



**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

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ORIGINAL: ENGLISH

**TRIAL CHAMBER I**

**Before:** Judge Erik Møse, presiding

**Registrar:** Adama Dieng

**Date:** 28 February 2008

**THE PROSECUTOR**

v.

**Hormisdas NSENGIMANA**

*Case No. ICTR-2001-69-I*

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**DECISION ON PROTECTIVE MEASURES FOR DEFENCE WITNESSES**  
*Rules 69 and 75 of the Rules of Procedure and Evidence*

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**The Prosecution**

Wallace Kapaya  
Sylver Ntukamazina  
Charity Kagwi-Ndungu  
Brian Wallace  
Iskandar Ismail  
Jane Mukangira

**The Defence**

Emmanuel Altit  
David Hooper

## **THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

**SITTING** as Trial Chamber I, composed of Judge Erik Møse, designated by the Chamber under Rule 73 (A) of the Rules of Procedure and Evidence;

**BEING SEIZED OF** the Defence Motion for Protective Measures, filed on 6 February 2008;

**CONSIDERING** the Prosecution Response, filed on 11 February 2008;

**HEREBY DECIDES** the motion.

### **INTRODUCTION**

1. The Defence case is scheduled from 2 June to 11 July 2008. The present motion seeks protective measures for all Defence witnesses. The Prosecution are in agreement, requesting an order that all identifying information concerning the witnesses be disclosed no later than twenty-one days before the commencement of the Defence case.

### **DELIBERATIONS**

2. Pursuant to Article 19 of the Statute, the Tribunal must conduct its 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 to the Prosecution in adequate time for preparation.

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 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. Trial fairness, also an important consideration, favours similar or identical measures for Defence and Prosecution witnesses.<sup>1</sup>

4. The Defence has submitted that its witnesses do fear for their safety and that these fears are justified by the dangers and insecurities described in the reports attached as annexes to its motion. The Chamber follows previous decisions regarding protective measures and accepts the existence of these fears amongst Defence witnesses, and their objective justification.<sup>2</sup> Accordingly, the Chamber finds that the conditions for ordering witness protection measures are satisfied.

5. The measures sought by the Defence are substantially identical to those previously

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<sup>1</sup> *Prosecutor v. Karera*, Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006; *Prosecutor v. Bagosora et al.*, Decision on Bagosora Motion for Protection of Witnesses (TC), 1 September 2003, p. 2; *Prosecutor v. Niyitegeka*, Decision (Defence Motion for Protective Measures for Defence Witnesses) (TC), 14 August 2002, p. 4.

<sup>2</sup> See the decisions referred to in footnote 1. See also *Prosecutor v. Semanza*, Decision on the Defence Motion for Protection of Witnesses (Rule 75) (TC), 24 May 2001, p. 3; *Prosecutor v. Ruggiu*, Decision on the Defence's Motion for Witness Protection (TC), 9 May 2000, p. 3.

ordered in respect of Prosecution witnesses in the present case. The interests of trial fairness and administrative simplicity strongly favour the adoption of identical measures, including the requirement to disclose redacted witness information twenty-one days prior to the commencement of the Defence case.<sup>3</sup>

**FOR THE ABOVE REASONS, THE CHAMBER**

**ORDERS** that:

1. The Defence shall designate pseudonyms for each of the witnesses for whom it claims the benefits of this Order, and that 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.
3. In cases where any identifying information of the protected witnesses appears in the Tribunal's public records, this information shall be expunged from the 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, 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 the protected witnesses, without leave of the Chamber and the parties.
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 protected witness, and shall not, directly or indirectly, share, discuss or reveal any such information.
8. The Defence shall temporarily withhold disclosure to the Prosecution of the identifying information of the protected witnesses and temporarily redact that information from material disclosed to the Prosecution. However, such information shall be disclosed by the Defence to the Prosecution twenty-one days prior to the 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, 28 February 2008

Erik Møse  
Presiding Judge  
[Seal of the Tribunal]

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<sup>3</sup> The witness protection orders governing Prosecution witnesses are contained in the Decision on the Prosecutor's Motion for Protective Measures for Witnesses (TC), 2 September 2002.