



ICTR-05-88-1
08-11-2007
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
(105-102)

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TRIAL CHAMBER I

Before: Judge Erik Mose
Registrar: Adama Dieng
Date: 8 November 2007

THE PROSECUTOR
v.
Callixte KALIMANZIRA
Case No. ICTR-2005-88-1

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DECISION ON PROSECUTION MOTION FOR PROTECTIVE MEASURES

The Prosecution
Christine Graham
Ousman Jammeh
Stephen Agaba
Kartik Murukutla

The Defence
Arthur Vercken

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Judge Erik Mose, designated by Trial Chamber I in accordance with Rule 73 (A) of the Rules of Procedure and Evidence;

BEING SEIZED OF the Prosecution "Motion for Protective Measures", filed on 2 October 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Prosecution requests protective measures for all potential witnesses in this case, wherever they may live, and including detained witnesses in Rwanda.¹ During a Status Conference on 26 October 2007, the Defence indicated that it does not oppose the motion.²

DELIBERATIONS

2. Pursuant to Article 19 of the Statute, the Tribunal must conduct proceedings with due regard for the protection of victims and witnesses. Article 21 obliges the Tribunal to provide for the protection of victims and witnesses in its Rules. Such protective 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 of Procedure and Evidence 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 to the Defence in adequate time for preparation of the Prosecution or Defence.

3. 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 their or their families' safety, 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 protective measures for Defence and Prosecution witnesses.³

4. The Prosecution has stated there is subjective and objective fear on the part of the Prosecution witnesses, wherever they live, that disclosure of their participation in Tribunal proceedings would threaten their safety and security. The Prosecution further submits that witnesses presently detained in Rwanda and their families face the same fear as non-detainee

¹ Motion, paras. 1, 3 and 6.

² T. 26 October 2007, p. 6.

³ *Prosecutor v. Setako*, Decision on Defence Motion for Protective Measures (TC), 18 September 2007, para. 4; *Prosecutor v. Gatete*, Decision on Defence Motion for Protection of Witnesses (TC), 10 April 2007, para. 2; *Prosecutor v. Renzaho*, Decision on Defence Request for Protective Measures (TC), 12 March 2007, para. 4; *Prosecutor v. Serugendo*, Decision on Motion for Protection of Witnesses (TC), 1 June 2006, para. 2; *Prosecutor v. Karera*, Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006, para. 2; *Prosecutor v. Kanyarukiga*, Decision on Prosecution Motion for Protective Measures (TC), 3 June 2005, para. 2; *Prosecutor v. Ntabakuze*, Decision on Ntabakuze Motion for Protection of Witnesses (TC), 15 March 2004, para. 2.

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witnesses. Detained witnesses are often in close proximity to persons directly involved in crimes charged at the ICTR, or perceived to be sympathetic to the accused before the Tribunal. Further, some of these detained witnesses are released and find themselves in the position of other non-detainee witnesses.⁴ Attached to the motion is an affidavit by a Commander of Investigations in the Prosecutor's Office in Kigali, according to which witnesses who participate in ICTR investigations face serious risks arising from their participation in Tribunal proceedings, regardless of where the witnesses are geographically located, or whether or not they are detainees in Rwanda.⁵

5. Based on the Prosecution's submissions and the Chamber's prior decisions, it is apparent that the witnesses do justifiably fear that disclosure of the participation in the proceedings of this Tribunal could threaten their safety and security.⁶ Accordingly, the Chamber finds that the conditions for ordering witness protection measures are satisfied.

6. Numerous decisions have required that the identity of all witnesses be disclosed before the start of trial, especially in the trials of a single Accused, where there is little likelihood of a long delay between disclosure of the witness's identity and their testimony.⁷ In light of Rule 69 (C), witness identities and unredacted witness statements would appropriately be disclosed to the Defence thirty days prior to the commencement of the Prosecution case, as requested by the Prosecution.⁸

FOR THE ABOVE REASONS, THE CHAMBER

HEREBY ORDERS that:

1. The Prosecution shall designate pseudonyms for each of the witnesses for whom it claims the benefits of this Order, and that pseudonym shall be used in Tribunal proceedings, communications and discussions, both 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-

⁴ Motion, paras. 3-5.

⁵ Affidavit attached to Motion, paras. 6-8.

⁶ See the decisions referred to in footnote 3.

⁷ *Prosecutor v. Setako*, Decision on Defence Motion for Protective Measures (TC), 18 September 2007, para. 6; *Prosecutor v. Simba*, Decision on Prosecution Request for Protection of Witnesses (TC), 4 March 2004, paras. 6-7; *Prosecutor v. Gatare*, Decision on Prosecution Request for Protection of Witnesses (TC), 11 February 2004, para. 6; *Prosecutor v. Seromba*, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses (TC), 30 June 2003, para. 7. See also *Prosecutor v. Bagosora et al.*, Decision on Defence Motion for Reconsideration of the Trial Chamber's Decision and Scheduling Order of 5 December 2001 (TC), 18 July 2003 (requiring immediate disclosure of identifying information of all Prosecution witnesses). Similarly, disclosure of the identity of all Defence witnesses is frequently required before the start of the Defence case. *Ndindabahizi*, Decision on the Defence Motion for Protection of Witnesses (TC), 15 September 2003, p. 4; *Bagosora et al.*, Decision on Kabiligi Motion for Protection of Witnesses (TC), 1 September 2003, p. 4. These decisions were all rendered after 6 July 2002 when Rule 69 (C), which had formerly required disclosure before trial, was amended to permit rolling disclosure at the Chamber's discretion. The many decisions prior to that date requiring disclosure before trial are omitted.

⁸ *Prosecutor v. Karera*, Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006, para. 5; *Prosecutor v. Kamukaga*, Decision on Prosecution Motion for Protective Measures (TC), 3 June 2005, para. 5.

confidential Tribunal records, or otherwise disclosed to the public or the media. This Order shall remain in effect until otherwise ordered.

3. Names, addresses, locations and other identifying information of the protected witnesses which may appear in the Tribunal's public records shall be expunged and placed under seal.
4. The names and identities of the protected witnesses shall be forwarded by the Prosecution to the Registry in confidence, to be communicated to the Witnesses and Victims Support Unit only to implement protective measures for such witnesses.
5. No person shall make audio or video recordings or broadcastings, or take photographs or make sketches of protected witnesses or their family members, without leave of the Chamber or the witness.
6. The Defence shall keep confidential to itself all information identifying any protected witness, and shall not, directly or indirectly, share, discuss or reveal any such information.
7. The Defence team in this case and any representative acting on its behalf shall notify the Prosecution in writing if it wishes to any contact any protected witness and, if the witness consents, the Prosecution shall facilitate such contact.
8. The Defence shall provide the Registry with a designation of all persons working on the Defence team in this case who will have access to any identifying information concerning any protected witness, and shall notify the Registry in writing of any such person leaving the Defence team and to confirm in writing that such person has remitted all material containing identifying information.
9. The Defence, or any person working for the Defence, shall not attempt to make an independent determination of the identity of any protected witness or encourage or otherwise aid any person in so doing.
10. Identifying information of the protected witnesses shall be disclosed by the Prosecution to the Defence 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) of the Rules.

Arusha, 8 November 2007.



Erik Mose
Judge

[Seal of the Tribunal]

