly or indirectly, disclose, discuss or reveal any such information.
6. 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 of the Protected Witnesses, and shall notify the Registry in writing of any such person leaving the Prosecution team and to confirm in writing that such person has remitted all material containing identifying information.
7. Subject to paragraph 8 below, the Defence may withhold disclosure to the Prosecution of the names, addresses, whereabouts and other identifying information of the Protected Witnesses and temporarily redact such information as may appear in witness statements or other material disclosed to the Prosecution.

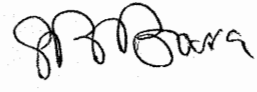
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8. The information withheld in accordance with paragraph 7 shall be disclosed by the Defence to the Prosecution twenty-one days prior to commencement of the Defence case, in order to allow adequate time for the preparation of the Prosecution pursuant to Rule 69(C) of the Rules.

Arusha, 15 September 2003


Erik Møse
Presiding Judge


Khalida Rashid Khan
Judge


Solomy Balungi Bossa
Judge

[Seal of the Tribunal]

