

ICTR-97-36A-T
16-07-2009
(973 - 969)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 16 July 2009

THE PROSECUTOR

v.

YUSSUF MUNYAKAZI

Case No. ICTR-97-36A-T

JUDICIAL AUTHORITY
2009 JUL 16 P 12:02

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

Article 21 of the Statute, Rules 54, 69 and 75 of the Rules of Procedure and Evidence

Office of the Prosecutor:

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Counsel for the Defence

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Etienne Mutabazi
Malien Habyarimana
André Nteziriraza

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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 Chamber's decision of 6 July 2009, ordering the Defence to re-file its Motion for Protective Measures with supporting evidence;¹

BEING SEIZED OF the Defence Motion for Protective Measures, filed on 09 July 2009 and its *Corrigendum* filed on 10 June 2009;²

NOTING that the Prosecution has made no submissions;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence case is scheduled to begin on 31 August 2009 and to run until 18 September 2009. Following the Chamber's Decision dated 6 July 2009,³ the Defence on 9 July 2009 re-filed its Motion for protective measures for all Defence witnesses as well as an affidavit in annex, under Article 21 of the Statute of the Tribunal and Rules 54, 69 and 75 of the Rules of Procedure and Evidence ("Rules" hereinafter). On 10 June 2009, the Defence further filed a *Corrigendum* to its motion attaching the second affidavit.

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 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 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.

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

¹ The *Prosecutor v. Yussuf Muniyaki*; Case No. ICTR-97-36A-T., Decision on Yussuf Muniyaki's Motion for Protective Measures for Defence Witnesses (TC), dated 06 July 2009.

² Confidential Motion for Protective Measures for Defence Witnesses filed on 9 July 2009; and Corrigendum to the Motion for Protective Measures for Defence Witnesses filed on 9 July 2009, which was filed on 10 July 2009.

³ The *Prosecutor v. Yussuf Muniyaki*; Case No. ICTR-97-36A-T., Decision on Yussuf Muniyaki's Motion for Protective Measures for Defence Witnesses (TC), dated 06 July 2009.

Yugoslavia requires that the witnesses, for whom protective measures are sought, have a real fear for their own safety or their family member's family. Furthermore, 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.⁴

4. 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 their place of residence. The Chamber has carefully reviewed the supporting affidavits annexed to the Motion and its *Corrigendum*. In light of this material, the Chamber concludes that the fears for their own safety or the safety of their family members expressed by the potential Defence witnesses residing in Rwanda and other parts of the world are justified. The Chamber follows previous decisions regarding protective measures and accepts the existence of these fears amongst Defence witnesses, and their objective justification.⁵ Accordingly, the Chamber finds that the conditions for ordering witness protection measures are satisfied.

5. The Defence further requests that the information concerning each protected witness be disclosed only 21 days prior to their respective appearance in court. The Chamber recalls that the Defence has already been ordered to file this information not later than 31 July 2009.⁶

6. The measures sought by the Defence are substantially identical to those previously ordered in respect of Prosecution witnesses in the present case. The interest of trial fairness and administrative simplicity strongly favour the adoption of identical measures.⁷ The Defence seeks confirmation that the identifying particulars to be disclosed may be limited to each witness's names and pseudonym; date and place of birth; parentage; ethnic origin; religion; occupation in April 1994; and address in April 1994.⁸ In the Chamber's view, such details may suffice only if they provide sufficient

⁴ *The 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; *The Prosecutor v. Niyitegeka*, Decision (Defence Motion for Protective Measures for Defence Witnesses) (TC), 14 August 2002, p. 4.

⁵ *The Prosecutor v. Nsengimana.*, Decision on Protective Measures for Defence Witnesses (TC), 28 February 2008, *Prosecutor v. Renzaho*, Decision on Defence Request for Protective Measures (TC), 12 March 2007, para. 4; *The Prosecutor v. Gatete*, Decision on Defence Motion for Protection of Witnesses (TC), 10 April 2007, *The Prosecutor v. Karera*, Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006, *The Prosecutor v. Kanyarukiga*, Decision on Prosecution Motion for Protective Measures (TC), 3 June 2005.

⁶ See the Pre-Defence Status Conference held on 8 June 2009; T. 8 June 2009, p.5 ; and Scheduling Order Following the Pre-Defence Conference, dated 9 June 2009.

⁷ The Order governing the protection of Prosecution witnesses in the present case is, *The Prosecutor v. Bagambiki et al.*, Case No. ICTR-97-36-T., Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses (TC), 3 March 2000. See the oral decision taken during the Pre-Trial Status Conference on 20 March 2009; T. 20 March 2009 pp. 14-15.

⁸ Confidential Motion for Protective Measures for Defence Witnesses filed on 9 July 2009; and Corrigendum to the Motion for Protective Measures for Defence Witnesses filed on 9 July 2009, which was filed on 10 July 2009.

information to enable the opposite party to conduct its investigations. The Chamber notes, nonetheless, that the Defence must provide the personal information of its witnesses "in the same format as had been provided by the Prosecution in respect of its witnesses."⁹

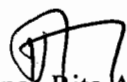
FOR THE ABOVE REASONS, THE CHAMBER

- I. **GRANTS** the Defence Motion in part; and
- II. **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) Their names, addresses, whereabouts, and other identifying information concerning them 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.

⁹ *The Prosecutor v. Bagosora et al.*, Decision on Sufficiency of Defence Witness Summaries (TC), 5 July 2005, para. 8; See also *The Prosecutor v. Karera*, Case No. ICTR-01-74-A, Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006, para. 3.

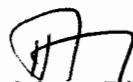
8) The Defence shall temporarily withhold disclosure to the Prosecution of the identifying information of the protected witnesses and temporarily redact that information from material disclosed to the Prosecution. However, such information shall be disclosed by the Defence to the Prosecution no later than 31 July 2009,¹⁰

Arusha, 16 July 2009, done in English.



Florence Rita Arrey

Presiding Judge



Mparany Mamy Richard
Rajohnson



Judge



Aydin Sefa Akay

Judge

[Seal of the Tribunal]



¹⁰ *The Prosecutor v. Yussuf Muniyaki*, Case No. ICTR-97-36A-T, Scheduling Order Following the Pre-Defence Conference (TC), dated 9 June 2009.