



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before:

Judge	Asoka	De	Silva,	Presiding
Judge		Taghrid		Hikmet
Judge Seon Ki Park				

Registrar: Mr Adama Dieng

Date: 28 October 2005

The PROSECUTOR
v.
Juvenal RUGAMBARARA

Case No. ICTR-00-59-I

DECISION ON THE PROSECUTOR'S MOTION FOR PROTECTIVE MEASURES FOR WITNESSES

Office of the Prosecutor

Mr Charles Adeogun-
Ms Memory
Mr Peter
Ms Maymuchka
Ms Florida Kabasinga

Defence Counsel

PhillipsMr Maroufa Diabira
Maposa
Tafah
Lauriston

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

SITTING as Trial Chamber II composed of Judge Asoka De Silva, Presiding, Judge Taghrid Hikmet, and Judge Seon Ki Park (the “Chamber”);

BEING SEISED of the “Prosecutor’s Motion for Protective Measures for Witnesses” filed on 16 September 2005 (the “Motion”);

CONSIDERING the «*Mémoire en réplique à la requête en date du 16/09/2005 du Procureur en prescription de mesures de protection de témoin* », filed on 26 September 2005 (the “Defence Response”);

CONSIDERING the Statute of the Tribunal (the “Statute”), in particular Articles 14, 19 and 21, and the Rules of Procedure and Evidence (the “Rules”), specifically Rules 69 and 75;

NOW DECIDES the Motion pursuant to Rule 73 (A) on the basis of the written submissions of the Parties.

SUBMISSIONS OF THE PARTIES

The Prosecution

1. The Motion is brought pursuant to Articles 14, 19 and 21 of the Statute and Rules 69 and 75 of the Rules.
2. The Prosecution seeks protective measures for potential Prosecution witnesses who live in Rwanda and who have not affirmatively waived their right to such protection.
3. The Prosecution submits that most of the potential witnesses have expressed concern over their fate after testifying before the Tribunal, considering the insecurity in Rwanda and the threats made against certain witnesses, as well as the risks, including the assassination of witnesses who testified before the Tribunal. Consequently, the Prosecution seeks appropriate protective measures for its potential witnesses. The measures requested are as follows:
 - a. That the names, addresses, whereabouts of and other identifying information concerning all victims and potential Prosecution witnesses falling into the definition specified in paragraph 7 of the present motion^[1] be sealed by the Registry and not included in any records of the Tribunal.
 - b. That the names, addresses, whereabouts of and other identifying information concerning all victims and potential Prosecution witnesses falling into the definition specified in paragraph 7 of the present motion be communicated only to the Victims and

Witnesses Support Unit personnel by the Registry in accordance with the established procedure and only in order to implement protective measures for these individuals.

c. That the names, addresses, whereabouts of and other identifying information concerning all victims and potential Prosecution witnesses falling into the definition specified in paragraph 7 of the present motion shall not appear in any document that is accessible to the public or the media.

d. That the Defence and the Accused shall not share, discuss, or reveal directly or indirectly, with another party, any document or information concerning the identification of the witnesses.

e. That the disclosure to the Defence of the names, addresses, whereabouts of, and any other identifying data which would reveal the identities of Prosecution witnesses short-listed for trial, should be made 21 days before the date set for commencement of trial.

f. That the Defence provide a list to the Trial Chamber and the Prosecution of all persons working on the immediate Defence team who will have access to any information referred to in the above paragraphs.

g. That the Defence and the Accused shall notify the Prosecution in writing of any request to contact Prosecution witnesses, so that the Prosecution may respond accordingly.

h. That nowhere and at no time shall the public and the media take photographs, make video or audio recordings, or sketches of the witnesses without leave of the Chamber.

i. That during each hearing before the Tribunal, or during communications and discussions between the parties involved in the trial and the public, the Prosecution shall utilize a pseudonym to designate each Prosecution witness that it intends to call. The use of pseudonyms shall last until such time when the Trial Chamber orders otherwise.

The Defence

4. The Defence does not object to the Motion but submits that an order to disclose all essential information in respect of the identities of Prosecution witnesses only 21 days before the date set for commencement of trial would not be in conformity with the provisions of Rule 69(C). According to the Defence, such disclosure should be done at least three months before the start of trial in order for it to prepare and conduct the necessary on-field investigations.

DELIBERATIONS

5. The Chamber recalls that Article 21 of the Statute empowers the Tribunal to make rules for the protection of victims and witnesses and provides that protective measures may include the conduct of *in camera* proceedings and the protection of personal identity.

Rule 54 of the Rules gives the Chamber a general power to issue orders necessary for the conduct of a trial; Rule 69 provides that either party may apply to the Chamber to order non-disclosure of the identity of witnesses who may be in danger or at risk; Rule 75 stipulates the power of the Chamber to order measures appropriate for the privacy or security of witnesses, and states that such measures must be consistent with the rights of the Accused. Finally, Rule 73 enables either party to bring motions before the Chamber after the initial appearance of the Accused.

6. The Chamber recalls the *Bagosora* Decision where it was stated that one of the conditions for the grant of protective measures is that “there must be a real fear for the safety of the witness and an objective basis underscoring the fear.”^[2]

7. The Chamber further recalls the ICTY decision in the *Milosević* case, where the Trial Chamber stated that “fears expressed by potential witnesses are not in themselves sufficient to establish a real likelihood that they may be in danger or at risk.”^[3]

8. The Chamber notes the Prosecution’s submissions that most of the victims and potential Prosecution witnesses have expressed concern over their fate after testifying before the Tribunal, considering the insecurity in Rwanda and the threats and dangers faced by certain witnesses. However, the Chamber observes that the Prosecution does not provide any information in support of its submission regarding the insecurity in Rwanda for victims and potential witnesses.

9. The Chamber wishes to remind the Prosecution of its obligation to provide the Chamber with all the material necessary for it to make a reasoned decision. In a matter as important as the protection of potential witnesses, the Prosecutor cannot expect the Chamber to speculate on the security situation in Rwanda. The Chamber concludes that the Prosecution has failed to demonstrate an objective basis for the subjective fears expressed by the proposed witnesses. The Motion is therefore rejected.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Motion as currently formulated without prejudice to the right of the Prosecution to file a fresh motion with the appropriate supporting material.

Arusha, 28 October 2005

Asoka De Silva
Presiding Judge

Taghrid Hikmet
Judge
[Seal of the Tribunal]

Seon Ki Park
Judge

^[1] This category of witness is defined in paragraph 2 of the Present Decision.

^[2] *Prosecutor v. Bagosora et al* Case No. 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 other two conditions for the grant of protective measures under Rule 75 are that the testimony of the

witness “must be relevant and important to the Party’s case”, and that “any measure taken should be strictly necessary.”

[3] *Prosecutor v. Milosević*, Case No. IT-02-54, Second Decision on Prosecution Motion for Protective Measures for Sensitive Source Witnesses (TC), 18 June 2002, para. 7.