

ICTR-2005-86-T
27-10-2009
(2617-2613)

INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA

2617
12

Case No. ICTR-2005-86-T

BEFORE TRIAL CHAMBER III

Before: Judge Vagn Joensen, Presiding
Judge Bakhtiyar Tuzmukhamedov
Judge Gberdao Gustave Kam

Registrar: Adama Dieng

Date filed: 27 October 2009

JUDICIAL RECORDS ARCHIVED
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2009 OCT 27 11 P 5: 14

PROSECUTOR

v.

Michel BAGARAGAZA

PUBLIC
DEFENCE MOTION FOR PROTECTIVE MEASURES
WITH CONFIDENTIAL ANNEX

Office of the Prosecutor

Wallace Kapaya
Patrick Gabaake
Iskander Ismael

Defence for Michel Bagaragaza

Geert-Jan Alexander Knoops
Wayne Jordash
Anne-Marie Verwiel

Introduction

1. On 17th September 2009 during a public hearing the honourable Trial Chamber accepted the guilty plea of Michel Bagaragaza. On that same day the Trial Chamber also decided that the sentencing hearing would take place in the week commencing on the 2nd of November 2009. On 20th October 2009 the Trial Chamber issued a scheduling order, establishing the exact dates for the hearing of evidence and submissions by the parties as well as the oral sentencing judgment, and setting a deadline for further filings in relation to the sentencing hearing.¹ The Trial Chamber ordered to the Defence “to file any motion for protective measures regarding its witnesses (...) no later than 27 October 2009”.²
2. The Defence for Michel Bagaragaza herewith is seeking for protective measures for its witnesses pursuant to Article 21 of the ICTR Statute and Rules 54 and 75 of the Rules of Procedure and Evidence (RPE).

Legal Basis for the Motion

3. Article 21 of the Statute recognises the need for and the importance of protective measures for witnesses. Rule 54 is a general provision relating to orders that can be issued to ensure the smooth conduct of trial. Rule 75(A) RPE authorises a Judge or a Chamber to order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the Accused. Rule 75(B) provides a wide range of measures for protecting the identity of witnesses. Pursuant to the Statute and these Rules the Trial Chambers of the ICTR have issued orders in every trial proceedings for the protection of witnesses and/or victims.

Factual Basis for the Motion

4. The Defence moves the Trial Chamber to grant these measures because there is a real and substantial danger that the defence witnesses will be threatened, assaulted, or killed if their identities are revealed. In this respect the Defence would like to refer the Trial Chamber to the agreed facts between the parties that will be filed with the Trial Chamber as soon as possible, as well as the confidential exhibits A-E attached to the

¹ *Prosecutor v. Michel Bagaragaza*, ICTR-2005-86-T, Scheduling Order, 20 October 2009.

² *Prosecutor v. Michel Bagaragaza*, ICTR-2005-86-T, Scheduling Order, 20 October 2009.

Defence Motion for Admission of Written Evidence.³ The dangers outlined in the agreed facts between the Prosecution and the Defence are real and extremely serious, and also apply to any witness who would testify for the Accused Michel Bagaragaza. This includes both witnesses living in Rwanda and witnesses who form part of the extensive Rwandan diaspora. The dangers specific for witnesses from Rwanda testifying for the Defence have been set out in a short statements by one of the Defence investigators, attached to this motion as confidential Annex 1.

5. Many witnesses whilst giving a statement to the Defence have indicated to the Defence that they are fearful of reprisals due to their cooperation and none of these witnesses has waived his or her right to protective measures. The Defence holds that the only way to effectively protect the identity of its witnesses is to have the Defence witnesses testify in closed session, and to have the witness statements and other evidence identifying the witness remain confidential and tendered under seal.

Order sought

6. Conclusively, the Defence for Michel Bagaragaza respectfully requests the honourable Trial Chamber to order immediate measures to protect the identify of its witnesses and to protect confidentiality of all non-public materials as filed through the Defence Motion for Admission of Written Evidence⁴, that is to issue the following orders:
 - (a) An Order requiring that the names and any other identifying information concerning all witnesses, be sealed by the Registry and not included in any existing or future records of the Court;
 - (b) An Order permitting the Defence to designate a pseudonym for each witness, which will be used whenever referring to such witness during the sentencing proceedings, and in other communications and discussions between the parties and with the public;
 - (c) An Order that the names and any other identifying information concerning all witnesses be communicated only to the Victims and Witnesses Unit personnel by the Registry in order to implement protection measures for these individuals;

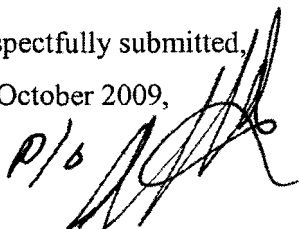
³ *Prosecutor v. Michel Bagaragaza*, ICTR-2005-86-T, Defence Motion for Admission of Written Evidence, 27 October 2009.

⁴ *Prosecutor v. Michel Bagaragaza*, ICTR-2005-86-T, Defence Motion for Admission of Written Evidence, 27 October 2009.

- (d) An Order prohibiting the disclosure to the public or the media of the names and any other identifying data or information on file with the Registry, or any other information which could reveal the identity of witnesses and victims and this order shall remain in effect after the termination of the proceedings in this case;
- (e) An Order prohibiting the Prosecution from sharing, discussing or revealing, directly or indirectly, any filed non-public materials of any sort, or any information contained in any such documents, to any person or entity other than the Prosecution;
- (f) An Order requiring the Prosecution to make a written request to the Trial Chamber, with reasonable notice to the Defence, prior to contacting any protected witness or relative or associate of such person;
- (g) An Order prohibiting the photographing and audio and/or video recording or sketching of any protected witness at any time or place, without leave of the Trial Chamber and the parties;
- (h) An Order requiring closure to the public of those parts of the sentencing hearing where any protected witness is to give testimony;
- (i) An Order requiring, to the extent that any names, relations, addresses, whereabouts or and other information concerning or tending to identify such protected witnesses is contained in existing records of the Tribunal, that such identifying information be expunged from those documents;
- (j) An Order continuing and/or varying the protective measures for Defence witness D1, in order to ensure that the same protective measures apply for all Defence witnesses. The Defence has only recently become aware that protective measures have already been put in place for this witness, but has not yet been able to locate these protective measures and/or any decision relating to these measures.
- (k) Any other Order(s) the Trial Chamber may deem appropriate in the interest of justice.

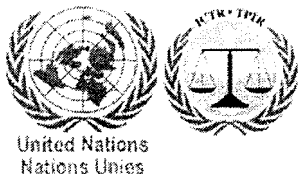
Respectfully submitted,

27 October 2009,



Geert-Jan Alexander Knoops

Wayne Jordash



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

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

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

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	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Appeals Chamber / Arusha Chamber II F. A. Talon		<input type="checkbox"/> Appeals Chamber / The Hague K. K. A. Afande R. Muzigo-Morrison
From:	<input type="checkbox"/> Chamber (names)	<input checked="" type="checkbox"/> Defence for Michel Bagaragaza (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Michel Bagaragaza		Case Number: ICTR-2005-86-T	
Dates:	Transmitted: 27 October 2009		Document's date: 27 October 2009	
No. of Pages:	4	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	Public Defence Motion for Protective Measures with Confidential Annex			
Classification Level:	TRIM Document Type:			
<input type="checkbox"/> Ex Parte	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence	<input type="checkbox"/> Submission from non-parties
<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal	<input type="checkbox"/> Submission from parties
<input type="checkbox"/> Confidential	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book	<input type="checkbox"/> Accused particulars
<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Judgement	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities	

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Reference material is provided in annex to facilitate translation.

Target Language(s):

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CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

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

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III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
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<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: