



UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-2001-74-I  
1-12-2005  
(1574 - 1571)

1574  
Zurich

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Flavia Lattanzi  
Gberdao Gustave Kam

**Registrar:** Adama Dieng

**Date:** 1 December 2005

**THE PROSECUTOR**

v.  
Francois KARERA  
Case No. ICTR-01-74-PT

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**DECISION ON MOTION FOR PROTECTIVE MEASURES FOR PROSECUTION  
WITNESSES**

*Article 21 of the Statute and Rules 69 and 75 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**  
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**Defence Counsel**  
Carmelle Marchessault  
Steven Kelliher

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal"),**

**SITTING** as Trial Chamber III, composed of Judges Dennis C. M. Byron, Presiding, Flavia Lattanzi and Gberdao Gustave Kam ("Chamber");

**BEING SEIZED OF** the "Prosecution's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment", filed on 24 November 2005 ("Motion");

**HEREBY DECIDES** the Motion as follows pursuant to Article 21 of the Statute of the Tribunal ("Statute") and Rules 69 and 75 of the Rules of Procedure and Evidence ("Rules").

**INTRODUCTION**

1. The trial in this case is scheduled to begin on 9 January 2006. The Prosecution submitted its first Motion for Protective Measures on 16 September 2005 ("First Motion"). The Defence responded to the First Motion on 1 October 2005, and opposed the application insofar that the Prosecution had not provided any evidence of fear of the witnesses it sought to protect. It further opposed the length of time requested by the Prosecution to disclose un-redacted witness statements. On 10 November 2005, the Prosecution disclosed all of its witness statements to the Defence in an un-redacted form. The Chamber made an Order on 21 November 2005 for the parties to submit additional information regarding the fear of the witnesses, at the Status Conference scheduled for 23 November 2005.<sup>1</sup>

2. On that day, the Prosecution withdrew its First Motion and made oral submissions for the present written Motion filed on 24 November 2005. The Defence indicated at the Status Conference that it would not make a written response to this Motion and that it did not oppose the Motion.

**DELIBERATION**

3. The Chamber notes that on 30 November 2005, the Defence filed a Response, which adopts a position which is completely contrary to statements made in open court.<sup>2</sup> Such an inconsistent reply cannot be taken into consideration by the Chamber while the Defence already stated very clearly and answering an explicit question put by the Presiding Judge that it does not oppose the Motion.<sup>3</sup>

4. In any case, in accordance with Article 21 of the Statute and Rules 69 and 75 the Chamber will consider protective measures for witnesses that should be appropriate to the

<sup>1</sup> *Karera*, Order for Submission (TC), 21 November 2005.

<sup>2</sup> *Prosecutor v. Francois Karera*, Case No. ICTR-01-74-I, T. 23 November 2005, pp. 27-31.

<sup>3</sup> See T., 23 November 2005, p. 31/L. 8-16.



safeguard the privacy and security of the victims and witnesses, without overriding the rights of the accused.

5. The Chamber notes that the Prosecution must demonstrate that the witnesses, for whom protection is sought, have a real fear for their safety and the safety of their family, and that there is an objective justification for this fear.<sup>4</sup> Such protective measures are to be granted on a case-by-case basis, which must also take into consideration the fairness of the trial and the equality of the parties.<sup>5</sup>

6. The Prosecution has attached twenty Annexes to its Motion, which include an Affidavit of Alfred Kwende, an ICTR investigator based in Kigali, news articles and other documentation showing the security risks and dangers facing witnesses who testify at the Tribunal. After reviewing the information provided by the Prosecution the Chamber finds that there is subjective and objective fear on the part of the Prosecution witnesses. Taking into account the fairness of the trial and the rights of the Accused, the Chamber is of the view that protective measures regarding Prosecution witnesses are warranted.

#### FOR THE ABOVE REASONS, THE CHAMBER

I. **GRANTS** in part the Motion, and

II. **DECIDES** to Order the following protective measures for all Prosecutor's witnesses or potential Prosecutor's witnesses wherever they reside and who have not affirmatively waived their right to protective measures ("Protected Witness")

- i. The Prosecution is required to designate a pseudonym for each Protected Witness; the pseudonym shall be used whenever referring to such Protected Witness in Tribunal proceedings, communications, and discussions both between the parties and with the public. The use of pseudonyms shall last until such time when the Trial Chamber orders otherwise.
- ii. The names, addresses, whereabouts and other information which might identify or assist in identifying any Protected Witness ("Identifying Information") must be sealed by the Registry and not included in any public or non-confidential records of the Tribunal.
- iii. To the extent that any names, addresses, relations, whereabouts or other Identifying Information is contained in existing records of the Tribunal, such Identifying Information be expunged from the public record of the Tribunal and placed under seal.

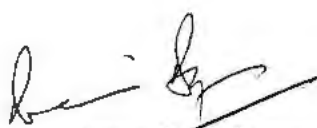
<sup>4</sup> *Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-I, Decision on Defence Request for Protection of Witnesses (TC), 25 August 2004, para. 5.

<sup>5</sup> *Ibidem*.

- iv. Any Identifying Information concerning Protected Witness shall not be disclosed to the public or the media; this order shall remain in effect after the termination of the trial.
- v. The Accused or any member of the Defence team shall not attempt to make any independent determination of the identity of any Protected Witness or encouraging or otherwise aiding any person to attempt to identify any such Protected Witness.
- vi. The Defence and/or the Accused are required to provide the Witnesses and Victims Support Section ("WVSS") a designation of all persons working on the immediate Defence team who will have access to any Identifying Information; the Defence are also required to notify WVSS in writing of any person leaving the Defence team and to confirm in writing to the WVSS that such person has remitted all material containing Identifying Information.
- vii. The Defence and/or the Accused shall notify, on reasonable notice to the Prosecution, prior to contacting any Protected Witness. Should the witness or potential witness concerned agree to the interview, or the parents or guardian of that person, if that person is under the age of 18, the Prosecution shall immediately undertake all necessary arrangements to facilitate the interview.
- viii. The Defence and/or the Accused shall not expose, share, discuss or reveal, directly or indirectly, any Identifying Information to any person or entity other than the Accused, assigned Defence Counsel, or other persons the Registry designates as working on the Defence team.
- ix. Nowhere and at no time shall the public and the media take photographs and audio and/or video recordings or sketches of any Protected Witness, without leave of the Trial Chamber.

### III. DENIES the remainder of the Motion.

Arusha, 1 December 2005, done in English.

  
Dennis C. M. Byron

Presiding Judge

   
Flavia Dattanzi      Gberdo Gustave Kam



[Seal of the Tribunal]

Judge