



ICTR-04-81-1  
05-10-2007  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
(1323-1324)

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**TRIAL CHAMBER I**

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

**Registrar:** Adama Dieng

**Date:** 5 October 2007

**THE PROSECUTOR**

v.

**Ephrem SETAKO**

*Case No. ICTR-04-81-1*

ICTR 04-81-1 P. 12  
10/10/07  
J. Møse

**DECISION ON DEFENCE MOTION FOR CERTIFICATION TO APPEAL  
PROTECTIVE MEASURES**

**The Prosecution**

Ifeoma Ojemeni-Okali  
Simba Mawere  
Christiana Fomenky

**The Defence**

Stefan Kirsch

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

**SITTING** as Trial Chamber I, composed of Judge Erik Mose, **presiding**, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Ligorov;

**BEING SEIZED OF** the Defence "Application for Certification to Appeal Decision on Prosecution Motion for Protective Measures", filed on 25 September 2007;

**CONSIDERING** the Prosecution response, filed on 1 October 2007;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. The Defence requests certification for appeal of the Chamber's decision to grant measures protecting the identity of witnesses residing in Rwanda to be called on behalf of the Prosecution. The request specifies two grounds of appeal. The first is that the Chamber erred in ordering protective measures without sufficiently specific identification as to which witnesses the protective measures shall apply. The second ground of appeal is that the Chamber erred in ordering protective measures without establishing "exceptional measures" under Rule 69 (A) of the Rules of Procedure and Evidence that would warrant the "non-disclosure" of the identity of a victim and witness.

2. The Prosecution opposes the request on the grounds that the standard for certification to appeal the decision has not been met.

**DELIBERATIONS**

3. Rule 73 (B) provides:

Decisions rendered on such motions are without interlocutory appeals save with certification by the Trial Chamber, which may grant such certification if the decision involved an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

4. The Chamber found that the Prosecution had demonstrated the witnesses' subjective fear for their or their families' safety arising from participation as Prosecution witnesses, as well as an objective basis justifying that fear. The Chamber therefore granted protective measures for the witnesses to which the Prosecution's application referred, *i.e.*, those potential Prosecution witnesses residing in Rwanda. The decision was in conformity with established practice.<sup>1</sup>

5. The Defence submits that immediate resolution of the issue would materially advance the proceedings because of the potential need to obtain and evaluate additional information

<sup>1</sup> See, e.g., *Prosecutor v. Renzaho*, Decision on Defence Request for Protective Measures (TC), 12 March 2007; *Prosecutor v. Kanyarukiga*, Decision on Prosecution Motion for Protective Measures (TC), 3 June 2005; *Prosecutor v. Simba*, Decision on Prosecution Request for Protection of Witnesses (TC), 4 March 2004; *Prosecutor v. Gutete*, Decision on Prosecution Request for Protection of Witnesses (TC), 11 February 2004; *Prosecutor v. Ndindabahizi*, Decision on Defence Motion for Protection of Witnesses (TC), 15 September 2003; *Prosecutor v. Seramba*, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses (TC), 30 June 2003.

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that might not have been available in time for cross-examination or at all due to protective measures.<sup>2</sup> While the Chamber granted measures that protect the potential witnesses from public identification, it also required the Prosecution to disclose to the Defence the identifying information of all witnesses thirty days prior to commencement of the Prosecution case, in order to allow adequate time for the preparation of the Defence pursuant to Rule 69 (C). This was also based on numerous precedents.<sup>3</sup> The issue of whether these witness protection measures were properly granted is not one that would significantly affect the fair and expeditious conduct of the proceedings, nor one which would require immediate resolution in order to materially advance the proceedings.


**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the Defence motion.

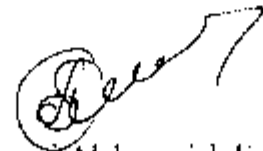
Arusha, 5 October 2007.



Erik Møse  
Presiding Judge



Jai Ram Reddy  
Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]



<sup>2</sup> Motion, para. 4.

<sup>3</sup> See decisions listed in footnote 1 (with a deadline for disclosure of 21 or 30 days).