



UNITED NATIONS  
NATIONS UNIES

ICTR-00-56-I

27-08-2004

(8692-8688)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

8692  
Mwanja

## TRIAL CHAMBER II

ENGLISH  
Original: FRENCH

Before: Judge Arlette Ramaroson, presiding and  
designated pursuant to Rule 73(A) of the Rules

Registrar: Adama Dieng

Decision rendered on: 8 June 2004

### THE PROSECUTOR

v.

Augustin BIZIMUNGU  
Augustin NDINDILIYIMANA  
Innocent SAGAHUTU  
François-Xavier NZUWONEMEYE

Case No. ICTR-2000-56-I

JUDICIAL RECORDS/ARCHIVES  
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ICTR  
2004 AUG 27 A 4 19

### DECISION ON DEFENCE MOTION FOR PROTECTIVE MEASURES FOR DEFENCE WITNESSES

Office of the Prosecutor:

Ciré Aly Ba, Senior Trial Attorney  
Justus Bwonwonga, Trial Attorney  
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Counsel for the Defence:

André Ferran, Lead Counsel  
Antoine Beraud, Co-Counsel  
Philippe Reche, Legal Assistant

CH04-0073 (E)

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Translation certified by LSS, ICTR

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (hereinafter the Tribunal);

**SITTING** as Trial Chamber II, with Judge Arlette Ramaroson presiding and designated pursuant to Rule 73(A) of the Rules of Procedure and Evidence (the Rules);

**BEING SEIZED** of the "Motion for Protective Measures for Defence Witnesses", filed on 4 May 2004 (the Motion);

**CONSIDERING** "The Prosecutor's Response to the Defence Motion for Protective Measures for its Witnesses", filed on 6 May 2004 (the Response);

**DECIDING** solely on the basis of the parties' written briefs, pursuant to Rule 73 of the Rules.

#### **PARTIES' SUBMISSIONS**

1. Pursuant to Article 21 of the Statute and Rules 54, 69, 73 and 75 of the Rules, the Defence seeks for the witnesses that it intends to call in the instant case the application of protective measures similar to those granted to Prosecution witnesses, pursuant to the "Order for Protective Measures for Prosecution Witnesses" issued by Trial Chamber III on 12 July 2001, and extended by the Decision rendered by Trial Chamber II, dated 19 March 2004.
2. The Defence endorses Prosecution submissions in support of its "Motion for the Review, Variation and Extension of the Protective Measures for Victims and Witnesses", filed on 22 November 2002, especially those relating to "risks to witnesses living outside Rwanda". The Defence submits that such risks also apply to Defence witnesses who, compared to Prosecution witnesses, face similar, if not higher, risks of bodily harm as they are on their own.
3. The Defence submits that the witnesses it has interviewed have all expressed concern, which has been compounded further by the judicial investigations being carried out by the French Judge Bruguière, and have indicated that they will not testify before the Tribunal unless they are afforded the same protective measures as Prosecution witnesses.
4. The Defence further submits that the principle of equality set forth in Article 20(1) of the Statute, and reiterated in matters of witness protection in the *Ruzindana* case, Decision of 6 October 1997, implies that similar protective measures should be accorded to Prosecution and Defence witnesses.
5. The Defence seeks the following measures:

- (a) designating for each Defence witness a pseudonym that shall be used whenever referring to such witness in Tribunal proceedings, communications and discussions between the parties and the public;
- (b) requiring that the names, addresses, whereabouts and any other identifying information on witnesses be placed under seal by the Registry, and that such identifying information be communicated to the Victims and Witnesses Support Section in order to implement protection measures for such witnesses;
- (c) redacting any such identifying information that is contained in the Tribunal's existing records;
- (d) prohibiting disclosure to the public or the media of any such identifying information prior to, during, and after the trial;
- (e) prohibiting the Prosecution from attempting to make any independent determination of the identity of any such witnesses or from encouraging or otherwise aiding any person to attempt to identify any such person;
- (f) requiring the Prosecution to make a written request to the Trial Chamber prior to contacting any witness whose identity it knows or any relative of such person;
- (g) prohibiting the photographing and audio and/or video recording or sketching of any witness at any time or place without leave of the Trial Chamber;
- (h) prohibiting the Registry from disclosing to the Prosecution any identifying information on such protected witnesses that it may have on file;
- (i) granting the Defence leave to make a prior disclosure to the Prosecution of versions of documents that have been redacted to conceal the names, addresses, and any other identifying information on such witness;
- (j) granting the Defence leave to disclose to the Prosecution all identifying information on such witnesses no later than 21 days prior to each witness's testimony.

6. The Prosecution does not challenge the Defence requests and submits to the Chamber's discretion. It simply emphasizes the Defence's obligation, pursuant to point (j), to disclose to the Prosecution all identifying information on the witnesses no later than 21 days prior to each witness's testimony, and appeals to the good faith of the Defence when redacting pursuant to point (i).

#### **AFTER HAVING DELIBERATED**

7. The Chamber recalls the measures adopted in the "Order for protective measures for [Prosecution] witnesses", as amended by this Chamber in its Decision of 19 March 2004, issued by Trial Chamber III, in the person of Judge Dolenc on 12 July 2001, and stresses that the requirement of ensuring equality between the parties also extends to the choice of protective measures for Prosecution and Defence witnesses.

8. Regarding the protective measures referred to under point (d), the Chamber however recalls that Rule 75 of the Rules, as amended during the Fourteenth Plenary Session of the Tribunal, now authorizes disclosure of the identity and testimony of the witness at a later date in another trial, after the witness has been informed prior to his or her testimony.

9. The Chamber shall order the other protective measures sought by the Defence, insofar as they are similar to those accorded to Prosecution witnesses, and are based on the same grounds as those previously set forth by the Prosecution in support of its motion for the protection of Prosecution witnesses.

**FOR THE FOREGOING REASONS,**

**GRANTS** the Motion,

**ORDERS** the following protective measures in respect of Defence witnesses:

- (a) that the Defence designate for each Defence witness a pseudonym that shall be used whenever referring to such witness in Tribunal proceedings, communications and discussions between the parties and the public;
- (b) that the names, addresses, whereabouts and any other identifying information of witnesses (hereinafter referred to as "identifying information") be placed under seal by the Registry, and that such identifying information be communicated to the Victims and Witnesses Support Section in order to implement protection measures for such witnesses;
- (c) that any identifying information on such witnesses contained in the Tribunal's existing records be redacted;
- (d) prohibiting disclosure to the public or the media of any identifying information, prior to, during and after the trial; however, pursuant to Rule 75(E) of the Rules, the transcript of those proceedings relating to the evidence of the witness to whom the measures relate shall be made available for use in other proceedings before the Tribunal and, during such proceedings, the identifying information may be disclosed pursuant to Rule 75(F) of the Rules. The Victims and Witnesses Support Section shall ensure that the witness has been informed that his or her identity may be disclosed;

- (e) that the Prosecution be prohibited from attempting to make any independent determination of the identity of any such witnesses or from encouraging or otherwise aiding any person to attempt to identify any such person;
- (f) that the Prosecution make a written request to the Trial Chamber prior to contacting any witness whose identity it knows or any relative of such person, and that, with leave of the Trial Chamber, the Defence take the necessary steps to facilitate such contact when the consent of the protected person or, if such person be under 18 years, ensure that the consent of his or her parents or guardian has been obtained;
- (g) that the photographing and audio and/or video recording or sketching of any witness at any time or place without leave of the Trial Chamber and the parties be prohibited;
- (h) that the Registry be prohibited from disclosing to the Prosecution any such identifying information that it may have on file;
- (i) that the Defence be granted leave to make a prior disclosure to the Prosecution of versions of documents that have been redacted to conceal the names, addresses and any other information which might identify such protected witnesses;
- (j) that the Defence be granted leave to disclose to the Prosecution all identifying information on such witnesses no later than 21 days prior to each witness's testimony.

Arusha, 8 June 2004

[Signed]

Judge Arlette Ramaroson  
Presiding Judge

[Seal of the Tribunal]

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