

ICTR-00-55B-PT  
16-1-2009  
(1303-1299)

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

UNITED NATIONS  
NATIONS UNIES

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Khalida Rachid Khan, presiding  
Lee Gacuiga Muthoga  
Emile Francis Short

**Registrar:** Adama Dieng

**Date:** 16 January 2009

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**THE PROSECUTOR**

v.

**ILDEPHONSE HATEGEKIMANA**

**Case No. ICTR-00-55B-PT**

**DECISION ON PROSECUTION EXTREMELY URGENT MOTION FOR  
PROTECTIVE MEASURES**

**Office of the Prosecutor:**

William Egbe  
Peter Tafah  
Sulaiman Khan  
Adama Niane  
Guilain Disengi Mugeyo  
Amina Ibrahim

**Defence Counsel:**

A.R. Dovi  
Ata-Quam-Dovi-Avouyi

*for*

INTRODUCTION

1. The trial in this matter is scheduled to commence on 26 January 2009.<sup>1</sup> By Motion dated 5 January 2009, the Prosecution seeks protective measures for witnesses QCL, BUQ, BYQ, BRT, BYO, XR, BYR, BTG, BRU, BYF, BYP, BRL, BUR, BRS, and BYS, as well as any other witnesses that it may call at trial.<sup>2</sup> The Prosecution notes that, pursuant to Rule 75(F)(i) of the Rules of Procedure and Evidence, prior protective measures were ordered in connection with the matter of the *Prosecutor v. Muvunyi et al.* which still apply to witnesses QB, RA, QBC, QCM, QCQ, QDC, QCN, and QX.<sup>3</sup>

2. The Defence did not respond to the Motion within the time prescribed by the Rules.

DISCUSSION

*The Law Regarding Protective Measures*

3. Pursuant to Article 19 of the Statute, the Tribunal shall conduct 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, including, but not limited to, the accommodation of in-camera proceedings and the protection of witnesses' and victim's identities. Rule 75 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; assigning a pseudonym to a witness; and permitting witness testimony in closed session.<sup>4</sup> Subject to these measures, Rule 69 (C) requires the identity of witnesses to be disclosed to the Defence in adequate time for preparation.

4. Measures for the protection of witnesses are granted on a case-by-case basis. According to the jurisprudence of this Tribunal, the witnesses for whom protective measures are sought must have a real fear for their safety or that of their families, and there must be an objective justification for this fear. These fears may be expressed by persons other than the witnesses themselves.<sup>5</sup>

<sup>1</sup> Scheduling Order Concerning the Commencement of Trial, 22 December 2008.

<sup>2</sup> The Prosecutor's Extremely Urgent Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, filed 5 January 2009 (The "Motion").

<sup>3</sup> See *Prosecutor v. Muvunyi et al.*, Case No. ICTR-00-55-I, Decision on the Prosecutor's Motion for Orders for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment (TC), 25 April 2001 (the "*Muvunyi et al.* Protective Measures Order").

<sup>4</sup> Unless stated otherwise, all further references to Rules in this Decision are to the Rules of Procedure and Evidence.

<sup>5</sup> *Prosecutor v. Kalimanzira*, Case No. ICTR-2005-88-I, Decision on Prosecution Motion for Protective Measures (TC), 8 November 2007, para. 3; *Prosecutor v. Setako*, Case No. ICTR-04-81-I, Decision on Prosecution Motion for Protective Measures (TC), 18 September 2007, para. 4; *Prosecutor v. Nchamihigo*, Case No. ICTR-2001-63-PT, Decision on Motions for Protective Measures for Prosecution Witnesses (TC), 26 July 2006, paras. 4-5.

*Real and Objectively Justified Fear*

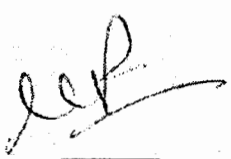
5. Having reviewed the information provided by the Prosecution, and mindful of the rights of the Accused, the Chamber accepts that the prospective Prosecution witnesses do justifiably fear that disclosure of their participation in proceedings before this Tribunal could threaten their safety and security. Therefore, the Chamber considers that the conditions for ordering protective measures are satisfied.

*Disclosure of the Identifying Information Prior to Commencement of the Prosecution Case*

6. The Prosecution seeks an order that it disclose the identifying information of the protected witnesses to the Defence at least thirty days prior to the commencement of trial. The commencement of trial is scheduled for 26 January 2009.<sup>6</sup> The Motion was filed on 5 January 2009, twenty-one days prior to the commencement of trial. Given the timing of the Motion, it would be impossible for the Prosecution to comply with an order that it disclose the identifying information of protected witnesses thirty days prior to the commencement of trial without also authorizing a delay in the trial's scheduled date of commencement. The Chamber does not consider such a delay to be warranted.

7. Some delay between the disclosure of a protected witness's identifying information and the hearing of that witness is generally required to allow an accused person to adequately prepare his or her defence. Under the circumstances, the Chamber considers immediate disclosure of the identifying information of all Prosecution witnesses to be appropriate. The Chamber will consider any Defence requests for relief based on the timing of disclosure of identifying information of Prosecution witnesses on a case-by-case basis.

8. In the *Muvunyi et al.* Protective Measures Order, the Chamber adopted a rolling disclosure system.<sup>7</sup> The Chamber is of the view that harmonization is required. The present order for immediate disclosure therefore applies to all Prosecution witnesses, including those subject to the *Muvunyi et al.* Protective Measures Order.



<sup>6</sup> Scheduling Order Concerning the Commencement of Trial, 22 December 2008.

<sup>7</sup> *Muvunyi et al.* Protective Measures Order, para. 26.

**FOR THE ABOVE REASONS, THE CHAMBER****ORDERS that:**

**I.** The pseudonyms designated by the Prosecution, and listed above in paragraph three (3) of this Decision, shall be used in the proceedings and in communications and discussions, both between the parties and with the public. The Prosecution shall designate pseudonyms for any additional witnesses it is subsequently permitted to call.

**II.** 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.

**III.** 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.

**IV.** No person shall disclose identifying information of protected witnesses to the public or the media.

**V.** 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.

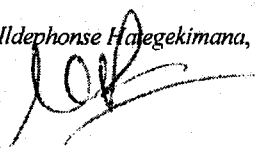
**VI.** No person shall make audio or video recordings or broadcastings, or take photographs or make sketches of protected witnesses, without leave of the Chamber and the parties.

**VII.** The Defence team in this case and any representative acting on its behalf shall notify the Prosecution in writing if it wishes to contact any protected witness and, if the witness consents, the Prosecution shall facilitate such contact.

**VIII.** 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.

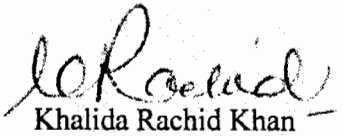
**IX.** The Defence shall provide the Registry with a designation of all persons working on the Defence team in this case who will have access to any identifying information concerning any protected witness, and shall notify the Registry in writing of any such person leaving the Defence team and to confirm in writing that such person has remitted all material containing identifying information.

**X.** The Prosecution shall disclose the identifying information of the protected witnesses to the Defence as soon as possible and, in any event, no later than two days from the notification of this Decision, in order to allow adequate time for the preparation of the Defence pursuant to Rule 69 (C) of the Rules.

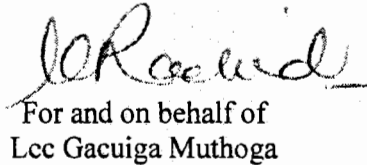


XI. The Prosecution shall forward the names and identities of the protected witnesses to the Registry in confidence, to be communicated to the Witnesses and Victims Support Unit for the purpose of implementing the above protective measures for such witnesses.

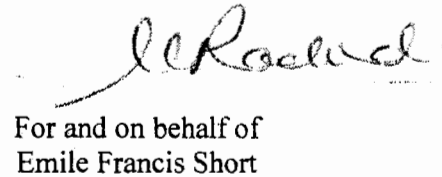
16 January 2009

  
Khalida Rachid Khan

Presiding Judge

  
For and on behalf of  
Lcc Gacuiga Muthoga

Judge

  
For and on behalf of  
Emile Francis Short

Judge

[Seal of the Tribunal]

