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

OR: ENG

TRIAL CHAMBER III

Before Judges: Lee Gacuiga Muthoga, *Presiding*
Seon Ki Park
Robert Fremr

Registrar: Adama Dieng

Date: 6 May 2011

THE PROSECUTOR

v.

Ildéphonse NIZEYIMANA

CASE NO. ICTR-00-55C-T

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**DECISION ON DEFENCE EXTREMELY URGENT MOTION
FOR PROTECTIVE MEASURES FOR DEFENCE WITNESSES RE WITNESSES
CKN18, CKN20 AND CKN22**

Articles 19 and 21 of the Statute and Rules 54, 69, 73 and 75 of the Rules of Procedure and Evidence

Office of the Prosecution:

Drew White
Kirsten Gray
Yasmine Chubin
Zahida Virani

Defence Counsel for Ildéphonse Nizeyimana:

John Philpot
Cainnech Lussiaà-Berdou
Myriam Bouazdi

INTRODUCTION

1. The trial commenced on 17 January 2011 with the opening statements of both the Prosecution and the Defence. The Prosecution closed its case-in-chief on Friday, 25 February 2011, after having called 38 witnesses. The Defence case is scheduled to commence on 9 May 2011.
2. On 26 April 2011, the Defence team of the Accused, Ildéphonse Nizeyimana, (“Defence” and “the Accused” respectively) filed its third motion seeking protective measures for witnesses CKN18, CKN20 and CKN22.¹ The Defence submits that its witnesses and those of the Prosecution should enjoy similar protective measures in the interests of trial fairness.² With respect to the three witnesses it requests protective measures for, the Defence submits generally that the “situation in Rwanda has largely now been recognized as hostile, unstable and dangerous for Defence witnesses of the ICTR.”³ The Defence notes that the specifics with respect to individual witnesses’ fears are included in *ex parte* Annex A, attached to the Defence Motion.⁴
3. On 26 April 2011, the Office of the Prosecutor (“Prosecution”) filed a response to the Motion.⁵ The Prosecution submits, *inter alia*, that any protective measures ordered should follow the approach adopted in previous protective measures decisions issued by the Chamber.⁶ The Prosecution further relies on all the arguments set out in its Response filed on 3 March 2011.⁷
4. The Defence did not file a reply.

DELIBERATIONS

Applicable Law of Protective Measures

5. The Chamber recalls that 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

¹ Defence Extremely Urgent Motion for Protective Measures for Defence Witnesses Re Witnesses CKN 18, CKN20 and CKN22 (“Defence Motion”), 26 April 2011.

² Defence Motion, para. 12.

³ *Ibid.*

⁴ Defence Motion, para. 10, Annex A.

⁵ Prosecution Response to Defence Extremely Urgent Motion for Protective Measures for Defence Witnesses Re: Witnesses CKN 18, CKN 20 and CKN 22 (“Prosecution Response”), 26 April 2011.

⁶ Prosecution Response, para. 5.

⁷ Prosecution Response, paras. 3-4; Prosecution Response to Defence Urgent Motion for Protective Measures for Defence Witnesses, 3 March 2011.

of victims' identities. To this end, Rule 69 of the Rules of Procedure and Evidence ("Rules") 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 that chamber decides otherwise.

6. 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 ("WVSS"), to order appropriate measures to safeguard the privacy and security of victims and witnesses.

7. Protective measures for victims and witnesses are granted on a case-by-case basis where a chamber determines the appropriateness of such protective measures.⁸

8. The Chamber maintains the definition of 'identifying information' set out in its three prior decisions on protective measures, namely "[t]he names, address(es), whereabouts and information of a private, personal or descriptive nature that either directly reveals the identity of the protected witness or makes the identity of the witness a matter of deduction".⁹

Specific Application for Protective Measures

9. In support of the request for protective measures, Annex A of the Defence Motion includes affidavits signed by witnesses CKN18, CKN20 and CKN22 specifying particular fears of intimidation. The Chamber finds that the Defence has demonstrated the existence of exceptional circumstances and a real fear for the witnesses' safety which justifies the grant of protective measures for the three witnesses identified in Annexes A of the Motion.

10. The Chamber notes that the relief requested by the Defence is identical to that requested in the three previous Defence motions for protective measures for Defence witnesses.¹⁰ The relief requested in the prior three motions was not granted in the manner

⁸ *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 Protection Measures for Mr. Bernard Ntuyahaga (TC), 13 September 1999, para. 28.

⁹ Decision on Defence Motion Requesting Protective Measures for Defence Witnesses RWV07, RWV08, OUV06, CKN10, OUV01, RWV02 and OUV03 ("First Protective Measures Decision"), 11 January 2011, para. 8. (citations omitted); Decision on Defence Urgent Motion for Protective Measures for Defence Witnesses ("Second Protective Measures Decision"), 9 March 2011, para. 7; Decision on Defence Urgent Motion for Protective Measures for Defence Witness ("Third Protective Measures Decision"), 18 April 2011, para. 7.

¹⁰ Motion, pp. 6-7; Defence Motion Requesting Protective Measures for Defence Witnesses RWV07, RWV08, OUV06, CKN10, OUV01, RWV02 and OUV03, 15 December 2010, pp. 6-7; Defence Urgent Motion for Protective Measures for Defence Witnesses, 28 February 2011, pp. 6-7; Second Defence Urgent Motion for Protective Measures for Defence Witnesses Re Witnesses CBN19 and CBN22, 4 April 2011, pp. 6-7.

sought by the Defence. The Defence has not provided any reason as to why the protective measures for Witnesses CKN18, CKN20 and CKN22 should be any different to those granted previously.

11. The Chamber accordingly refers the Defence to its prior decisions with respect to the relief sought in sub-paragraphs (ii),¹¹ (viii)¹² and (ix),¹³ rather than repeating itself for the fourth time. The Chamber reminds the Defence of the Third Protective Measures Decision, where the Defence was “strongly advise[d]” to carefully consider prior Decisions before requesting identical relief.¹⁴ The Chamber warns the Defence that it will not entertain another attempt to re-litigate matters that have already been adjudicated on three prior occasions.

12. The Chamber finds that the protective measures requested are otherwise consistent with the fair trial rights of the Accused and considers that they should be ordered as set out below.

FOR THESE REASONS, THE CHAMBER

I. GRANTS the Motion in part;

II. ORDERS that the Defence witnesses CKN18, CKN20 and CKN22 of the Motion be subject to the following protections which will remain in effect until further order:

- i. If it has not already done so, the Defence is to designate a pseudonym for each protected witness. The pseudonyms shall be used when referring to such protected witnesses in ICTR proceedings, communications, and discussions, both between the parties and with the public. The use of such pseudonyms shall last until such time as the Trial Chamber orders.
- ii. Names, address(es), whereabouts and information of a private, personal or descriptive nature that either directly reveals the identity of the protected witness or makes the identity of the witness a matter of deduction (hereinafter “Identifying Information”) must be sealed by the Registry and not be included in public or non-confidential ICTR records;

¹¹ First Protective Measures Decision, p. 5; Second Protective Measures Decision, para. 9; Third Protective Measures Decision, para. 9.

¹² Second Protective Measures Decision, para. 10; Third Protective Measures Decision, para. 10.

¹³ First Protective Measures Decision, para. 12; Second Protective Measures Decision, para. 11; Third Protective Measures Decision, para. 11.

¹⁴ Third Protective Measures Decision, para. 12.

- iii. To the extent that any Identifying Information is contained in existing records of the Tribunal, such Identifying Information must be expunged from the public record of the Tribunal and placed under seal;
- iv. Identifying Information shall not be disclosed to the public or the media. This order shall remain in effect until further order;
- v. Until such time as Identifying Information is provided to the Prosecution pursuant to a Trial Chamber order, no member of the Prosecution shall attempt, encourage or otherwise aid any person in an attempt to make any independent determination of the identity of any protected witness;
- vi. Nowhere and at no time shall the public or the media make audio or video recordings or broadcasts, or take photographs of any protected witness or his/her family members (meaning, parents, siblings, children and partners), in relation to the testimony of the protected witness at the ICTR, without leave of the Trial Chamber;
- vii. No member of the Prosecution shall make any contact with a protected witness, unless the consent of the person concerned has first been confirmed. The Prosecution shall contact the Defence, who with the services of the WVSS, shall determine whether such consent exists. In the event that such consent exists, the WVSS shall facilitate the interview;
- viii. The Prosecution shall keep confidential the fact that the witness is a witness and shall not express, share, discuss or reveal directly or indirectly that status to any unauthorized person or entity; and

III. DENIES the Defence motion in all other respects.

Arusha, 6 May 2011, done in English.

Lee Gaguiga Muthoga
Presiding Judge

Seon Ki Park
Judge

Robert Fremr
Judge

