



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-50-I
23. 10. 2003
(8500 — 8497)

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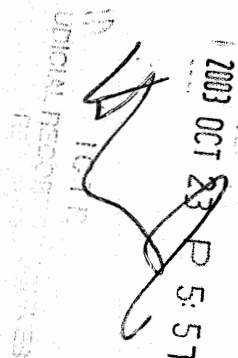
TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Asoka de Zoysa Gunawardana
Judge Arlette Ramaroson

Registrar: Adama Dieng

Date: 23 October 2003

The PROSECUTOR
v.
Casimir BIZIMUNGU
Justin MUGENZI
Jerôme BICAMUMPAKA
Prosper MUGIRANEZA
Case No. ICTR-99-50-I



**DECISION ON PROSPER MUGIRANEZA'S MOTION FOR PROTECTIVE
MEASURES FOR WITNESSES**

Counsels for the Prosecution:

Paul Ng'arua
Melinda Pollard
Elvis Bazawule
George Mugwanya

Counsel for the Defence:

Michelyne C. St. Laurent for Casimir Bizimungu
Howard Morrison and Ben Gumpert for Justin Mugenzi
Pierre Gaudreau for Jérôme Bicomumpaka
Tom Moran for Prosper Mugiraneza

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

SITTING as Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Asoka de Zoysa Gunawardana and Judge Arlette Ramaroson (the "Chamber");

BEING SEIZED of "Prosper Mugiraneza's Motion for Protective Measures for Witnesses" filed on 17 September 2003, (the "Motion");

NOTING the "Prosecutor's Response to Prosper Mugiraneza's Motion for Protective Measures for Witnesses" filed on 22 September 2003, (the "Response");

NOTING the "Prosper Mugiraneza's Reply to Prosecutor's Response to Prosper Mugiraneza's Motion for Protective Measures for Witnesses" filed on 23 September 2003, (the "Reply");

CONSIDERING the Statute of the Tribunal ("Statute") and the Rules of Procedure and Evidence (the "Rules"), and, especially, Articles 20 and 21 of the Statute and Rules 66, 69 and 75 of the Rules;

ARGUMENTS OF THE DEFENCE

1. The Defence for Prosper Mugiraneza seeks protective measures for Defence witnesses. The Defence moves the Trial Chamber to enter an order adopting the protective measures as granted in the "Decision on Prosecutor's Motion for Protective Measures for Witnesses" dated 12 July 2000 (the "Decision").
2. The Defence attached the afore-mentioned Decision on support of its Motion and ask the Trial Chamber to apply to Defence witnesses the same protective measures and to impose the same restrictions on the Prosecutor as it was applied to the Defence for Prosper Mugiraneza in the previous Decision.
3. The Defence therefore moves the Trial Chamber to:
 - a. Adopt by reference all protective measures contained in its Decision of 12 July 2000 to protection of Defence witnesses
 - b. Apply identical requirements and identical restrictions to the Office of the Prosecutor and its agents as are applied to the Defence and its agents in its Decision of 12 July 2000.

RESPONSE OF THE PROSECUTOR

4. The Prosecutor considers that the Defence did not provide the Chamber with any factual justification for its request. According to the Prosecutor, the case law of both International Criminal Tribunal for Rwanda and International Criminal Tribunal for the former Yugoslavia hold that for a witness to qualify for protection of identity



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from disclosure to the public and media, there must be a real fear for the safety of the witness (or his or her family) and there must always be an objective basis for the fear.

5. Even if the Prosecutor recognizes that in some instances it may be appropriate to extend protective measures to the Defence witnesses, the Prosecutor considers that the Defence has not provided the Trial Chamber with any information about the witnesses in question or their peculiar circumstances to assist in evaluating its application.
6. The Prosecutor submits that the Defence Motion should be denied in its entirety.

REPLY BY THE DEFENCE

7. The Defence reiterates its request for protective measures for Defence witnesses on the basis that the Defence is only seeking the same relief given to Prosecutor's witnesses by the Trial Chamber in its Decision.
8. The Defence argues that the persons for whom protection is sought fall into the following three categories: potential witnesses who reside in Rwanda and who have not waived their right to protective measures; potential witnesses who are in other countries in Africa and who have not waived this right; potential witnesses who reside outside the continent of Africa and who have requested that they be granted such protective measures.
9. The Defence asserts that it has a significant fear that Defence Witnesses residing in all Africa, and especially in Rwanda, are subject to coercion and danger to their families and themselves unless protective measures are granted.
10. Therefore the Defence considers that the Trial Chamber should impose the same protective measures for Defence witnesses as it has for Prosecution witnesses.

HAVING DELIBERATED

11. The Chamber recalls the provisions of Article 69 (A) of the Rules, which stipulate that in exceptional circumstances, each of the two Parties may request the Chamber to order the non-disclosure of the identity of a witness, to protect him from risk of danger, and that such order will be effective until the Chamber determines otherwise, without prejudice, pursuant to Article 69 (C), regarding disclosure of the identity of the witness to the other Party in sufficient time for preparation of its case.
12. However, the Trial Chamber acknowledges the reasoning of the Trial Chamber of the International Criminal Tribunal for Rwanda ("ICTR") in *Prosecutor v. Alfred Musema*,¹ quoting the findings of The Trial Chamber of the International Criminal

¹ *Prosecutor v. Alfred Musema*, Case No ICTR-96-13-T, Decision on the Prosecutor's Motion for Protection of the Witnesses, TC, 20 November 1998.



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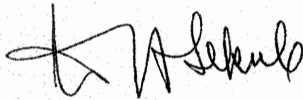
Tribunal for the former Yugoslavia ("ICTY") in the *Prosecutor v. Tadic*.² In these decisions, both Trial Chambers held that for a witness to qualify for protection of identity from disclosure to the public and media, there must be real fear for the safety of the witness or his or her family, and that there must always be an objective basis to the fear.

13. The Trial Chamber considers that the Defence for Prosper Mugiraneza's has not provided any factual basis for its motions and has not specified the reasons why it was seeking protective measures for its witnesses.

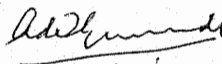
FOR THE ABOVE REASONS, THE TRIBUNAL

DENIES the Defence Motion in all respects without prejudice to filing an application in future, with supporting material as set out above.

Arusha, 23 October 2003



William H. Sekule
Presiding Judge



Asoka de Zoysa Gunawardana
Judge



Arlette Ramaroson
Judge



² *Prosecutor v. Dusko Tadic*, Case No. IT-94-I-T, Decision on the Prosecutor's Motion for Requesting Protective Measures for Witnesses, TC, 10 August 1995.