



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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ICTR-01-70-T
16-05-2007
(3106-3102)

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 16 May 2007

THE PROSECUTOR

v.

Emmanuel RUKUNDO

Case No. ICTR-2001-70-T

JUDICIAL RECORDS ARCHIVES
RECEIVED

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

Office of the Prosecutor:

Mr William T. Egbe
Mr Sulaiman Khan
Ms Veronic Wright
Mr Patrick Gabaake
Ms Thembile Segoele
Ms Amina Ibrahim

Counsel for the Defence:

Ms Aïcha Condé

INTRODUCTION

1. The trial against Emmanuel Rukundo commenced on 15 November 2006. The Prosecution closed its case on 12 March 2007. The Defence case is set to start on 2 July 2007.¹
2. On 3 May 2007, the Defence filed a Motion, asking the Chamber to grant protective measures to potential witnesses residing in Rwanda, other African countries and in Europe. The Motion was brought pursuant to Article 21 of the Statute of the Tribunal (the 'Statute') as well as Rules 69 and 75 of the Rules of Procedure and Evidence (the 'Rules').² The Prosecution has not filed a Response.

SUBMISSIONS

3. The Defence submits that it seeks protective measures for potential witnesses residing in Rwanda and other African countries who have not expressly renounced their right to protection and for those residing outside of Africa who have asked for protective measures.
4. The Defence further submits that all its witnesses have expressed fears for their own safety and that of their families in connection with their testimony before the Tribunal and have indicated that they will only testify if protective measures are granted. The Defence submits in particular that its witnesses could be accused of being complicit in genocide if they were to openly testify on behalf of a person charged with this crime.
5. Finally, the Defence submits that the principle of equality of arms demands that the protective measures for Defence witnesses should be similar to the ones granted to Prosecution witnesses. The Defence annexed several documents in support of its Motion.

DELIBERATIONS

6. According to the well established jurisprudence of the Tribunal, the witness' subjective expressions of fear must be underscored by objective considerations to justify the grant of protective measures.³ The practice of the Tribunal requires the moving party to demonstrate 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.
7. The Chamber has carefully reviewed the supporting material annexed to the Motion. The Chamber notes in particular the extensive material documenting the risks witnesses are facing in Rwanda and the Great Lakes region. In light of this material, the Chamber concludes that the fears for their own safety or the safety of their family members expressed by the potential Defence witnesses residing in that area, are justified by objective considerations. With respect to the supporting material for witnesses living in Europe, the Chamber notes that the Defence only reproduced a declaration by Professor Reyntjens of July

¹ Scheduling Order following the Pre-Defence Conference ('Scheduling Order'), 7 May 2007.

² "Requête urgente de la Défense en prescription de mesures spéciales de protection des témoins à décharge potentiels en vertu des articles 69 et 75 du Règlement de Procédure et de Preuve."

³ *The Prosecutor v. J. Rugambarara*, "Decision on the Prosecutor's Motion for Protective Measures for Witnesses", 28 October 2005, para. 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. Bagasara et al.*, "Decision on the Extremely Urgent Request Made by the Defence for Protection Measures for Mr. Bernard Niyahaga", 13 September 1999, para. 28.



1998, in which reference is made to the witnesses' fear of Rwandan killer commandos allegedly operating in Europe, whose existence had not been proven at that date. The Chamber considers that this declaration is outdated and not sufficient to objectively justify the witnesses' fears for their safety today. However, in the interests of judicial economy and in light of the scheduled start of the Defence case on 2 July 2007, the Chamber considers it necessary to take the side of caution by granting protective measures to all Defence witnesses at this stage. The Chamber, however, reserves its right to modify this order whenever it is warranted.

8. The Chamber notes that the protective measures sought by the Defence for Rukundo are substantially identical to those granted to Prosecution witnesses in the present case.⁴ For the sake of consistency and trial fairness, the Chamber hereby grants identical protective measures, enumerated below, to the witnesses for the Defence. With respect to the Defence's disclosure obligation, the Chamber recalls that all the witnesses' identifying information have to be disclosed to the Prosecution at least 21 days prior to the start of the Defence case.⁵

FOR THE ABOVE REASONS, THE CHAMBER

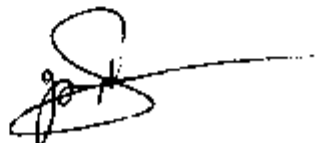
GRANTS the Defence Motion;

ORDERS that:

- (a) the Defence for Rukundo shall assign pseudonyms to its witnesses; the assigned pseudonyms shall be used at any time when referring to these witnesses during the course of the proceedings before this Tribunal and in communications and discussions between the parties and to the public;
- (b) the names, addresses, whereabouts and any other information capable of identifying these witnesses, including but not limited to familial and social relations, shall be kept confidential by the Registry and not be included in any non-confidential records of the Tribunal, or otherwise disclosed to the public or media, prior to, during and after the conclusion of this trial and any appeal. The identifying information shall be communicated to WVSS in accordance with established procedure and only in order to implement protective measures for the individual;
- (c) the names, address, whereabouts, relations, and any other information capable of identifying these witnesses contained in the existing records of the Tribunal shall be expunged from such records;
- (d) the Prosecution is prohibited from sharing or otherwise disclosing any information, documentary or otherwise, capable of identifying these witnesses, to any person or any entity outside the office of the Prosecutor;
- (e) the Prosecution shall not attempt to make an independent determination of the identity of these witnesses, nor shall they encourage, or otherwise aid any other individual to do the same;


⁴ Decision on the Prosecutor's Motion for Variation of Witness List and Protective Measures for Witnesses BUW, CCF, CCJ and BLJ, 14 February 2007.


⁵ Scheduling Order, 7 May 2007.




- (f) No photograph, audio or video recording or sketching of these witnesses shall be taken at any time or any place without the leave of the Trial Chamber;
- (g) The Prosecution and any representative acting on its behalf, upon approval of the Chamber shall notify the Defence for Rukundo in writing prior to any contact with any of its witnesses and, if the witness consents, the Defence for Rukundo shall facilitate such contact;
- (h) The Defence for Rukundo 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 at least 21 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.

Amsh: , 16 May 2007


Aoko Je Silva
Presiding Judge


Read and approved by
Taghrid Hikmet
Judge
(Absent at the time of the signature)


Seon Ki Park
Judge

