



ICTR-05-88-1
14-12-2007
(123-120)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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S. Muzo

TRIAL CHAMBER I

Before: Judge Erik Mose
Registrar: Adama Dieng
Date: 14 December 2007

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

DECISION ON DEFENCE MOTION FOR PROTECTIVE MEASURES

The Prosecution
Christine Graham
Ousman Jammeh
Stephen Agaba
Kartik Murukutla

The Defence
Arthur Vercken
Anta Guisse

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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

BEING SEIZED OF the Defence Motion for Protective Measures, filed on 6 December 2007;¹

NOTING the Prosecution's observations during a status conference on 13 December 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence requests protective measures for all potential witnesses in this case, residing in Rwanda and in the Great Lakes region generally, as well for those residing elsewhere in Africa, Europe and in America.² The Prosecution responded orally to the motion during the status conference on 13 December 2007.

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 Defence has stated there is subjective and objective fear on the part of the prospective Defence witnesses residing in Africa, Europe and America, that disclosure of their participation in Tribunal proceedings would threaten their safety and security. In support

¹ *Requête de la Défense aux fins de protections des témoins à décharge.*

² Motion, para. 1 (b).

³ *Prosecutor v. Setaka*, 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.

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of this submission, the Defence has attached to its motion several documents: an extract of a text written by a former expert witness before the Tribunal; a statement by the Commander of Investigations in the Prosecutor's Office in Kigali which had been submitted in another case before the Chamber, 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; a letter to the President of the UN Security Council from the permanent representative of Rwanda to the UN; an extract of an article that appeared in the International Review of the Red Cross; and a written declaration by another expert witness before the Tribunal.

5. Based on the Defence's submissions and the Chamber's prior decisions, it is apparent that these witnesses do justifiably fear that disclosure of the participation in the proceedings of this Tribunal could threaten their safety and security.⁴ 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.⁵ In light of Rule 69 (C), as well as the Chamber's ruling on this issue regarding Prosecution witnesses in this case, witness identities and unredacted witness statements would appropriately be disclosed to the Prosecution thirty days prior to the commencement of the Defence case.⁶

FOR THE ABOVE REASONS, THE CHAMBER

HEREBY ORDERS that:

1. The Defence shall designate pseudonyms for each of its potential witnesses residing in Africa, Europe and America, and those pseudonyms 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-confidential Tribunal records, or otherwise disclosed to the public or the media. This Order shall remain in effect until otherwise ordered.

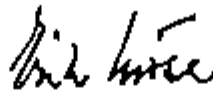
⁴ See the decisions referred to in footnote 2.

⁵ *Setaka*, Decision on Defence Motion for Protective Measures (TC), 18 September 2007, para. 6; *Gatete*, Decision on Prosecution Request for Protection of Witnesses (TC), 11 February 2004, paras. 6-7; *Prosecutor v. Seramba*, 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. Similarly, disclosure of the identity of all Defence witnesses is frequently required before the start of the Defence case. *Prosecutor v. Nindabahizi*, 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 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.

⁶ *Prosecutor v. Kalimanzira*, Decision on Prosecution Motion for Protective Measures (TC), 8 November 2007; *Karera*, Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006, para. 5; *Kanyarukiga*, Decision on Prosecution Motion for Protective Measures (TC), 3 June 2005, para. 5.

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 Defence 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 Prosecution 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 Prosecution and any representative acting on its behalf shall notify the Defence in writing if it wishes to any contact any protected witness and, if the witness consents, the Defence shall facilitate such contact.
8. The Prosecution, or any person working for the Prosecution, 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.
9. Identifying information of the protected witnesses shall be disclosed by the Defence to the Prosecution thirty 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, 14 December 2007.



Erik Møse
Judge

[Seal of the Tribunal]

