



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-98-41-T  
15-03-2004  
(19021-19019)

19021  
S. Thuss

TRIAL CHAMBER I

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

**Registrar:** Adama Dieng

**Date:** 15 March 2004

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

Handwritten signature: S. Thuss

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DECISION ON MODIFICATION OF SPECIAL PROTECTIVE MEASURES FOR  
WITNESS BY

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**The Office of the Prosecutor**

Barbara Mulvaney  
Drew White  
Segun Jegede  
Christine Graham  
Rashid Rashid  
Abdoulaye Seye

**Counsel for the Defence**

Raphaël Constant  
Paul Skolnik  
Jean Yaovi Degli  
Peter Erlinder  
André Tremblay  
Kennedy Ogetto  
Gershom Otachi Bw'Omanwa

Handwritten initials: J. M.

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

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

**BEING SEIZED** of the Defence “Requête de la défense en révision de la décision d’émission de mesures spéciales de protection des témoins A et BY”, filed on 18 December 2003;

**CONSIDERING** the Prosecution “Response”, filed on 22 December 2003;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. By its Decision of 3 October 2003, the Chamber authorized special protective measures for two Prosecution witnesses, including Witness BY. The decision allowed the Prosecution to delay disclosure of the witness’s identity, and any identifying information, until thirty days before his or her testimony.<sup>1</sup> Witness BY was thereby excepted from the witness protection decision of 18 July 2003 which required disclosure of the identities and complete statements of Prosecution witnesses by 28 July 2003.<sup>2</sup> The present motion seeks disclosure of the Witness BY’s identity, and the entirety of his or her witness statements, no later than ninety days before testifying.

**SUBMISSIONS**

2. The Defence submits that at the time of the Chamber’s decision granting special protective measures for Witness BY, the Defence was in possession of only one redacted statement of the witness. Given the content and size of this document, the disclosure of the identity of the witness thirty days before testifying would have given the Defence adequate time to prepare for the cross-examination of the witness. On 11 December 2003, the Defence received more than a thousand pages of additional statements of the witness. The Defence argues that thirty days is no longer adequate for its preparations and requests complete disclosure of the witness’s statements and identity no later than ninety days prior to testifying.

3. The Prosecution opposes the request, arguing that the threat to the witness remains the same, and that the protective measures are the minimum necessary to ensure the security of the witness. The Prosecution also emphasizes that his testimony is uniquely valuable.

**DELIBERATIONS**

4. Where exceptional circumstances exist which suggest that a witness is “in danger or at risk”, Rule 69(C) confers a wide discretion on the Trial Chamber to delay disclosure of the witness’s identity to the Defence, beyond the sixty days normally required, as long as the period of disclosure gives “adequate time for preparation of the prosecution and the defence”. In its earlier decision granting special protective measures, the Chamber accepted that Witness BY and another witness “are in a precarious position or are particularly likely to be

<sup>1</sup> Decision on Prosecution Motion for Special Protective Measures for Witnesses A and BY (“Decision of 3 October”).

<sup>2</sup> Decision on Defence Motion for Reconsideration of the Trial Chamber’s Decision and Scheduling Order of 5 December 2001.

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threatened, in comparison with other witnesses”, and that Witness BY “appears to be in a particularly precarious security situation, and relies heavily on anonymity for his security”.<sup>3</sup>

5. Those security concerns may be the same today as they were before the new disclosures, but they do not pre-empt the right of the Accused to have adequate time and facilities for the preparation of his Defence. The disclosure of more than one thousand pages of witness statements raises doubt as to whether thirty days’ notice gives the Defence adequate time to prepare, as required by Rule 69(C). The Prosecution submission that this is a crucial witness with unique testimony heightens, rather than diminishes, the need to assure the Defence an adequate opportunity to review and understand the full statements, and to have knowledge of the witness’s identity. Further, the Prosecution implies that the identity of the witness may already be known to the Defence or, at the least, is amongst a small number of known individuals. If this is so, then requiring a longer period of disclosure to the Defence does not appear likely to prejudice the security of the witness in any way.

6. In light of all the circumstances, and having due regard for the continuing security concerns expressed by the Prosecution, the identity and unredacted statements of the witness are to be disclosed forty-five days in advance of his or her testimony.

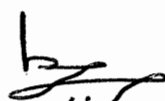
**FOR THE ABOVE REASONS, THE CHAMBER**

**ORDERS** the Prosecution to disclose the identity and unredacted witness statements of Witness BY no later than forty-five days before his or her testimony.

Arusha, 15 March 2004



Erik Møse  
Presiding Judge



Jai Ram Reddy  
Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]



<sup>3</sup> Decision of 3 October, paras. 6, 13.