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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-00-61-1
10-04-2007
(1567-1564)

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S. M. M. M.

TRIAL CHAMBER I

Before: Judge Erik Mose

Registrar: Adama Dieng

Date: 10 April 2007

THE PROSECUTOR

v.

Jean-Baptiste GATETE

Case No. ICTR-2000-61-1

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DECISION ON DEFENCE MOTION FOR PROTECTION OF WITNESSES

The Prosecution
Richard Karegyesa

The Defence
Richard Dubé
Julie Veillette

6/11

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

1566

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 Jean-Baptiste Gatete en émission de mesures de protection pour les témoins à décharge", filed on 11 October 2006;

NOTING that the Prosecution has made no submissions;

HEREBY DECIDES the motion.

1. This motion for measures to protect the identity of Defence witnesses is brought under Articles 19 and 21 of the Statute and Rules 69 and 75 of the Rules. The Defence requests measures substantially identical to those previously ordered in respect of Prosecution witnesses in the present case. 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 in adequate time for preparation of the Prosecution or Defence.

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. According to the Defence, its witnesses fear for their safety. The fears are justified by the dangers described in United Nations and NGO reports annexed to the motion. The Chamber accepts the existence of fears amongst Defence witnesses, and their objective justification.² The conditions for ordering witness protection measures are therefore satisfied.

¹ *Renzaho*, Decision on Defence Request for Protective Measures (TC), 12 March 2007, para. 4; *Serugendo*, Decision on Motion for Protection of Witnesses, 1 June 2006, para. 2; *Karera*, Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006, para. 2; *Bagosora et al.*, Decision on Bagosora Motion for Protection of Witnesses (TC), 1 September 2003, para. 2; *Bagosora et al.*, Decision on Kabili Motion for Protection of Witnesses (TC), 1 September 2003, para. 2.

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

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4. The Defence asks to disclose each witness's particulars twenty-one days before his or her testimony.³ At the same time, it maintains that the interest of justice requires that witnesses' identifying data be disclosed no later than thirty-five days before the relevant party starts presenting its case.⁴ On 11 February 2004, the Chamber granted protection measures to Prosecution witnesses in this case. It highlighted the inappropriateness of a "rolling" disclosure system in the present circumstances of a relatively short single accused trial. The Prosecution was ordered to disclose its witnesses' identifying particulars no later than twenty-one days before the trial.⁵ The Defence does not demonstrate that the circumstances have changed since the order was rendered, and the Chamber does not consider that such a change has occurred.⁶ Considering interests of trial fairness and administrative simplicity, the Chamber accords protection measures essentially identical to those granted to Prosecution witnesses in this case, as enumerated below in language customarily adopted in such orders. The Defence shall disclose its witnesses' identifying data no later than twenty-one days before the commencement of its case.

5. The Defence further seeks confirmation that the identifying particulars to be disclosed may be limited to each witness's names and pseudonym; date and place of birth; parentage; ethnic origin; religion; occupation in April 1994; and address in April 1994.⁷ In the Chamber's view, such details may suffice only if they provide sufficient information to enable the opposite party to conduct its investigations. The Chamber notes, nonetheless, that the Defence must provide the personal information of its witnesses "in the same format as had been provided by the Prosecution in respect of its witnesses."⁸

³ Defence motion, para. 4 (g).

⁴ Defence motion, paras. 15-18. The Defence refers to witness protection decisions in *Karera* and *Mpambara*, where this Chamber ordered disclosure of witnesses' identifying information as early as thirty-five or thirty days before the commencement of the relevant party's case. (*Karera*, Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006; *Mpambara*, Decision on Defence Motion for Protection of Witnesses (TC), 4 May 2005). The Chamber notes, however, that it recently ordered the Defence in *Renzaho* to disclose its witnesses' identifying information no later than twenty-one days before its case. See *Renzaho*, Decision on Defence request for Protective Measures (TC), 12 March 2007, para. 8.

⁵ *Gatete*, Decision on Prosecution Request for Protection of Witnesses (TC), 11 February 2004, paras. 6, 9.

⁶ In *Mpambara*, the protection order applicable to Prosecution witnesses orders the disclosure of identifying information of the witnesses twenty-one days before the trial. The protection order applicable to Defence witnesses orders the disclosure of identifying information of the witnesses thirty days before the Defence case. The reason for this apparent anomalism is that in status conference held before the commencement of that case, the Prosecution agreed to disclose the identifying information of its witnesses thirty days before the trial. Accordingly, the order applicable to Defence witnesses stipulated the same with respect to the Defence. See *Mpambara*, Decision on Protection of Defence Witnesses, 4 May 2005, para. 4, footnote 3.

⁷ Defence motion, para. 4 (h).

⁸ *Bagosora et al.*, Decision on Sufficiency of Defence Witness Summaries (TC), 5 July 2005, para. 8 ("The Chamber has ruled pursuant to Rule 73 *ter* (B)(iii)(a) that personal information of each Defence witness must be provided in the same format as had been provided by the Prosecution in respect of its witnesses"). Also see *Karera*, Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006, para. 3 ("[t]he Defence is not required to provide the present physical address of non-alibi witnesses under Rule 73 *ter* (B)(iii)(a) ... the Defence has provided the addresses of the witnesses in 1994. Absent further argumentation from the Prosecution this is considered sufficient." The decision addressed particulars of Defence alibi witnesses, but the Chamber considered that "[i]t would seem anomalous to require the Defence to provide more detailed particulars about alibi witnesses than regular witnesses").

FOR THE ABOVE REASONS, THE CHAMBER

HEREBY ORDERS that:

1. The Defence 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 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 Defence in writing prior to any contact with any of its witnesses and, if the witness consents, the 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.
8. The Prosecution shall not attempt to make an independent determination of the identity of any protected witness, nor encourage or otherwise aid any person in doing so.
9. The Defence 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 twenty-one 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, 10 April 2007


Erik Mose

Judge

[Seal of the Tribunal]





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(Art. 27 of the Directive for the Registry)

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Case Name:	The Prosecutor vs. Jean-Baptiste GATETE			Case Number: ICTR-2000-61-I
Dates:	Transmitted: 10 April 2007		Document's date: 10 April 2007	
No. of Pages:	4	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
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