



UNITED NATIONS
NATIONS UNIES

ICTR-00-552-PT
09-06-2010
(1429-1427)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1429
Ivan

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 9 June 2010

THE PROSECUTOR

v.

Ildephonse NIZEYIMANA

CASE NO. ICTR-2001-55-PT

9-06-2010
5:00 p.m.
[Signature]

**DECISION ON PROSECUTOR'S MOTION FOR PROTECTIVE MEASURES FOR
THE VICTIMS AND WITNESSES TO CRIMES ALLEGED IN THE INDICTMENT**

Rules 69, 72 and 75 of the Rules of Procedure and Evidence

Office of the Prosecution:
Richard Karegyesa

Defence Counsel for Ildephonse Nizeyimana:
John Philpot
Cainnech Lussiaà-Berdou

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1. On 30 April 2010, the Prosecution filed a motion seeking protective measures for its prospective witnesses.¹ The Defence opposes the scope of the Motion and protective measures sought.²
2. Pursuant to Article 21 of the Statute, the Tribunal has the duty to provide 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 victims' identities. To this end, Rule 69 of the Rules of Procedure and Evidence provides that under exceptional circumstances, either of the parties may apply to a Trial Chamber to order that the identity of a witness or victim who may be in danger or at risk not be disclosed, until the Chamber decides otherwise.
3. Rule 75 authorises a judge or a Chamber, *proprio motu* or at the request of either party, the victim or witness concerned, or of the Witnesses and Victims Support Section, to order appropriate measures to safeguard the privacy and security of victims and witnesses. These measures must be consistent with the rights of the Accused, including his or her right to a fair trial, and are subject to the condition imposed by Rule 69(C) which requires that the identity of the victim or witness shall be disclosed to the Defence in sufficient time prior to the trial to allow adequate time for preparation of the Defence case.
4. Protective measures for victims and witnesses are granted on a case-by-case basis where the Chamber determines the appropriateness of such protective measures.³ Further, the moving party should demonstrate how the witness is relevant and important to the party's case and the measures should be strictly necessary.⁴
5. The Prosecution is seeking protective measures for all of its prospective witnesses and their family members.⁵ The Prosecution has attached an annex to support its Motion, which is the affidavit of the Prosecution's Officer in Charge of Investigations: Alfred Kwende.⁶

¹ The Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, filed on 30 April 2010 ("Motion").

² Response to the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 4 May 2010 ("Response").

³ *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Nyiramasuhuko's Strictly Confidential *Ex Parte* Under Seal Motion for Additional Protective Measures for Defence Witness WBNM (TC), 17 June 2005, paras. 8-9 citing *Prosecutor v. Bagosora et al.*, Case No. ICTR-96-7-I, Decision on the Extremely Urgent Request Made by the Defence for Protective Measures for Mr. Bernard Ntuyahaga, 13 September 1999, para.28.

⁴ *Ibid.*

⁵ Motion, paras. 3, 9.

⁶ See Annex A to the Motion.

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6. The Chamber notes that the Prosecution has not provided any information about the potential witnesses for it to assess, on a case-by-case basis, whether to grant protection to all potential Prosecution witnesses and their families. The Chamber finds the Prosecution's request too broad and would negatively impact upon Ildephonse Nizeyimana's ability to meet with potential witnesses as his defence team would need to seek clearance from the Prosecution prior to contacting any potential witness as they would not know if they are subject to the protective order and thereby reveal its own investigations to the Prosecution. Moreover, the inclusion of only one affidavit attesting to the general fear of all potential witnesses and their families' fear is not sufficiently specific, especially given that the Chamber does not know where the potential witnesses are based.

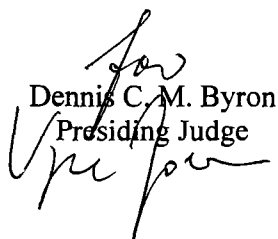
7. Further, the Chamber notes that the Prosecution has requested protection for the families of the potential witnesses. However, the Prosecution has not defined who would be considered a family member and the Chamber considers this request unclear.


8. Given that the Chamber finds the current request too broad and imprecise and it is unable to assess on a case-by-case basis the protective measures sought, it is not necessary to consider how the witnesses are relevant and important to the Prosecution's case and whether the measures are strictly necessary.

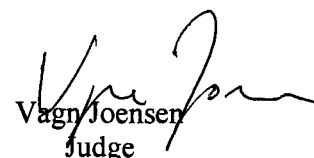
FOR THESE REASONS, THE CHAMBER

DISMISSES the Prosecution's Motion.

Arusha, 9 June 2010, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]

