



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-01-74-T
09-02-2006
(1700-1697)

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S. MUSA

TRIAL CHAMBER I

Before: Judge Erik Møse
Registrar: Adama Dieng
Date: 9 February 2006

THE PROSECUTOR

v.

François KARERA

Case No. : ICTR-01-74-T

JUDICIAL RECORDS ARCHIVES
ICTR

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DECISION ON DEFENCE MOTION FOR PROTECTION OF WITNESSES

The Prosecution

Charles Adeogun-Phillips
Memory Maposa
Peter Tafah
Florida Kabasinga

The Defence

Carmelle Marchessault
Peter Kelliher
Alexandre Bergevin
Rita Francis

[Handwritten initials]

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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SITTING as Judge Erik Møse, designated by the Trial Chamber, pursuant to Rule 73 of the Rules of Procedure and Evidence (“the Rules”);

BEING SEIZED OF the Defence “Requête de la Défense aux fins d’une ordonnance de mesures de protection des témoins à décharge”, filed on 1 February 2006;

NOTING that the Prosecution has made no submissions;

HEREBY DECIDES the motion.

1. This motion for special measures protecting the identity of witnesses to be called on behalf of the Defence for Karera is brought under Articles 19 and 21 of the Statute and Rules 69 and 75 of the Rules. Pursuant to Article 19 of the Statute, the Tribunal must conduct the proceedings with due regard for the protection of victims and witnesses. Article 21 obliges the Tribunal to provide in its Rules for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in-camera proceedings and the protection of the victim's identity. Rule 75 of the Rules elaborates several specific witness protection measures that may be ordered, including sealing or expunging names and other identifying information that may otherwise appear in the Tribunal's public records, assignment of a pseudonym to a witness, and permitting witness testimony in closed session. Subject to these measures, Rule 69 (C) requires the identity of witnesses to be disclosed to the Prosecution in adequate time for preparation.

2. Measures for the protection of witnesses are granted on a case by case basis. The jurisprudence of this Tribunal and of the International Criminal Tribunal for the Former Yugoslavia requires that the witnesses for whom protective measures are sought must have a real fear for the safety of the witness or her or his family, and there must be an objective justification for this fear. These fears may be expressed by persons other than the witnesses themselves. A further consideration is trial fairness, which favours similar or identical protection measures for Defence and Prosecution witnesses.¹

3. The Defence for Karera has submitted that Defence witnesses do fear for their safety and that these fears are justified by the dangers and insecurities described in the reports attached as annexes to the Prosecution's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment”, filed on 24 November 2005. The Chamber follows previous decisions regarding protection for Defence witnesses and accepts the existence of these fears amongst Defence witnesses, and their objective justification.² Accordingly, the Trial Chamber finds that the conditions for ordering witness protection measures are satisfied.

¹ *Bagosora et al.*, Decision on Bagosora Motion for Protection of Witnesses, 1 September 2003, p. 2; *Bagosora et al.*, Decision on Kabiligi Motion for Protection of Witnesses, 1 September 2003, p. 2; *Niyitegeka*, Decision (Defence Motion for Protective Measures for Defence Witnesses), 14 August 2002, p. 4; *Elizaphan and Gerard Ntakirutimana*, Decision on Witness Protection, 22 August 2000, pp. 2-4.

² See the decisions referred to in footnote 1. See also *Semanza*, Decision on the Defence Motion for Protection of Witnesses (Rule 75), 24 May 2001, p. 3; *Nahimana*, Decision on the Defendant's Motion for Witness Protection, 25 February 2000, p. 3; *Ruggiu*, Decision on the Defence's Motion for Witness Protection, 9 May 2000, p. 3.

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4. The measures sought by the Defence for Karera are substantially identical to those previously ordered in respect of Prosecution witnesses in the present case. The interests of trial fairness and administrative simplicity strongly favour the adoption of identical measures, which are enumerated below in language customarily adopted in such orders.³

5. In particular, the Defence for Karera has requested that the Chamber order measures to protect the identity of Defence Witnesses KBA, BBM, YMK, YCK, BBA, KBG, wherever they reside and who have not affirmatively waived their right to protective measures. In conformity with established practice, the Chamber makes a general order. The Defence shall disclose unredacted information to the Prosecution thirty-five days prior to the commencement of the Defence case.

6. The request that the Prosecution provide the Defence with a list of all persons within the Office of the Prosecutor who shall have access to the protected information is denied. The Prosecutor is, of course, bound to ensure that confidential information is not disclosed by his Office to other persons; but the mechanism to prevent such disclosure, and the range of persons within his Office who have such access, rests within his sole discretion.⁴

FOR THE ABOVE REASONS, THE CHAMBER

HEREBY ORDERS that:

1. The Defence for Karera shall designate pseudonyms for each of the witnesses for whom it claims the benefits of this Order, for use in trial proceedings, communications and during discussions between the Parties and with the public.
2. The names, addresses, whereabouts, and other identifying information concerning the protected witnesses shall be sealed by the Registry and not included in any public or non-confidential Tribunal records, or otherwise disclosed to the public.
3. In cases where the names, addresses, relations, whereabouts and other identifying information of the protected witnesses appear in the Tribunal's public records, this information shall be expunged from the said records and placed under seal.
4. The names and identities of the protected witnesses shall be forwarded by the Defence for Karera to the Registry in confidence, and they shall not be disclosed to the Prosecution unless otherwise ordered.
5. No person shall make audio or video recordings or broadcastings and shall not take photographs or make sketches of the protected witnesses, without leave of the Chamber or the witness.
6. The Prosecution and any representative acting on its behalf, shall notify the Defence for Karera in writing prior to any contact with any of its witnesses and, if the witness consents, the Defence for Karera shall facilitate such contact.


³ The witness protection orders governing Prosecution witnesses are contained in *Karera*, Decision on Motion for Protective Measures for Prosecution Witnesses, 1 December 2005.

⁴ *Bagosora et al.*, Decision Amending Defence Witness Protective Orders (TC), 2 December 2005, para. 5 (applying *Bagosora et al.*, Decision on Interlocutory Appeals of Decision on Witness Protection Orders (AC), 6 October 2005).

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7. The Prosecution shall keep confidential to itself all information identifying any witness subject to this order, and shall not, directly or indirectly, disclose, discuss or reveal any such information.
8. The Defence for Karera may withhold disclosure to the Prosecution of the identity of the protected witnesses and temporarily redact their names, addresses, locations and other identifying information from material disclosed to the Prosecution. However, such information shall be disclosed by the Defence to the Prosecution thirty-five days prior to commencement of the Defence case, in order to allow adequate time for the preparation of the Prosecution pursuant to Rule 69 (C) of the Rules.

Arusha, 9 February 2006



Erik Møse

Judge

[Seal of the Tribunal]

