



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-05-84-1
01-06-2006
(335-332)

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TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 1 June 2006

THE PROSECUTOR

v.

Joseph SERUGENDO

Case No. ICTR-05-84-I

JUDICIAL ARCHIVES
ICTR

2006 JUN -1 A 9:31

DECISION ON MOTION FOR PROTECTION OF WITNESSES

The Office of the Prosecutor
Hassan Bubacar Jallow
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William Egbe

Counsel for the Defence
Cecil J. Maruma

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA,

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the “Defence Motion for Protection of Witnesses under Article 21 of the Statute, Rules 69 and 75 of the Rules of Procedure and Evidence”, which was filed on 29 May 2006;

NOTING that the Prosecution does not oppose the motion;

HEREBY DECIDES the motion.

1. This motion for measures to protect the identity of witnesses to be called on behalf of the Serugendo Defence is brought under Article 21 of the Statute and Rule 75 of the Rules of Procedure and Evidence (“the Rules”). Article 21 of the Statute 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 his or her 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 Serugendo Defence submits that the witnesses for whom protection is sought have legitimate fears for their safety due to a combination of the following factors: their close relationship to the Accused, pre-existing vulnerabilities which have already created a need for their relocation to third countries and other well-founded fears of reprisals. Based on the information provided, the Chamber follows previous decisions regarding protection for Defence witnesses and accepts the existence of these fears amongst

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

Defence witnesses, and their objective justification.² Accordingly, the Chamber finds that the conditions for ordering witness protection measures are satisfied.

FOR THE ABOVE REASONS, THE CHAMBER

HEREBY ORDERS that:

1. The Serugendo Defence shall be permitted to designate pseudonyms for each of the witnesses for whom it claims the benefits of this Order, for use in trial proceedings, and during discussions between the Parties in proceedings.
2. The names, addresses, whereabouts, and other identifying information concerning the protected witnesses shall be sealed by the Registry and not included in any non-confidential Tribunal records, or otherwise disclosed to the public.
3. In cases where the names, addresses, locations and other identifying information of the protected witnesses appear in the Tribunal's public records, this information shall be expunged from the said records.
4. The names and identities of the protected witnesses shall be forwarded by the Serugendo Defence to the Registry in confidence.
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 Serugendo Defence in writing prior to any contact with any of its witnesses and, if the witness consents, the Serugendo Defence shall facilitate such contact.
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.

² *Prosecutor v. Bagosora, Kabiligi, Ntabakuze, and Nsenyumva*, Decision on Bagosora Motion for Protection of Witnesses, 1 September 2003, p. 2; *Prosecutor v. Bagosora, Kabiligi, Ntabakuze, and Nsenyumva*, Decision on Kabiligi Motion for Protection of Witnesses, 1 September 2003, p. 2; *Prosecutor v. Eliézer Niyitegeka*, Decision (Defence Motion for Protective Measures), 14 August 2002, p. 4; *Prosecutor v. Laurent Semanza*, Decision on the Defence Motion for Protection of Witnesses (Rule 75), 24 May 2001, p. 3; *Prosecutor v. Ferdinand Nahimana*, Decision on the Defendant's Motion for Witness Protection, 25 February 2000, p. 3; *Prosecutor v. Georges Ruggiu*, Decision on the Defence's Motion for Witness Protection, 9 May 2000, p. 3. Such measures have not been granted where, unlike the present motion, no evidence of the security situation of witnesses has been submitted to the Chamber. *Prosecutor v. Gacumbitsi*, Décision relative à la requête de la défense aux fins de mesures de protection en faveur des témoins à décharge, 25 August 2003, pp. 2-3.

