

ICTR-00-60-I
20-12-2005
(1341 - 1337)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule
(Designated Judge pursuant to Rule 73(A) of the Rules)

Registrar: Mr Adama Dieng

Date: 20 December 2005

The PROSECUTOR

v.

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

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**DECISION ON BISENGIMANA'S EXTREMELY URGENT MOTION FOR
PROTECTIVE MEASURES FOR CHARACTER WITNESSES**

Office of the Prosecutor
Mr Charles Adeogun-Phillips
Ms Memory Maposa
Mr Peter Tafah
Ms Florida Kabasinga

Defence Counsel
Ms Catherine D. Mabilie

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

SITTING as Trial Chamber II, composed of Judge William H. Sekule, designated pursuant to Rule 73(A) of the Rules (the "Chamber");

CONSIDERING Bisengimana's "*Requête en extrême urgence de la Défense aux fins de prescription de mesures de protection des témoins de moralité, Articles 14, 19 et 21 du Statut, Articles 69 et 75 du Règlement de procédure et de preuve*"¹, filed on 16 December 2005 (the "Motion");

NOTING that the Prosecution has not filed a reply;

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

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

DEFENCE SUBMISSIONS

1. The Motion is brought pursuant to Articles 14, 19 and 21 of the Statute and Rules 69 and 75 of the Rules. The Defence submits that it is the Tribunal's practice to authorise the examination of witnesses after an Accused's guilty plea to support the mitigating circumstances. In this context, the Defence notes that protective measures have been accorded to such witnesses.² The Defence seeks protective measures for two character witnesses whom it intends to call at the Sentencing Hearing to be held on 19 January 2006.³
2. The Defence submits that whereas two of the witnesses it intends to call do not request protective measures, two others do.
3. The Defence states that proposed Witness 3 has asked for the following protective measures:
 - That the witness' identity be placed under seal;
 - That a pseudonym be used during the whole duration of the hearing;
 - That the Prosecution team be prohibited from communicating any document or information which might reveal the witness' identity in any manner whatsoever.
 The Defence submits that these measures are justified because of the witness' fear that the disclosure of identity might have a damaging effect on his or her professional activities.⁴
4. Further, the Defence submits that Witness 4 has requested the following protective measures:
 - That the witness' identity be placed under seal;
 - That any information which might reveal the witness' identity be only communicated to the personnel of the Witnesses and Victims Support Unit;

¹ Bisengimana's extremely urgent Motion for Protective Measures for Character Witnesses, Art. 14, 19, and 21 of the Statute, Rules 69 and 75 of the Rules (Unofficial translation).

² The Motion, para. 7, citing *Prosecutor v. Ruggiu*, ICTR-97-32-I, Transcript of 15 May 2000, pp. 49 ff (French version); *Prosecutor v. Ruggiu*, ICTR-97-32-I, *Décision relative à la requête de la défense en prescription de mesures de protection en faveur d'un témoin*, 9 May 2000.

³ The Motion, paras. 9, 11.

⁴ The Motion, paras. 12-13.

- That any information regarding the witness be rendered inaccessible to the public and the media, including a prohibition of taking photographs, or making audio and/or video tapes or sketches of the witness;
- That the Prosecution team be prohibited from communicating any document or information which might reveal the witness' identity in any manner whatsoever.

The Defence submits that these measures are justified because Witness 4 fears for his or her security after testifying at the Tribunal.⁵

5. The Defence further requests that the Prosecution transmit a list of all the immediate members of the Prosecution team who will have access to the information concerning Witnesses 1, 2, 3, and 4, and to be informed in writing should the Prosecution request authorisation to contact these witnesses.⁶

DELIBERATIONS

6. 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 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, whereas 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.⁷
7. The Chamber has considered the Defence arguments with respect to the need to safeguard the privacy and security of Witnesses 3 and 4 and finds that certain protective measures requested by the Defence are warranted.
8. The Chamber notes that the Motion contains discrepancies between the requests contained in paragraphs 12, 14, and 16, and those listed in paragraphs (a)-(h), which are also more detailed requests. The Chamber will address the different measures sought in paragraphs (a)-(h) of the Motion in turn.
9. The Chamber considers that measure (a), which requests that the identity (first name and family name) of the character witnesses concerned, as well as every document which regards them, their addresses, whereabouts, or any other document which might reveal their identity, be placed under seal, is consonant with the current practice of both the Tribunal⁸ and this Chamber.⁹ Accordingly, the Chamber grants measure (a) with respect to Witnesses 3 and 4.
10. The Chamber notes that measure (b) requires that the Registry shall only communicate the identity of the witnesses concerned or any information that might reveal their identity to the Witnesses and Victims Support Section. The Chamber observes that this is consonant with

⁵ The Motion, paras. 14-15.

⁶ The Motion, para. 16

⁷ See *Prosecutor v. Renzaho* (TC), Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes alleged in the Indictment, 17 August 2005, para. 6.

⁸ See for example, *The Prosecutor v. Karemera* (TC), Order on Protective Measures for Prosecution Witnesses, 10 December 2004, p. 2.

⁹ *Prosecutor v. Renzaho*, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes alleged in the Indictment, 17 August 2005, para. 13.

the Tribunal's practice.¹⁰ However, the Chamber also notes that the measure does not provide disclosure timeframes of the witnesses' identifying information to the Prosecution. The Chamber recalls that Rule 69(C) provides that, "[s]ubject to Rule 75, the identity of the victim and witness shall be disclosed within such time as determined by the Trial Chamber to allow adequate time for the preparation of the Prosecution and the Defence." The Chamber grants measure (b) with respect to Witness 4. In view of the scheduling of the Sentencing Hearing on 19 January 2006, the Chamber hereby orders that the identifying information relating to all witnesses be disclosed to the Prosecution on receipt of this Decision.

11. As for measure (c), which requests that the Prosecution shall not communicate the identity of the witnesses concerned, as well as their addresses, whereabouts, or any other information likely to reveal their identity, the Chamber observes that this request is incomplete as it does not indicate to whom communication is prohibited. The Chamber therefore denies measure (c) with regard to Witnesses 3 and 4.
12. With regard to measure (d), which requests that the Prosecution shall be prohibited from sharing, discussing, or revealing any document or other information which might reveal the witnesses' identities to anyone and in any way, the Chamber notes that this request presupposes that identifying information is restricted to certain members of the office of the Prosecutor team. The Chamber wishes to recall that restriction of access to identifying information to the members of the immediate Prosecution team has been rejected in recent decisions by the Tribunal's Appeals Chamber,¹¹ for

[N]owhere in the Statute or Rules is it stated that the Prosecutor's obligations may be limited to specific teams within the Office of the Prosecutor, which in the practice of the Tribunal, are sometimes referred to as the "Prosecution" in an individual case. The ordinary meaning and context of the text of the Rules suggest that the obligations of the Prosecutor rest on him or her alone as an individual who is then able to authorize the Office of the Prosecutor as whole, undivided unit, in fulfilling those obligations.¹²

The Chamber is bound by the Appeals Chamber's reasoning and therefore denies this measure. However, the Chamber orders *proprio motu* pursuant to Rule 75 (A) that the Prosecution be prohibited from sharing, discussing, or revealing any document or other information which might reveal the witnesses' identities to anyone and in any way outside the Office of the Prosecutor. The Chamber decides that this measure shall apply to all potential Defence witnesses.

13. As regards measure (e), which requests that the Defence be informed by the Prosecution about all members of the immediate Prosecution team having access to the information referred to in (d), the Chamber notes that this measure presupposes that identifying information is restricted to certain members of the Office of the Prosecutor. The Chamber recalls its previous reasoning with respect to the fact that a restriction of access to identifying

¹⁰ *The Prosecutor v. Karemera* (TC), Order on Protective Measures for Prosecution Witnesses, 10 December 2004, p. 2; *Prosecutor v. Renzaho*, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes alleged in the Indictment, 17 August 2005, para. 13.

¹¹ See *Prosecutor v. Bagosora et al.* (AC), Decision on Interlocutory Appeals of Decision on Witness Protection Orders, 6 October 2005, paras. 42-46; *Prosecutor v. Rwomakuba* (TC), Decision on Prosecution Motion for Variation, or in the Alternative Reconsideration of the Decision on Protective Measures for Defence Witnesses, 2 November 2005, para. 6; *Prosecutor v. Bizimungu et al.* (AC), Decision on Prosecution Appeal of Witness Protection Measures, 16 November 2005, para. 4.

¹² See *Prosecutor v. Bagosora et al.* (AC), Decision on Interlocutory Appeals of Decision on Witness Protection Orders, 6 October 2005, para. 43.

information to the members of the immediate Prosecution team has been rejected by the Tribunal's Appeals Chamber.¹³ The Chamber therefore denies measure (e).

14. The Chamber considers that measure (f), which requests that the Prosecution inform the Defence in writing of any request for authorisation to contact the witnesses is consonant with the Tribunal's practice¹⁴ and thus grants measure (f) for Witnesses 1, 2, 3, and 4.
15. As to measure (g), allowing the Defence to designate each witness it intends to call with a pseudonym to be used in proceedings before the Tribunal, the communications and consultations between the Parties or with the public, until the Chamber decides otherwise, the Chamber is of the opinion that this measure corresponds to the Tribunal's practice¹⁵ and is necessary for the protection of witnesses. It therefore grants measure (g) with respect to Witness 3.
16. Finally, the Chamber notes that measure (h), which requests that the public and the media be prohibited from taking photographs and making sketches, or audio and/or video recordings of the witnesses concerned, unless authorised to do so by the Chamber, is consonant with the Tribunal's practice.¹⁶ Therefore, the Chamber grants measure (h) with respect to Witness 4.

FOR THE ABOVE REASONS,

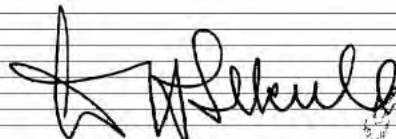
THE TRIAL CHAMBER

GRANTS the Motion in part and

GRANTS the measures requested in paragraphs 8-9, 11, 13-15 above;

DENIES the measures sought in paragraphs 10 and 12 above.

Arusha, 20 December 2005


 William H. Sekule
 Judge
 [Seal of the Tribunal]

¹³ See *Prosecutor v. Bagosora et al.* (AC), Decision on Interlocutory Appeals of Decision on Witness Protection Orders, 6 October 2005, paras. 42-46; *Prosecutor v. Rwamakuba* (TC), Decision on Prosecution Motion for Variation, or in the Alternative Reconsideration of the Decision on Protective Measures for Defence Witnesses, 2 November 2005, para. 6; *Prosecutor v. Bizimungu et al.* (AC), Decision on Prosecution Appeal of Witness Protection Measures, 16 November 2005, para. 4.

¹⁴ *The Prosecutor v. Karemera* (TC), Order on Protective Measures for Prosecution Witnesses, 10 December 2004, p. 3; *Prosecutor v. Renzaho*, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes alleged in the Indictment, 17 August 2005, para. 13.

¹⁵ *The Prosecutor v. Karemera* (TC), Order on Protective Measures for Prosecution Witnesses, 10 December 2004, p. 3; *Prosecutor v. Renzaho*, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes alleged in the Indictment, 17 August 2005, para. 13.

¹⁶ *The Prosecutor v. Karemera* (TC), Order on Protective Measures for Prosecution Witnesses, 10 December 2004, p. 3; *Prosecutor v. Renzaho*, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes alleged in the Indictment, 17 August 2005, para. 13.