



ICTR-97-31-I  
01-11-2005  
(1450 - 1446)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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smm/bsg

OR: ENG

**TRIAL CHAMBER II**

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

**Registrar:** Mr Adama Dieng

**Date:** 1 November 2005

**The PROSECUTOR**

v.

**Tharcisse RENZAHO**

*Case No. ICTR-97-31-I*

2005 NOV 11 09 31 11

**DECISION ON RENZAHO'S MOTION ON CERTIFICATION TO APPEAL THE DECISION  
ON PROTECTIVE MEASURES FOR VICTIMS AND WITNESSES TO CRIMES ALLEGED  
IN THE INDICTMENT**

**Office of the Prosecutor**

Mr Jonathan Moses  
Ms Katya Melliush  
Mr Ignacio Tredici

**Defence Counsel**

Mr François Cantier

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1449

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

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

**BEING SEISED** of Renzaho’s “*Requête de la Défense en demande d’autorisation de faire appel en vertu de l’Article 73 C du 17 août 2005 Règlement de Preuve et de Procédure*”, filed on 24 August 2005 (the “Motion”);

**NOTING** the Prosecutor’s “Response to the ‘*Requête de la Défense en demande d’autorisation de faire appel en vertu de l’Article 73 C du Règlement de Preuve et de Procédure*’”, filed on 6 September 2005 (the “Prosecutor’s Response”);

**CONSIDERING** the Defence’s “*Réplique de la Défense à la Réponse du Procureur à la Requête de la Défense en demande d’autorisation de faire appel en vertu de l’Article 73 C du Règlement de Preuve et de Procédure*”, filed on 13 October 2005 (the “Defence’s Reply”);

**RECALLING** the Prosecutor’s “Motion for Protective Measures for Victims and Witnesses to Crimes alleged in the Indictment”, filed on 6 June 2005 (the “Prosecutor’s Motion”);

**NOTING** the “Decision on the Prosecutor’s Motion for Protective Measures for Victims and Witnesses to Crimes alleged in the Indictment”, issued on 17 August 2005 (the “impugned Decision”);

**NOTING FURTHER** the Registry’s directions to the Parties regarding filing of responses and replies to the Prosecutor’s Motion, dated 4 July 2005 (the “Registry’s Directions”);

**CONSIDERING** the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), particularly Rules 73(C) and (E);

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

## INTRODUCTION

1. On 6 June 2005, the Prosecutor moved the Chamber to award protective measures for several witnesses. Of the 18 Annexes supporting the motion, 17 were in English.
2. On 4 July 2005, the Registry informed the Parties of the time limits with respect to the filing of responses and replies. The Defence for Renzaho was directed to file its response within five days after the receipt of the French translation and the Prosecution within five days of receipt of the Defence response.
3. On 14 July 2005, the Registry informed the Defence that it was awaiting its response to the Prosecutor’s Motion and asked the Defence to indicate its position so the Chamber could be informed of the current status.
4. On 17 August 2005, the Chamber issued a Decision granting in part the Prosecutor’s Motion for witness protective measures.

R

1448

## SUBMISSIONS OF THE PARTIES

### *The Defence Motion*

5. The Defence submits that it received the Prosecutor's Motion, in English, on 8 June 2005. Attached to this motion were several Annexes, comprising over 70 pages.
6. The Defence submits that it understands Rule 73(E) to provide a Party with five days within which to reply to a motion from the date on which it is received in the working language of the Party, in this case, French.
7. In the Annexes adjoining the Motion, the Defence attaches an email it sent to the Registry on 8 July 2005, informing the Registry that it was still awaiting the Prosecutor's Motion and Annexes. The Defence noted that it had received a communication from the Registry via electronic mail but had been unable to open and print the attachments. The Defence requested that the Registry transmit the translated Motion and adjoining Annexes by facsimile. The Defence also sought confirmation from the Registry that the time limits imposed by the Chamber for filing its response had not begun to run, considering the translated documents had not been received.
8. The Defence submits that on 11 July 2005, it received the French translation of the Prosecutor's Motion, but not of the Annexes. The Defence subsequently wrote to the Registry, noting the sheer number of the Annexes, as well as the Prosecutor's reliance upon them in justifying its Motion. The Defence informed the Registry that since it had not received a translation of these Annexes, it was of the view that the period within which it had to reply to the Motion would not begin to run until receipt of the translated Annexes.
9. The Defence reiterated its request for translation of the Annexes on 20 July 2005, noting that it was unable to respond without a translation of the Annexes. In view of the lack of response from the Registry on the issue of time limits, the Defence submits it was justified in believing the Registry would not object to the delay in the submission of its response.
10. On 17 August 2005, the Defence received the impugned Decision. The Defence maintains that it was not given an opportunity to reply to the Prosecutor's Motion, the core of which concerned the fundamental rights of the Defence. As a result, the Defence submits that it has been prevented from knowing the identity of the Prosecution witnesses for whom protective measures are sought until the last moment.
11. In conclusion, the Defence seeks certification to appeal the impugned Decision pursuant to Rule 73 (B), in order to present its arguments, which would assure the rights of the Defence as well as the equality of parties in these proceedings.

### *The Prosecution's Response*

12. The Prosecutor submits that the Defence has failed to satisfy the requirements of Rule 73(B) and accordingly moves the Chamber to deny the Motion in its entirety.<sup>1</sup>
13. The Prosecution argues that the impugned Decision is consistent with this Tribunal's and the International Criminal Tribunal for the Former Yugoslavia's jurisprudence, according to which the Accused has the right to receive translations into a language he understands of certain well-

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<sup>1</sup> Prosecution's Response, para. 9.

R

1447

determined documents. The Prosecution maintains that this does not mean that each and every act or document produced during trial has to be translated into both working languages of the Tribunal.<sup>2</sup> The Prosecution submits that the documents in question, namely the annexes to the Prosecution's Motion, are subsidiary and thus are not required to be translated in order to enable the Defence to respond.<sup>3</sup>

14. The Prosecution further submits that the impugned Decision does not prejudice the rights of the Accused and the Defence has failed to raise any substantial objections to the terms of the Chamber's orders.<sup>4</sup>

### *The Defence's Reply*

15. The Defence's Reply reiterates the arguments contained in the Motion and stresses the importance of the equality of arms for a fair trial, which it submits has been violated because the Defence's arguments were not heard.<sup>5</sup>
16. The Defence further submits that the Prosecution's prayer to be authorised to disclose the witnesses' identities 21 days before the start of their testimony can only be ordered pursuant to Rule 69 (A). This Rule, however, is only applicable in exceptional circumstances and therefore cannot be sought as a blanket protection for all witnesses. Besides, this measure violates the rights of the Accused to have the time and facilities to adequately prepare his defence, pursuant to Art. 20 of the Statute.<sup>6</sup>
17. The Defence observes that the disclosure of documents to the Defence within reasonable time would expedite the proceedings. It points out that if it was clear that the Annexes would not be communicated in French, it would have been good manners to inform it, rather than take a decision without informing the Defence that its arguments would not be heard.<sup>7</sup>
18. The Defence accepts that the Accused does not have the right to receive each and every document translated into a language s/he understands. It submits, however, that the Annexes were of fundamental importance for the Prosecution's Motion and thus had to be translated in the interests of a fair trial.<sup>8</sup>

### **DELIBERATIONS**

19. The Chamber has carefully considered all the submissions of the Parties.

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<sup>2</sup> *Ibid.*, paras. 10-14, relying on *Bagosora et al.*, Certification of Appeal concerning Prosecution Investigation of Protected Defence Witnesses (TC), 21 July 2005, para. 6; *Zigiranyirazo*, Décision relative à la requête en extrême urgence de la Défense aux fins de traduction des éléments essentiels du mémoire préalable au procès du Procureur (TC), 30 August 2005, para. 3; *Muhimana*, Décision relative à la requête de la Défense aux fins de traduction des documents de l'Accusation et des actes de procédure en Kinyarwanda, langue de l'Accusé et en français, langue de son Conseil – Articles 10 et 31 du Statut et 3, 19, 31, 33 (B), 54, 66 (A) et 73 du Règlement (TC), 6 November 2001, para. 33; *Delalic et al.*, Décision relative à la requête de la Défense aux fins de transmission des documents dans la langue de l'Accusé (TC), 25 September 1996.

<sup>3</sup> Prosecution's Response, paras. 11-13.

<sup>4</sup> Prosecutor's Response, para. 16-17.

<sup>5</sup> Defence's Reply, paras. 10-15, relying on Art. 10 of the Universal Declaration of Human Rights; ECHR *Neumeister v. Austria*, 27 June 1968, para. 22; ECHR, *Dumbo Beheer BV v. The Netherlands*, 27 October 1993, para. 33.

<sup>6</sup> *Ibid.*, paras. 16-20.

<sup>7</sup> *Ibid.*, paras. 22-29.

<sup>8</sup> *Ibid.*, paras. 32-35.

1446

20. In light of the Chamber's Decision of 01 November 2005, the Chamber finds that this Motion has been rendered moot.

**FOR THE ABOVE REASONS,**

**THE TRIBUNAL** denies the Motion in its entirety.

Arusha, 1 November 2005



Arlette Ramaroson  
Presiding Judge



William H. Sekule  
Judge



Solomy Balungi Bossa  
Judge

