



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before:

Judge Asoka De Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 8 May 2006

The PROSECUTOR
v.
Juvenal RUGAMBARARA

Case No. ICTR-00-59-I

**DECISION ON THE MOTION FOR PROTECTIVE MEASURES FOR
DEFENCE WITNESSES**

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

Counsel for the Defence
Mr Diabira Maroufa

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

SITTING as Trial Chamber II composed of Judge Asoka De Silva, Presiding, Judge Taghrid Hikmet and Judge Seon Ki Park (the “Chamber”);

BEING SEISED of the “*Requête en Prescription de mesures visant à la protection des témoins à décharge*” filed on 24 April 2006”^[1] (the “Motion”);

NOTING that the Prosecution has not filed a response;

CONSIDERING the Statute of the Tribunal (the “Statute”), in particular Articles 19, 20 and 21 and of the Statute, and the Rules of Procedure and Evidence (the “Rules”), specifically Rules 69 and 75 of the Rules;

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

SUBMISSIONS OF THE DEFENCE

1. The Defence for Juvénal Rugambarara requests the Chamber to order protective measures for its potential witnesses pursuant to Articles 19 to 21 of the Statute and Rules 69 and 75 of the Rules.
2. The Defence submits that the witnesses it intends to call reside in Rwanda, in other African nations, in Europe and in North America.
3. The Defence refers to the Chamber’s Decision of 31 January 2006, in which protective measures for Prosecution witnesses were granted, and submits that the witnesses the Defence intends to call are in the same situation as the Prosecution witnesses and the witnesses of other accused persons.
4. The Defence submits that the witnesses it has contacted have expressed their fears to testify before the Tribunal if their identities are known or revealed.
5. The Defence requests that the Chamber grant eleven specific witness protection measures outlined on pages 2-4 of the Motion.
6. Finally, the Defence submits that if the Chamber wishes to see any supporting material or hear reasons orally in support of the present Motion, it should order a closed session.

DELIBERATIONS

7. The Chamber recalls that measures for protection of witnesses are granted on a case-by-case basis.^[2] The Chamber further recalls its Decisions of 28 October 2005 and 31 January 2006 in this matter in which it held, *inter alia*, that witnesses for whom protective measures are sought, must have a real fear for their own safety or the safety of their family, and that *this subjective fear must be objectively justified*.^[3] Finally, the Chamber recalls the ICTY decision in the *Milosević* case, where the Trial Chamber stated that “fears expressed by potential witnesses are not in themselves sufficient to establish a real likelihood that they may be in danger or at risk.”^[4]

8. The Chamber notes the Defence’s submissions that its potential witnesses have expressed concerns over their fate if they testify before the Tribunal. The Chamber observes, however, that the Defence has not provided any independent material that demonstrates that the fears of its potential witnesses are well founded. The Chamber reiterates that without any such material, it is left to speculate about the security situation of potential witnesses and no reasoned decision on protective measures can be made.

9. As regards the Defence submission to order a closed session, the Chamber is of the opinion that an application for protective measures for witnesses can be dealt with on the basis of written submissions and reminds the Defence that any supporting material can be provided by way of confidential filing.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Motion as currently formulated without prejudice to the right of the Defence to file a fresh motion with the appropriate supporting material.

Arusha, 8 May 2006

Asoka De Silva	Taghrid Hikmet	Seon Ki Park
Presiding Judge	Judge	Judge

[Seal of the Tribunal]

[1] Motion for Protective Measures for Defence Witnesses (unofficial translation).

[2] *Prosecutor v. Aloys Simba*, Case No. 01-76-I, Decision on Defence Request for Protection of Witnesses (TC), 25 August 2004, para. 5.

[3] *Prosecutor v. Juvenal Rugambarara*, Decision on the Prosecutor’s Motion for Protective Measures for Witnesses, 28 October 2005, para. 6; Decision on the Prosecutor’s Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 31 January 2006, para. 9.

[4] *Prosecutor v. Milosević*, Case No. IT-02-54, Second Decision on Prosecution Motion for Protective Measures for Sensitive Source Witnesses (TC), 18 June 2002, para. 7.

