



UNITED NATIONS  
NATIONS UNIES

ICTR-98-42-T  
15-06-2005  
(11381 - 11372)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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OR: ENG

**TRIAL CHAMBER II**

**Before:** Judge William H. Sekule, Presiding  
Judge Arlette Ramarason  
Judge Solomy Balungi Bossa

**Registrar:** Mr Adama Dieng

**Date:** 15 June 2005

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**The PROSECUTOR**

v.

**Pauline NYIRAMASUHUKO et al.**  
Case No. ICTR-97-21-T  
*Joint Case No. ICTR-98-42-T*

**DECISION**

**ON NYIRAMASUHUKO'S STRICTLY CONFIDENTIAL EX-PARTE - UNDER  
SEAL - MOTION FOR ADDITIONAL PROTECTIVE MEASURES  
FOR DEFENCE WITNESS BK**

**Office of the Prosecutor**

Ms. Silvana Arbia  
Ms Adelaide Whest  
Ms Holo Makwaia  
Ms Adesola Adeboyejo  
Mr Cheikh T. Mara  
Ms Althea Alexis  
Mr Michael Adenuga  
*Ms Astou Mbow, Case Manager*

**Defence Counsel**

Ms. Nicole Bergevin  
Mr. Guy Poupart

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

**SITTING** as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa (the “Chamber”);

**BEING SEISED** of Nyiramasuhuko’s Strictly Confidential *Ex Parte* - Under Seal - Motion for Additional Protective Measures for Defence Witness BK, filed on 3 June 2005 (the “Motion”);<sup>1</sup>

**NOTING** that, being *ex parte*, the Motion was not served to the Prosecution or any other Party in the case;

**CONSIDERING** the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

**NOW DECIDES** the matter, pursuant to Rule 73 (B), on the basis of the *ex parte* written submissions of the Defence only.

### **SUBMISSIONS OF THE DEFENCE**

1. The Defence recalls the Decisions rendered on 13 March 1998<sup>2</sup>, 20 March 2001<sup>3</sup> and 1 March 2005<sup>4</sup> regarding witness protection, which ordered disclosure of witnesses’ identifying information no later than 21 days before their appearance and denied further protective measures for Witness BK. The Defence further reminds the Chamber of the Decision of 15 April 2005 which denied the Defence request to certify the Decision of 1 March 2005, stating that the only reason for reconsideration was the Defence’s omission to mention Witness BK’s pseudonym and that the proper procedure to remedy that mistake would have been the submission of a new motion.
2. The Defence submits that in spite of existing protective measures, Witness BK has refused to come to Arusha to testify because he fears for his safety.
3. Summarizing the relevant applicable law, case-law and the former decisions rendered in the present case, the Defence argues that Rwanda remains a very dangerous country for “voluntarily” repatriated Hutus.<sup>5</sup>
4. The Defence submits that the Accused’s right to a fair trial is one of the elements to be considered when ordering protective measures for witnesses. Therefore, these protective

<sup>1</sup> The Motion was originally filed in French and entitled : “Requête de l’accusée Pauline Nyiramasuhuko strictement confidentielle *ex parte* sous scellés de Pauline Nyiramasuhuko en mesure de protection additionnelle du témoin à décharge BK” (*sic*).

<sup>2</sup> *Prosecutor v. Nyiramasuhuko*, ICTR-97-21-T, Decision on Protective Measures for Defence Witnesses and Their Families and Relatives (TC), 13 March 1998 (the “Decision on Protective Measures of 13 March 1998”)

<sup>3</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, ICTR-97-21-T, Decision on Pauline Nyiramasuhuko’s Motion for Protective Measures for Defence Witnesses and their family members (TC), 20 March 2001

<sup>4</sup> *Prosecutor v. Nyiramasuhuko*, ICTR-97-21-T, joint case ICTR-98-42-T, Decision on Nyiramasuhuko’s strictly confidential *ex-parte* – under seal – Motion for additional protective measures for some Defence Witnesses (TC), 1 March 2005

<sup>5</sup> See the Chamber’s Decision of 20 March 2001 and the report and press release of Amnesty International annexed to the motion.

measures should *a fortiori* be granted when they are requested by the Defence, because they cannot jeopardize the right to a fair trial.

5. The Defence further submits that, for a proper defence to be granted, the identity of Defence witnesses must be protected. The outcome of the trial depends on the capacity and willingness of witnesses to testify. The Defence argues that this is particularly true as regards witnesses who occupied an important position in their country and/or possess sensitive information. The disclosure of the identity of witnesses several days before their testimony creates actual and serious risks that they should not have to face. The Defence has been informed by the Witnesses and Victims Support Section (WVSS) that, once the Witness's identity is disclosed, it could not guarantee the non-disclosure of his identity to third persons, in particular the Rwandan authorities. The Defence's purpose is not to make allegations against anybody within the OTP, rather it seeks to stress the actual and existing risk of information regarding the Witness's identity being revealed to third persons, as has occurred in November 2003 in another case.
6. The Defence submits that, in the *Blaskić* and *Delalić* cases and in the *Milosević* case, the International Criminal Tribunal for the Former Yugoslavia (the "ICTY") authorized the Defence to disclose the identity of some of its witnesses seven and ten days respectively, before said witnesses testified.<sup>6</sup>
7. Therefore, considering the situation of Defence Witness BK, the Defence requests that the Chamber order that his identity should not be disclosed to the Prosecution before the very day of his testimony. The Defence argues that such an order would be the only measure limiting the risk that his identity be disclosed to third persons to a strict minimum. The Defence submits that the information to be divulged by the Witness is crucial for the determination of truth because this type of witness never appears before the ICTR, justly fearing safety risks. According to the Defence, Witness BK could never take the risk of testifying, if the Tribunal does not grant him all the protective measures in its power.
8. The Defence submits that the exceptional circumstances described as regards Defence Witness BK meet the criteria for the organization of his testimony by way of video-link. In support of this request, the Defence relies on the *Bagosora* Decision of 8 October 2004, which ruled that a request for testimony by means of video-link should be considered under the "interests of justice" standard set forth in the *Nahimana* case.<sup>7</sup>
9. The exceptional circumstances affecting Witness BK justify, according to the Defence, a testimony via video-link, be that decision founded on Rule 75 or on the criterion of the interests of justice.
10. The Defence further submits that the exceptional circumstances described as regards Defence Witness BK meet the criteria for maximal protection measures and therefore requests, in addition to the other protective measures, the use of adequate devices for the alteration of his image and voice during his testimony. The Defence submits that in

<sup>6</sup> ICTY, *Prosecutor v. Blaskić*, IT-95-14-T, Decision on the Prosecutor's Motion for Seven (7) Days Advance Disclosure of Defence Witnesses and Defence Witnesses Statements(TC), 3 September 1998; ICTY, *Prosecutor v. Milosević*, IT-02-54-T, Second Decision on Prosecution Motion for Protective Measures for Sensitive Source Witnesses, 18 June 2002 (the "*Milosević* Decision of 18 June 2002")

<sup>7</sup> *Prosecutor v. Bagosora*, ICTR-96-7-1, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004 ("The *Bagosora* Decision of 8 October 2004")

several cases before the ICTY, all these measures have been accorded cumulatively to one witness and stresses that Witness BK, particularly in as far as his fears for his family are concerned, is in need of image- and voice-altering devices on the basis of Rules 54 and 75.

11. Finally, the Defence submits that Defence Witness BK and his family live in very precarious conditions in refugee camps, which make them particularly vulnerable to retaliation measures, including their murder. The Defence recalls Mr Seth Sendashonga's murder by RPF agents in Nairobi, a few days before he was scheduled to testify in the *Kayishema/Ruzindana* case, and submits that there is a risk of Witness BK and his family being killed in reprisals, stressing that they are even more vulnerable than Mr Sendashonga because of living in a refugee camp.
12. The Defence argues that since pursuant to Art. 28, a Chamber can order a State to arrest a suspect, a Chamber also has the competence to order a State to welcome a person if necessary. Such measures are taken by some European and North-American jurisdictions. In some instances, a new identity is also granted to the re-installed witness. The Defence believes that such measures were used for Prosecution Witness ZC who testified in the *Media* and *Military I* cases and submits that Defence Witness BK, incontestably among the most vulnerable Witnesses the Tribunal could hear, fulfils the conditions for relocation to a European country, together with his family.
13. Therefore, the Defence prays the Chamber to grant the following additional measures for the protection of Defence Witness BK:
  - i) To order the non-disclosure of the Witness's identity to the Prosecutor and the other parties before the day the Witness will testify;
  - ii) To order the redaction of all information contained in the Witness's will-say statement that would allow his identify to be disclosed, until the day he will testify;
  - iii) To order that the testimony of Witness BK be taken by video-link from Paris or Brussels;
  - iv) To order that appropriate measures be used to alter the Witness's voice and image during testimony;
  - v) To order the relocation of the Witness and his family to a European country.

#### DELIBERATIONS

14. The Chamber recalls that all Parties are, pursuant to Article 20(1) of the Statute, equal before the Tribunal<sup>8</sup> and that the Chamber must take appropriate measures to ensure that the truth is ascertained in a fair and expeditious trial.<sup>9</sup>
15. The Chamber recalling the provisions of Article 21 of the Statute and Rules 69 and 75 of the Rules, reiterates its analysis of the case law regarding the request for extra protective measures found in its Decision of 1 March 2005, as enunciated in the *Bagosora* Decision of 13 September 1999:

<sup>8</sup> See *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Decision on the Motion for the Protection of Defence Witnesses (TC), 6 October 1997; *Prosecutor v. Bagambiki et al.*, ICTR-97-36-T, Decision on the Defence Motion for the Protection of Witnesses (TC), 30 September 1998.

<sup>9</sup> See ICTY, *Prosecutor v. Blaskić*, IT-95-14-T, Decision on the Prosecutor's Motion for Seven (7) Days Advance Disclosure of Defence Witnesses and Defence Witnesses Statements (TC), 3 September 1998.

To grant protective measures to a witness, pursuant to Rule 75, the following conditions must also apply. Firstly, the testimony of the witness must be relevant and important to the party's case. Secondly, there must be a real fear for the safety of the witness and an objective basis underscoring the fear. Thirdly, any measure taken should be strictly necessary. If a less restrictive measure can secure the required protection, that measure should be applied.<sup>10</sup>

16. In addition to those three criteria, some decisions rendered by the Tribunal or the ICTY have mentioned further issues, such as the fact that there must be *no prima facie* evidence that the witness is untrustworthy,<sup>11</sup> the length of time at which the identity of the victims and witnesses must be disclosed to the Parties,<sup>12</sup> the fact that the Parties must be in a fair position to confront the witness,<sup>13</sup> the lack of an efficient witness protection program.<sup>14</sup> It is the view of the Chamber that, while keeping these additional issues in mind, the Motion shall be determined on the basis of the three principal criteria mentioned above.

17. The Chamber recalls that the burden of proof for the fulfilment of the applicable criteria lies with the Party requesting additional protective measures. As stated in a Decision rendered in the *Bagosora* Decision of 8 October 2004 and others:

[T]he applicant must make some showing that giving testimony in that manner is necessary to safeguard the witness' security.<sup>15</sup>

18. The Chamber will thus consider the three above-mentioned criteria and determine whether the Defence has demonstrated that they are fulfilled in the case of Witness BK. The Chamber notes that the third criterion is relevant to the choice of protective measures to be granted to those witnesses fulfilling the first two criteria. Therefore, the Chamber will start by determining whether in the light of the first two criteria the Witness is eligible to additional protective measures and will then decide which protective measures shall be applied.

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<sup>10</sup> *Prosecutor v. Bagosora*, ICTR-96-7-I, Decision on the Extremely Urgent Request Made by the Defence for Protection Measures for Mr. Bernard Ntuyahaga (TC), 13 September 1999, para. 28. (the "*Bagosora* Decision of 13 September 1999")

<sup>11</sup> ICTY, *Prosecutor v. Tadić*, IT-94-1-T, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses (TC), 10 August 1995, para. 64 (the "*Tadić* Decision of 10 August 1995"; ICTY, *Prosecutor v. Milosević*, IT-02-54-T, Partly Confidential and *Ex Parte* Decision on Prosecution Motion for Provisional Protective Measures Pursuant to Rule 69 (TC), 19 February 2002, para. 25.

<sup>12</sup> The *Milosević* Decision of 18 June 2002, para. 7.

<sup>13</sup> *Prosecutor v. Nahimana*, ICTR-99-52-I, Decision on the Prosecutor's Application to Add Witness X to its List of Witnesses and for Protective Measures (TC), 14 September 2001, para. 35; *Prosecutor v. Karemera*, ICTR-98-44-I, Decision on the Prosecutor's Motion for Special Protective Measures for Witness G and T and to Extend the Decision on Protective Measures for the Prosecutor's Witnesses in the Nzirorera and Rwamakuba Cases to Co-Accused Ngirumpatse and Karemera, and Defence's Motion for Immediate Disclosure (TC), 20 October 2003, para. 13.

<sup>14</sup> *Prosecutor v. Bagosora*, ICTR-96-7-I, Decision on the Prosecution Motion for Special Protective Measures for Witnesses 'A' Pursuant to Rules 66(C), 69(A) and 75 (TC), 5 June 2002, para.29; ICTY, *Prosecutor v. Milosević*, IT-02-54-T, Decision on Prosecution Motion for Provisional Protective Measures Pursuant to Rule 69 (TC), 19 February 2002, para. 25.

<sup>15</sup> See the *Bagosora* Decision of 8 October 2004 at para. 8; see also *Prosecutor v. Rutaganda*, ICTR-96-3-T, Decision on the Urgent Motion Filed by the Defence for the Immediate Transfer and Appearance of a Detained Witness, Froduald Karamira (TC), 26 March 1998, paras. 7-10; The *Bagosora* Decision of 13 September 1999, para. 19; ICTY, *Prosecutor v. Brdanin and Talić*, IT-99-36-T, Decision on Motion by Prosecution for Protective Measures (TC), 3 July 2000, paras. 16-17.

*Relevance and Importance of the Testimony*

19. The jurisprudence of both Tribunals holds that, for special protective measures to be granted to a witness, his or her testimony must be relevant and important to the case of the requesting Party. As stated in the Decision rendered on 10 August 1995 by the ICTY in the *Tadić* Case:

[T]he testimony of the particular witness must be important to the Prosecutor's case: '[T]he evidence must be sufficiently relevant and important to make it unfair to the prosecution to compel the prosecutor to proceed without it.' (*R. v. Taylor*, Ct. App. Crim. Div. 22 July 1994). In this respect, it should be noted that the International Tribunal is heavily dependent on eyewitness testimony and the willingness of individuals to appear before the Trial Chamber and testify. Further, the Prosecutor has stated that this testimony is important and, for some witnesses, critical.<sup>16</sup>

20. The Chamber notes that the Defence has referred to a previously filed will-say statement of Witness BK. On its basis, the Witness was *bourgmestre* in Butare *préfecture*. His expected testimony will cover facts he says he has directly seen, including massacres in his *commune* between 16 and 19 April 1994 and two meetings with Sindikubwabo and other politicians in April 1994. It is the view of the Chamber that the relevance of his testimony cannot be disputed.

*Real Fear Underscored By an Objective Basis*

21. As mentioned in the above-cited *Bagosora* Decision, to fulfil the second criterion for protective measures, the witness' subjective fear is insufficient and must be underscored by objective considerations. In the *Milosević* Decision of 18 June 2002, the ICTY further ruled:

[F]ears expressed by potential witnesses are not in themselves sufficient to establish a real likelihood that they may be in danger or at risk.<sup>17</sup>

22. The Chamber recalls that the security situation of Witness BK, as submitted by the Defence, can be summarized as follows: Witness BK, who as a *bourgmestre* held an important position during the events of 1994, has had reason to fear being killed since 1994. This fear for his and his family's safety has prompted him to assume a false identity, under which he lives with his family in a refugee camp in an African country. The danger he believes they are in is both related to the office he held in 1994, and that he possesses crucial information regarding the genocide. The danger for former Rwandan authorities is borne out by reports of humanitarian organizations, such as those of Amnesty International annexed to the Motion. More specifically, Witness BK fears being arrested by the OTP or the Rwandan authorities, he fears for the security of his family, as well as reprisals once the protection provided by the Tribunal ends. The Chamber considers that those elements constitute an objective basis underscoring the fears expressed by the Witness that his security or the security of his family may be threatened, should he testify.

<sup>16</sup> ICTY, *Prosecutor v. Tadić*, IT-94-1-T, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses, 10 August 1995, para. 63; see also *Prosecutor v. Bagosora*, ICTR-96-7-1, Decision on the Extremely Urgent Request Made by the Defence for Protection Measures for Mr. Bernard Ntuyahaga, 13 September 1999, para. 29.

<sup>17</sup> The *Milosević* Decision of 18 June 2002, para. 7.

23. As regards his fear of arrest by either the OTP or the Rwandan authorities, the Chamber notes that according to his will-say statement, Witness BK held an important position in Rwanda in 1994. In the Chamber's opinion, although Witness BK's fears appear to be justified, as objectively underscored by the 2004 report of Amnesty International, the Chamber recalls that, as stated in the *Bagosora* Decision of 13 September 1999:

[T]he phrase "in danger or at risk" does not include being subject to lawful acts of a State, e.g., prosecution. For a person to be in danger or at risk, the threat must be of an unlawful act.<sup>18</sup>

24. Therefore, the Chamber considers that the risk to be legally arrested and/or prosecuted by the OTP or the Rwandan Authorities is outside the scope of protective measures, with the limited exception of the granting of safe-conduct. This exception is discussed below.

25. For the foregoing reasons, the Chamber considers that the Defence has demonstrated that Witness BK meets the criteria for the application of additional protective measures.

*Strictly Necessary Protective Measures*

26. The Chamber recalls the measures requested for by the Defence as outlined at paragraph 13.

27. As regards measures (i) and (ii), the Chamber is aware that short time-limits for disclosure of the identity of witnesses and non-redacted statements have been previously granted before the ICTY.

28. However, in the present case, the Chamber notes that the fears which those measures are supposed to allay, i.e. the risk of pressure or retaliation on the Witness or his family, are already adequately addressed by the protective measures granted to all Defence witnesses in the present case in the Decision on Protective Measures of 13 March 1998, namely, the use of a pseudonym and confidentiality of identifying information which may be addressed in closed session only. The Chamber considers that the balance to be struck between the Parties' opposing interests in regard to the preparation of their case is achieved by the measures already granted. There is therefore no reason to reconsider the time-frame for the disclosure of identifying information and unredacted statements of Witness BK as measures (i) and (ii) seek to do.

29. As regards measure (iii), the Chamber notes that, although the testimony of witnesses via video-link has been granted in other cases,<sup>19</sup> this has been limited to circumstances of

<sup>18</sup> The *Bagosora* Decision of 13 September 1999, para. 34.

<sup>19</sup> For example, *Prosecutor v. Nahimana*, ICTR-99-52-I, Decision on the Prosecutor's Application to Add Witness X to its List of Witnesses and for Protective Measures (TC), 14 September 2001; *Prosecutor v. Bagosora*, ICTR-96-7-I, Decision on the Prosecution Motion for Special Protective Measures for Witnesses 'A' Pursuant to Rules 66(C), 69(A) and 75 (TC), 5 June 2002; ICTY, *Prosecutor v. Milosević*, IT-02-54-T, Decision on Confidential With an *Ex-Parte* Annexure Prosecution's Motion for Video-Conference Link And Protective Measures For Witness Named Herein (TC), 19 March 2003; *Prosecutor v. Karemera*, ICTR-98-44-I, Decision on the Prosecutor's Motion for Special Protective Measures for Witness G and T and to Extend the Decision on Protective Measures for the Prosecutor's Witnesses in the Nzirorera and Rwamakuba Cases to Co-Accused Ndirumpatse and Karemera, and Defence's Motion for Immediate Disclosure (TC), 20 October 2003; *Prosecutor v. Bizimungu et al.*, ICTR-99-50-T, Decision on Prosecutor's Extremely Urgent Motion Requesting That the Extraordinarily Vulnerable Witnesses X/006 and 039 Testify by Closed Video Transmission Link With

absolute necessity, the Tribunal having regularly recalled that it had a clear preference for testimony in court.<sup>20</sup> The Chamber further notes that each time the security concerns of the witness could be satisfied by a less restrictive measure, this measure was favoured. As observed in the Decision rendered in the *Bagosora* Decision of 13 September 1999:

Thus it is seen that Bagosora's right to a fair trial, pursuant to Articles 19 and 20, could be secured by use of a less restrictive measure than that proposed by the Defence, and without interference in matters of national jurisdiction and interaction between States.<sup>21</sup>

30. In the present case, the Defence moves the Chamber to organize Witness BK's testimony via video-link from Paris or Brussels, although he is allegedly currently living under an assumed identity as a refugee in an African country. The Chamber notes that no evidence has been adduced supporting this submission.
31. It is the further view of the Chamber that the organization of Witness BK's testimony via video-link would not be an appropriate answer to the problem, as it would not diminish the risks already referred to in para. 28 above. Rather, it is the confidentiality of the Witness's particulars and identifying information that appears to be the most appropriate measure to prevent the risks described.
32. As regards the fear of criminal prosecution expressed by Witness BK, the Chamber has already noted that this risk is not a ground for protective measures, with the exception of the granting of a safe conduct, which has been repeatedly admitted in both the Tribunal's and the ICTY's jurisprudence.<sup>22</sup>
33. The Chamber recalls that "protective measures for witnesses should not hinder due process or be used as a way of providing immunity to the witnesses against possible prosecution"<sup>23</sup> and that "the only type of immunity which falls within the jurisdiction of this Tribunal is the kind provided for under Rule 90(E) whereby witnesses will not be prosecuted by this Tribunal for giving compelled evidence which may incriminate them, excluding perjury".<sup>24</sup>
34. However, these considerations do not prevent from granting, in accordance with Rule 54, a safe conduct to a witness whose appearance is necessary and who fears to be arrested.

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a Location at The Hague And Other Related Special Protective Measures Pursuant to Article 21 of the Statute and Rules 73 and 75 (TC), 4 June 2004.

<sup>20</sup> *Prosecutor v. Nahimana*, ICTR-99-52-I, Decision on the Prosecutor's Application to Add Witness X to its List of Witnesses and for Protective Measures, 14 September 2001, para. 37; *Prosecutor v. Bagosora*, ICTR-96-7-I, Decision on Prosecution Request for Testimony of Witness BT via Video-Link, 8 October 2004, para. 15.

<sup>21</sup> *Prosecutor v. Bagosora*, ICTR-96-7-I, Decision on the Extremely Urgent Request Made by the Defence for Protection Measures for Mr. Bernard Ntuyahaga (TC), 13 September 1999, para. 38.

<sup>22</sup> ICTY, *Prosecutor v. Tadić*, IT-94-1-T, Decision on the Defence Motion to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link (TC), 25 June 1996; ICTY, *Prosecutor v. Dokmanović*, IT-95-13a-T, Decision Regarding Defence Motion to Protect Witness (TC), 27 August 1997; ICTY, *Prosecutor v. Mrksić et al. ("Vukovar Hospital")*, IT-95-13/1-T, Order on Defence Motion for Safe Conduct (TC), 12 June 1998; ICTY, *Prosecutor v. Blaskić*, IT-95-14-T, Order Granting Safe-Passage to Defence Witness "D/G" (TC), 7 September 1998.

<sup>23</sup> *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Decision on the Motion for Protection of Defence Witnesses (TC), 6 October 1997; *Prosecutor v. Bagosora*, ICTR-96-7-I, Decision on the Extremely Urgent Request Made by the Defence for Protection Measures for Mr. Bernard Ntuyahaga (TC), 13 September 1999, paras. 34-35.

<sup>24</sup> *Prosecutor v. Ntagerura*, ICTR-96-10A-I, Decision on the Defence Motion for the Protection of Witnesses (TC), 24 August 1998.



The Chamber concurs with the statement made by the ICTY in the Decision rendered in *Prosecutor v. Dokmanovic* on 27 August 1997<sup>25</sup> that, “an order for safe conduct grants only a very limited immunity from prosecution’ and only ‘with respect to crimes within the jurisdiction of the International Tribunal committed before coming to the International Tribunal and only for the time during which the witness is present at the seat of the International Tribunal for purpose of giving testimony”.

35. Therefore, and considering the Witness’s fear of being arrested and extradited to the Rwandan authorities, the Chamber deems it appropriate to *proprio motu* issue, pursuant to Rule 54, an order of safe conduct for Defence Witness BK.

36. As regards measure (iv), namely, the distortion of Witness BK’s voice and image, the Chamber recalls the measures already ordered for the protection of the identity of Defence witnesses and notes that the Defence did not demonstrate that those measures are insufficient to prevent the alleged risks of identification. Nor did the Defence make a demonstration of the reason why the requested distortion should be ordered. Therefore, it is the view of the Chamber that there is no reason for ordering the distortion of the Witness’s voice and image.

37. As regards measure (v), the Witness’s relocation to a European country with his family, the Chamber recalls the finding made in the *Prosecutor v. Kanyabashi* case:

The Trial Chamber is, however, of the view that the granting of refugees status falls within the ambit of domestic law, in this case under Kenyan Law and Kenyan Authorities hold the sovereign right to prosecute criminal offenders within their territory.<sup>26</sup>

38. It results from this finding that the Tribunal has no authority and no jurisdiction to order a State to grant refugee status to a witness.

**FOR THE ABOVE REASONS,**

**THE TRIAL CHAMBER**

**DENIES** the Motion in its entirety,

**ORDERS *proprio motu***, pursuant to Rule 54, that Defence Witness BK shall not be prosecuted, detained or subjected to any other restriction of his personal liberty, for acts or convictions falling within the jurisdiction of the Tribunal, during his presence in Tanzania and his travel between that country and his place of residence and, accordingly:

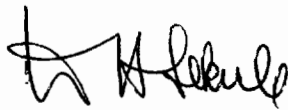
<sup>25</sup> ICTY, *Prosecutor v. Dokmanović*, IT-95-13a-T, Decision Regarding Defence Motion to Protect Witness (TC), 27 August 1997.

<sup>26</sup> *Prosecutor v. Kanyabashi*, ICTR-96-15-T, Decision on the Protective Measures for Defence Witnesses and Their Families (TC), 25 November 1997.

11372

- **DECIDES** that such immunity shall take effect from the date of the present Decision and shall remain in force for a maximum of seven days following the completion of the testimony of Witness BK;
- **DECIDES**, moreover, that should illness prevent Witness BK from leaving Tanzania or should he be detained for an offence he may have committed during his stay in Tanzania, the seven days time-limit shall start to run from the time he is again able to travel or has been released;
- **DECIDES** that Witness BK may travel only between the country's point of entry and exit and his place of residence, within a limited radius around his place of residence, and between such place and the Tribunal.

Arusha, 15 June 2005



William H. Sekule  
Presiding Judge



Arlette Ramarason  
Judge  
[Seal of the Tribunal]



Solomy Balungi Bossa  
Judge

