



ICTR-97-36A-T
06-07-2009
(943-946)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

943
1094

ORIGINAL: ENGLISH

TRIAL CHAMBER I

Before Judges: Florence Rita Arrey, Presiding
Mparany Mamy Richard Rajohnson
Aydin Sefa Akay

Registrar: Adama Dieng

Date: 06 July 2009

THE PROSECUTOR

v.

YUSSUF MUNYAKAZI

Case No. ICTR-97-36A-T

2009 JUL -6 P.S.H.
JUDICIAL RECORDS ARCHIVES
RECEIVED

**DECISION ON YUSSUF MUNYAKAZI'S MOTION FOR
PROTECTIVE MEASURES FOR DEFENCE WITNESSES**

Article 21 of the Statute, Rules 69 and 75 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Richard Karegyesa
Segun Jegede
Didace Nyirinkwaya

Counsel for the Defence
Jwani Mwaikusa
Barnabé Nekuie

NA

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Florence Rita Arrey, Presiding, Mparany Mamy Richard Rajohnson and Aydin Sefa Akay.

NOTING the orders to the Defence to file its Motion for Protective Measures not later than 30 June 2009¹;

BEING SEIZED OF the Defence Motion for Protective Measures, filed on 30 June 2009;

CONSIDERING the Prosecution Response, filed 02 on July 2009;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence case is scheduled to begin on 31 August 2009 and runs until 18 September 2009. This motion for protective is brought under Article 21 of the Statute of the Tribunal and Rules 54, 69 and 75 of the Rules of Procedure and Evidence. The Defence seeks protective measures for all its anticipated witnesses who will testify during the Defence case.²

2. The Prosecution objects to the entire motion, submitting that the Defence has not identified the specific witnesses for whom the protective measures are sought nor does its contain any justification for the requested protective measures. Secondly, that in order to meet the criterion of “real fear underscored by an objective basis” stipulated in the *Bagosora* decision, the witness’s subjective fear is insufficient and must be underscored by objective considerations. Therefore, submits the Prosecution, the Defence should have filed supporting material, including affidavits and reports on the current security situation in locations where the witnesses reside so as to enable the Chamber make an objective assessment.³

DELIBERATIONS

3. 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 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 elaborates several specific witness protection measures that may be ordered, including sealing or

¹ *Prosecutor v. Munyakazi* Case No. ICTR-97-36A-T.; Scheduling Order Following the Pre-Defence Conference, (Rules 54 and 73ter of the Rules of Procedure and Evidence) 9 June 2009

² Defence Motion

³ Prosecutor Response, para. 5.(a-b)

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 defence witnesses to be disclosed to the Prosecution in adequate time for preparation.

4. According to the well established jurisprudence of the Tribunal, the witness' subjective expressions of fear must be underscored by objective considerations to justify the grant of protective measures.⁴ The practice of the Tribunal requires the moving party to demonstrate such objective basis through affidavits attesting to the state of insecurity in the witness' place of residence, the presence at such place of individuals either related to, friends with, or otherwise supportive of the accused, or other circumstances demonstrating that if the identity of the witness(es) and the fact that they may testify before the Tribunal are known, such witness(es) may face danger to their lives or to the lives of their family members.⁵

5. The Defence submits that its witnesses fear that they may be threatened, assaulted, or killed if their identities were revealed to anyone and the adverse consequences that they or their families may face upon their return to Rwanda. While the Defence does not provide any material in support of its Motion, it makes reference to the Appeal Chamber and Trial Chamber decisions regarding the referrals under Rule 11*bis* in which it was found that Defence witnesses could justifiably fear that disclosure of their participation in the proceedings in Rwanda would threaten their safety and security.⁶

6. The Chamber finds that the Defence has only stated the fears of its witnesses, but have not provided any evidence to support this assertion. The Chamber notes that the conclusions arrived at by Appeal Chamber and Trial Chamber regarding the referrals under Rule 11*bis* had to do with witnesses testifying before the courts in Rwanda and not before the ICTR thus, that cannot be consider as basis for granting protective measures.

⁴ *The Prosecutor v. Rugambarara*, "Decision on the Prosecutor's Motion for Protective Measures for Witnesses", 28 October 2005, para. 6, 7; *The Prosecutor v. Renzaho*, "Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment", 17 August 2005, para. 7; *The Prosecutor v. Bagosora et al*, "Decision on the Extremely Urgent Request Made by the Defence for Protection Measures for Mr. Bernard Ntuyahaga", 13 September 1999, para. 28.

⁵ *Prosecutor v. Rukundo*, Decision on Defence Motion for Defence of Witnesses (TC), 16 May 2007; para 6.

⁶ Defence Motion para.12, See the decisions referred to in footnote 1 and 2.

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

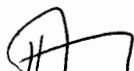
7. Without prejudice to the Defence case, the Defence should re-file within four (4) days of this decision its motion for protective measures with reference to and attaching supporting evidence on which the motion is based.

Arusha, 06 July 2009, done in English.



Florence Rita Arrey

Presiding Judge



Mparany Rajohnson

Judge



Aydin Akay

Judge

[Seal of the Tribunal]





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
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I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input checked="" type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input checked="" type="checkbox"/> Chamber TC1 (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. YUSSUF MUNYAKAZI		Case Number: ICTR-97-36A-T	
Dates:	Transmitted: 06 07 2009		Document's date: 06 07 2009	
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Title of Document:	DECISION ON YUSSUF MUNYAKAZI'S MOTION FOR PROTECTIVE MEASURES FOR DEFENCE WITNESSES Article 21 of the Statute, Rules 69 and 75 of the Rules of Procedure and Evidence			
Classification Level:	TRIM Document Type:			
<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence	<input type="checkbox"/> Submission from non-parties
<input type="checkbox"/> Confidential	<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal	<input type="checkbox"/> Submission from parties
<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Disclosure	<input checked="" type="checkbox"/> Order	<input type="checkbox"/> Appeal Book	<input type="checkbox"/> Accused particulars
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Reference material is provided in annex to facilitate translation.

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CMS SHALL NOT take any action regarding translation.

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Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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