



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1261
amiga

OR: ENG

TRIAL CHAMBER II

Before:

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

Registrar:

Mr Adama Dieng

Date:

10 November 2005

ICTR-00-60-I
10-11-2005
(1261 — 1259)

The PROSECUTOR

v.

Paul BISENGIMANA
Case No. ICTR-00-60-I

2005 NOV 10 PM 14:14
[Handwritten signature]

**DECISION ON THE PROSECUTION'S MOTION FOR PROTECTIVE MEASURES FOR
WITNESSES**

Office of the Prosecutor

Mr Charles Adeogun-Phillips
Ms Memory Maposa
Mr Peter Tafah
Ms Maymuchka Lauriston
Ms Florida Kabasinga

Defence Counsel

Ms Catherine Mabilille

12

1260

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");

CONSIDERING the "Prosecutor's Motion for Protective Measures for Witnesses, based on Art. 14, 19 and 21 of the Statute and Rule 69 and 75 of the Rules of Procedure and Evidence", filed on 16 September 2005 (the "Motion");

HAVING RECEIVED the Defence's "*Réponse à la Requête du Procureur en prescription de mesures de protection des témoins*", filed on 29 September 2005 (the "Defence Reply");

RECALLING this Chamber's "Decision on Prosecutor's Motion for Protective Measures for Victims and Witnesses", issued on 25 August 2004 (the "Decision");

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. The Prosecution seeks protective measures for victims and potential Prosecution witnesses who live in Rwanda and who have not affirmatively waived their right to such protection,¹ arguing that most of these persons have expressed concern over their fate after testifying before the ICTR, considering the insecurity in Rwanda and the threats made against certain witnesses, as well as the risks they run, including even the death of some of the witnesses who were killed simply because of testifying before the Tribunal.

The Defence's Reply

2. The Defence submits that the legitimate concern for the protection of witnesses and victims must be weighed against the requirements of the revelation of the truth and the respect of the Accused's right to a diligent and fair trial.² The Defence recalls the provisions of Rules 69 and 75 of the Rules and submits that the Prosecution's right to request protective measures for witnesses must be interpreted restrictively, because it is prejudicial to the rights of the Defence by its very existence.³

DELIBERATIONS

3. The Chamber recalls its Decision of 25 August 2004, in which it granted comprehensive protective measures for Prosecution witnesses, which are still in force. The Chamber notes that the Prosecution has filed another Motion for protective measures for witnesses without taking into account the said Decision. In this regard, the Prosecution has demonstrated lack of diligence in the discharge of its duties. The Chamber warns that this conduct should not be repeated by the Prosecution.
4. The Chamber regards the Motion as frivolous and moot and urges the Prosecution to observe more diligence in the discharge of its duties.

¹ The Motion, para. 7.

² The Defence Reply, p. 2.

³ The Defence Reply, p. 2.

R

FOR THE ABOVE REASONS,

1259

THE TRIAL CHAMBER

DENIES the Motion in its entirety.

Arusha, 10 November 2005



Arlette Ramaroson
Presiding Judge



William H. Sekule
Judge

[Seal of the Tribunal]



Solomy Balungi Bossa
Judge