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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER II

Case No. ICTR-01-77-I

ENGLISH
Original: FRENCH

Before: Judge Arlette Ramaroson, presiding
Judge William H. Sekule
Judge Balungi Bossa

Registrar: Adama Dieng

Date: 5 October 2006

THE PROSECUTOR

v.

JOSEPH NZABIRINDA

DECISION ON EXTREMELY URGENT DEFENCE MOTION FOR PROTECTIVE
MEASURES FOR DEFENCE WITNESSES

Office of the Prosecutor:

William T. Egebe
Veronic Wright
Patrick Gabaake
Iain Morley
Sulaiman Khan
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Amina Ibrahim

Counsel for the Accused:

François Roux

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

SITTING as Trial Chamber II, composed of Judge Arlette Ramaroson, presiding, Judge William H. Sekule and Judge Solomy B. Bossa (the "Chamber");

BEING SEIZED of the Extremely Urgent Defence Motion for Protective Measures for the Defence Witnesses filed on 5 September 2006 (the "Motion");

CONSIDERING

- (i) the Prosecutor's Response to the Defence Motion for Protective Measures for Defence Witnesses filed on 12 September 2006 (the "Prosecutor's Response");
- (ii) the Defence Answer to the Prosecutor's Response to the Defence Motion for Protective Measures for Defence Witnesses filed on 18 September 2006 (the "Defence Answer")

CONSIDERING the Statute of the Tribunal (the "Statute") and to the Rules of Procedure and Evidence (the "Rules"), in particular Rules 69 and 75 thereof;

NOW DECIDES based on the written briefs filed by the parties pursuant to Rule 73(A).

SUBMISSIONS OF THE PARTIES

The Defence

1. The Defence relies on Articles 14, 19(1) and 21 of the Statute and Rules 69 and 75 of the Rules to request that an order for protective measures in respect of Defence witnesses be issued as soon as possible.
2. The Defence submits that the witnesses in respect of whom protective measures are sought currently reside in Rwanda or are in exile, but certain members of their families are still in Rwanda and have not expressly waived their right to such protective measures. According to the Defence, most of them have stated that, for various reasons, they fear for their safety once they have testified before the Tribunal.
3. For the above reasons, the Defence requests that 18 witnesses be assigned pseudonyms and granted wide protective measures, ranging from denying the public and the press all access to their identity to restrictions on the circulation within the Prosecution team of information concerning them.

The Prosecution

4. The Prosecution does not challenge the Motion except with regard to measures relating to restrictions on the circulation of information among the various Prosecution teams. The Prosecution argues that its office is an indivisible whole,¹ and that such restrictions sought by the Defence are contrary to the provisions of Rules 68 and 75(F), which place wide disclosure obligations on the Prosecution vis-à-vis the entire Defence.

The Defence Answer

5. The Defence contends that the restrictive measures sought to relate only to information and documents which might reveal the identity of the witnesses, and not to the content of their testimonies. It argues that the Prosecution may discharge its disclosure obligation by using information and documents provided by the Defence witnesses, with passages which might reveal witnesses' identity being redacted.

6. The Defence further submits that under Rule 75 there is no inconsistency between protective measures ordered in respect of a witness in first proceedings and the Prosecutor's disclosure obligation in second proceedings.

DELIBERATION

7. Article 21 of the Statute, taken together with Rules 69 and 75, provides that either party may request the Chamber, in exceptional circumstances, to order appropriate measures for the protection of victims and witnesses. The Chamber may also order such measures *proprio motu*.²

8. Case law established by ICTR and by the International Criminal Tribunal for the Former Yugoslavia ("ICTY") provides that witnesses in respect of whom protective measures are sought must face a real threat to their own safety and to that of their family, and that their fear must be objectively justified.³ The Chamber further recalls that "any fears expressed by potential witnesses themselves that they may be in danger or at risk are *not in themselves* sufficient to establish any real *likelihood* that they may be in danger or at risk. Something more than that must be demonstrated to warrant an interference with the rights of the accused which these redactions represent".⁴

¹ *The Prosecutor v. Bagosora and Others*, Decision on Interlocutory Appeals of Decision on Witness Protection Orders, 6 October 2005, para. 43.

² *Prosecutor v. Kupreškić*, Case No. IT-95-16, Decision on Prosecution Motion to Delay Disclosure of Witness Statements, 21 May 1998, para. 7.

³ *The Prosecutor v. Nzabirinda*, Decision on Prosecution Motion to Order Protective Measures for Victims and Witnesses, 4 May 2004, para. 5.

⁴ *Prosecutor v. Radoslav Brdanin & Momir Talić*, Decision on Prosecution Motion for Protective Measures, 3 July 2000, para. 26.

9. The Chamber notes that the Defence merely refers to vague fears said to have been expressed by most of its witnesses without adducing any evidence in support of such a claim. Moreover, the said witnesses are not identified, as opposed to those not having such fears; nor has the Defence clearly explained the objective reasons justifying the alleged fears. The Chamber therefore denies the Defence Motion in its entirety.

FOR THESE REASONS

THE TRIBUNAL

DENIES the Motion

Arusha, 5 October 2006

Arlette Ramaroson
Presiding Judge

William H. Sekule
Judge

Solomy B. Bossa
Judge

[Seal of the Tribunal]
