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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER II

Before Judges: Asoka de Silva Presiding
Taghrid Hikmet
Seon Ki Park

Registrar: Adama Dieng

Date: 29 November 2006

THE PROSECUTOR

v.

EMMANUEL RUKUNDO

Case No. ICTR-2001-70-T

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ICTR

**DECISION ON PROSECUTOR'S MOTION FOR PROTECTIVE MEASURES FOR
WITNESSES CCF, CCJ, BLC, BLS AND BLJ**

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INTRODUCTION

1. By decision of 24 October 2002, Trial Chamber III granted protective measures to Prosecution witnesses and victims residing in Rwanda and neighbouring countries. The Chamber denied protective measures for witnesses not living in Rwanda or neighbouring countries on the ground that the Prosecution failed to provide evidence of threats to their lives or to offer any explanation to justify their protection.¹ On 15 November 2006, the trial against Emmanuel Rukundo commenced. On 21 November 2006, the Prosecution filed a "Motion for Protective Measures for Witnesses CCF, CCJ, BLC, BLS and BLJ." The Prosecution notes that these witnesses live in Europe and are therefore not covered by the protective measures granted by the Decision on protective measures dated 24 October 2004.²

DELIBERATIONS

2. 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 54 gives the Chamber a general power to issue orders necessary for the conduct of a trial; 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. Finally, 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.
3. The Chamber recalls the jurisprudence of the Tribunal and of the ICTY that to justify the grant of protective measures on the basis of fear for the security of potential witnesses or members of their family, the witness' subjective expressions of fear must be underscored by objective considerations.³ In other words, the fears expressed by potential witnesses are not in themselves sufficient to establish a real likelihood that

¹ *The Prosecutor v. Emmanuel Rukundo*, "Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses", 24 October 2002, para. 16.

² "Prosecutor's Motion for Protective Measures for Witnesses CCF, CCJ, BLC, BLS, and BLJ", 21 November 2006, para. 3, where it is stated that witnesses CCF and CCJ reside in Belgium, BLS in Italy, BLJ in France and BLC in Sweden.

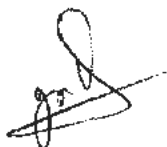
³ *The Prosecutor v. J. Rugambarara*, "Decision on the Prosecutor's Motion for Protective Measures for Witnesses", 28 October 2005, paras. 6, 7; *The Prosecutor v. T. Renzaho*, "Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment", 17 August 2005, para. 7; *The Prosecutor v. T. Bagosora et al.*, "Decision on the Extremely Urgent Request Made by the Defence for Protection Measures for Mr. Bernard Ntuyahaga", 13 September 1999, para. 28.



they may be in danger or at risk.⁴ In the practice of the Tribunal, the moving party has demonstrated such objective basis through affidavits attesting to the state of insecurity in the witness' place of residence, the presence at such place of individuals either related to, friends with, or otherwise supportive of the accused, or other circumstances demonstrating that if the identity of the witness(es) and the fact that they may testify before the Tribunal are known, such witness(es) may face danger to their lives or to the lives of their family members.

4. The Chamber notes the Prosecution statement that it has requested the WVSS to obtain the details of the security concerns of the relevant witnesses and that it will submit this information in due course. At the same time, the Prosecution seeks to rely on the supporting material annexed to its Motion for protective measures filed in 2002. The Chamber recalls that in deciding that Motion, Trial Chamber III reviewed the affidavit and other documents annexed to the Motion and concluded that while they show that a volatile security situation existed in Rwanda and neighbouring countries thereby justifying the grant of protective measures to witnesses living in those areas, the supporting material did not contain any evidence to show that witnesses not living in Rwanda and neighbouring countries faced threats to their lives. The Chamber further noted that the Prosecution failed to give any other explanation why protective measures should be granted to this category of witnesses under Rule 75.
5. The Chamber has again reviewed the material annexed to the Prosecution Motion of 2002 and concludes that it relates to insecurity and potential threats faced by witnesses and victims in Rwanda and the Great Lakes region. It does not address the situation of witnesses living outside those areas. By seeking to rely on the same supporting material in this Motion for protective measures for witnesses living in Belgium, France, Italy and Sweden, the Prosecution essentially calls upon the Chamber to engage in judicial speculation about the security situation of these witnesses. Such a course of action would be inapposite for the Trial Chamber.
6. The Chamber notes the Prosecution argument that certain trial chambers have granted protective measures for witnesses residing outside Rwanda and neighbouring countries on the ground that the same security situation would affect any potential

⁴ *Prosecutor v. Milosević*, "Second Decision on Prosecution Motion for Protective Measures for Sensitive Source Witnesses (ICTY)", 18 June 2002, para. 7.



witness even if residing outside of the Region.⁵ The Chamber considers that such decisions are explicable on their own particular facts and circumstances, and by no means lay down principles of general application.

7. The Chamber wishes to remind the Prosecution of its obligation to provide the Chamber with all the material necessary for it to make a reasoned decision. Witness protective measures are matters of great importance to the Tribunal requiring trial chambers to carefully weigh the dangers to prospective witnesses with a view to ensuring the highest levels of protection, without compromising the rights of the Accused to receive all information necessary to mount an effective defence. Such a balancing exercise cannot be done in a vacuum. The Chamber concludes that the Prosecution has failed to demonstrate an objective basis for the fears allegedly expressed by Witnesses CCF, CCJ, BLC, BLS and BLJ. The Motion, as currently presented, must therefore fail.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Motion.

Arusha, XX November 2006, done in English.


Adalberto de Silva

Presiding Judge


Taghrid Hikmet

Judge
[Seal of the Tribunal]




Seon Ki Park

Judge

⁵ *The Prosecutor v. Nyiramasuhuko & Ntahobali*, "Decision on Pauline Nyiramasuhuko's Motion for Protective Measures for Defence Witnesses and their Family Members", 20 March 2001, para. 13.