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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge Arlette Ramaroson, Presiding
Judge William H. Sekule
Judge Solomy Balungi Bossa

Registrar: Mr Adama Dieng

Date: 16 January 2007

ICTR-01-77-T
16-01-2007
(638-634)

JUDICIAL RECORDS ARCHIVES
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The PROSECUTOR v. Joseph NZABIRINDA

Case No. ICTR-2001-77-T

DECISION ON THE DEFENCE'S EXTREMELY URGENT CONFIDENTIAL MOTION
FOR PROTECTIVE MEASURES FOR WITNESS LBZ2

Office of the Prosecutor

Mr Hassan B. Jallow
Mr Stephen Rapp
Mr William Egbe

Defence Counsel

Mr François Roux
Mr Jean Haguma
Mr Celestin Buhuru
Ms Charlotte Moreau

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II, composed of Judge Arlette Ramaroson, Presiding, Judge William H. Sekule, and Judge Solomy Balungi Bossa (the "Chamber");

BEING SEIZED of the Confidential "*Requête additionnelle en extrême urgence de la Défense aux fins de prescription de mesures de protection du témoin LZB2*", filed on 12 January 2007 (the "Motion");

NOTING that the Prosecution does not oppose the Motion;¹

RECALLING its "Decision on Nzabirinda's Under Seal – Extremely Urgent Motion for Protective Measures for Character Witnesses" of 13 December 2006;

CONSIDERING the Statute of the Tribunal (the "Statute"), in particular Articles 14, 19 and 21 of the Statute, and the Rules of Procedure and Evidence (the "Rules"), specifically Rules 69 and 75;

NOW DECIDES the Motion pursuant to Rule 73 (A) of the Rules on the basis of the written submissions of the Defence.

The Defence

1. The Defence relies upon Articles, 14, 19(1) and 21 of the Statute and Rules 69 and 75 of the Rules to request protective measures for Witness LZB2. It submits that it intends to request the Chamber to admit the proposed witness' written statement pursuant to Rule 92 *bis* (A)² and that it is unlikely that the witness will come to testify.³ The Defence argues that protective measures for LBZ2 are necessary for two reasons: LBZ2 has only accepted to submit a statement after having expressly asked for and been assured that his security and anonymity would be guaranteed; and the Defence fears for this witness' safety.⁴
2. The Defence recalls the threats leveled against Defence witnesses, particularly if they reside in Rwanda, as is the case for LBZ2, and that these persons are afraid both for their own and their family's sake. The insecurity, the threats, the harassments before the *Gacaca* courts, and the risk of being killed are real reasons which frighten witnesses and victims alike and prevent them from testifying.⁵ Further, persons having testified have subsequently been prosecuted, which, according to the Defence, they regard as a sanction for having testified.
3. The Defence submits that the fears of LBZ2 are of a similar nature but are even more justified because LBZ2 is a survivor and lives on the same *colline* on which the Accused resided; he regularly meets with survivors' associations which have

¹ On 13 January 2007, Counsel for the Prosecution indicated that the Prosecution does not oppose the Motion in an electronic mail addressed to the Trial Chamber Coordinator.

² The Motion, para. 21.

³ The Motion, para. 17.

⁴ The Motion, para. 22.

⁵ The Motion, paras. 23-24.

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officially forbidden him to participate in anybody's Defence, and particularly in the Accused's; he has already been threatened, and his life would be in danger if it became known that he testified for the Defence, even if it were only by making a written statement.⁶

4. The Defence therefore requests a number of protective measures for LBZ2.⁷

DELIBERATIONS

5. The Chamber recalls that Article 21 of the Statute together with Rules 69 and 75 of the Rules provide that any Party may move the Chamber, in exceptional circumstances, to grant appropriate protective measures for victims or witnesses.
6. The case law of both ICTR and ICTY provide that witnesses for whom protective measures are sought must incur a real threat for their own safety or for their family and that their fear must be objectively grounded.⁸
7. The Chamber has reviewed the Defence arguments with respect to the need to safeguard the privacy and security of proposed Witness LZB2. The Chamber is of the view that there are exceptional circumstances in the present case, and that there is an objective basis for the fears expressed by the proposed witness. The Chamber will therefore consider if the measures sought are in conformity with the provisions and case law governing the matter.
8. The Chamber observes that the measure referred to in Paragraph 29 of the Motion requesting that the identity of Witness LBZ2, his address, whereabouts, or any other document which might reveal his identity, be placed under seal and not appear on any document of the Tribunal, is consonant with the current practice of both the Tribunal⁹ and this Chamber.¹⁰ Accordingly, the Chamber grants that measure with respect to Witness LBZ2.
9. The Chamber further observes that the sealing of identifying information sought in Paragraph 35 of the Motion is apparently similar to the measure referred to above. The Chamber further observes that once identifying information is put under seal, any document containing such information is inaccessible to the media and the public, rendering the measures sought in Paragraphs 31 and 35 of the Motion moot.
10. The Chamber notes the measure indicated in Paragraph 30 of the Motion requiring the Registry to only communicate the identity of the concerned witness or any information that might reveal his identity to the Witnesses and Victims Support

⁶ The Motion, para. 27.

⁷ The Motion, paras. 29-25.

⁸ *The Prosecutor v. Nzabirinda*, « Decision on Prosecutor's Motion for Protective Measures for Victims and Witnesses », 4 May 2004, para.5.

⁹ See for example, *The Prosecutor v. Karemera (TC)*, Order on Protective Measures for Prosecution Witnesses, 10 December 2004, p. 2.

¹⁰ *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. 13.

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Section. The Chamber observes that this is consonant with the Tribunal's practice.¹¹ However, the Chamber also notes that the measure does not provide disclosure timeframes of the witness' identifying information to the Prosecution. The Chamber recalls that Rule 69 (C) provides that, "[s]ubject to Rule 75, the identity of the victim and witness shall be disclosed within such time as determined by the Trial Chamber to allow adequate time for the preparation of the Prosecution and the Defence." In light of the scheduling of the pre-sentencing hearing on 17 January 2007, the Chamber thus grants that measure with respect to Witness LBZ2 and orders that the name, address, whereabouts and other relevant identifying information regarding him or her be immediately and confidentially communicated to the Chamber and to the Prosecution.

11. As for the measure indicated in Paragraph 32 of the Motion requesting that the Prosecution shall not communicate the identity of the concerned witness, as well as his address, whereabouts, or any other information likely to reveal his identity to anyone else, the Chamber understands that the communication of identifying information is limited to staff of the Office of the Prosecutor. The Chamber finds that this measure is consonant with the Tribunal's practice and therefore grants it.¹²
12. The Chamber considers that the measure referred to in Paragraph 33 of the Motion, which requests that the Prosecution inform the Defence in writing of any request for authorisation to contact the witnesses, is consonant with the Tribunal's practice¹³ and thus grants that measure.
13. As to the measure indicated in Paragraph 34 of the Motion allowing the Defence to designate Witness LBZ2 with a pseudonym to be used in proceedings before the Tribunal, the communications and consultations between the Parties or with the public, until the Chamber decides otherwise, the Chamber is of the opinion that this measure corresponds to the Tribunal's practice¹⁴ and is necessary for the protection of this witness. It therefore grants that measure.

FOR THE ABOVE REASONS,

THE TRIAL CHAMBER

GRANTS the measures requested in Paragraphs 29, 30, 32, 33, and 34 of the Motion;

¹¹ *The Prosecutor v. Karemera* (TC), Order on Protective Measures for Prosecution Witnesses, 10 December 2004, p. 2; *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. 13.

¹² *The Prosecutor v. Bisengimana*, Decision on Bisengimana's Extremely Urgent Motion for Protective Measures for Character Witnesses, 20 December 2005, para. 12.

¹³ *The Prosecutor v. Karemera* (TC), Order on Protective Measures for Prosecution Witnesses, 10 December 2004, p. 3; *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. 13.

¹⁴ *The Prosecutor v. Karemera* (TC), Order on Protective Measures for Prosecution Witnesses, 10 December 2004, p. 3; *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. 13.

DIRECTS the Defence to immediately and confidentially disclose Witness LBZ2's name, address, whereabouts and other relevant identifying information regarding him or her to the Chamber and to the Prosecution;

DECLARES MOOT the measures requested in Paragraphs 31 and 35 of the Motion.

Arusha, 16 January 2007



Arlette Ramaroson
Presiding Judge



William H. Sekule
Judge



Solomy B. Bossa
Judge

[Seal of the Tribunal]



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COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

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

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input checked="" 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
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From:	<input checked="" type="checkbox"/> Chamber Kathrin Greve <small>(names)</small>	<input type="checkbox"/> Defence <small>(names)</small>	<input type="checkbox"/> Prosecutor's Office <small>(names)</small>	<input type="checkbox"/> Other: <small>(names)</small>
Case Name:	The Prosecutor vs. Nzabirinda			Case Number: ICTR-2001-77-T
Dates:	Transmitted: 16 January 2007		Document's date: 16 January 2007	
No. of Pages:	5	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	DECISION ON THE DEFENCE'S EXTREMELY URGENT CONFIDENTIAL MOTION FOR PROTECTIVE MEASURES FOR WITNESS LB22			
Classification Level:	<input type="checkbox"/> Strictly Confidential / Under Seal <input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Public			
TRIM Document Type:	<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties <input checked="" type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Submission from parties <input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars <input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities			

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Reference material is provided in annex to facilitate translation.

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		Case No / Affaire No.:	ICTR-01-77-T	
To:	received by / reçu par:		ALO:	received by / reçu par
A:	<input type="checkbox"/> TC1	<input type="checkbox"/>
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	<input type="checkbox"/> Judge D. C. M. Byron (Simba.)	<input type="checkbox"/>
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	<input checked="" type="checkbox"/> Judge A. Ramaroson(Nzabirinda)	<input type="checkbox"/>
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	<input checked="" type="checkbox"/> A. Leroy, Co-ordinator	<input type="checkbox"/>
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	<input type="checkbox"/> Judge A. Vaz	<input type="checkbox"/>
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	<input checked="" type="checkbox"/> OTP / BUREAU DU PROCUREUR			
	<input type="checkbox"/> Trial Attorney in charge of case:	William Egbe	received by
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	<input type="checkbox"/> Accused / Accusé:	Joseph Nzabirinda	complete / remplir "CMS4 FORM"	
	<input type="checkbox"/> Lead Counsel	François Roux		
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**NZABIRINDA-DECISION ON THE DEFENCE'S EXTREMELY URGENT
CONFIDENTIAL MOTION FOR PROTECTIVE MEASURES FOR WITNESS
LBZ2**

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16.01.2007

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