

ICTR-00-59-PT

25-07-2007

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Mwamba



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

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 25 July 2007

JUDICIAL
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THE PROSECUTOR

v.

Juvenal RUGAMBARARA

Case No. ICTR-00-59-PT

ORDER FOR PROTECTIVE MEASURES FOR DEFENCE WITNESSES

Office of the Prosecutor:

Mr Charles Adeogun- Phillips
Mr Peter Tafah
Ms Memory Maposa

Counsel for the Defence:

Mr Maroufa Diabira
Mr Boubou Diabira

INTRODUCTION

1. The Defence submitted this Motion for Protective Measures for Defence Witnesses on 10 July 2007.¹ The Prosecution responded on 13 July 2007 and did not oppose the Motion. On 14 July 2007, the Chamber held a further appearance in this case where the Accused pleaded guilty to the new charge in the Indictment.² The Chamber accepted Mr. Rugambarara's guilty plea and set a date for the sentencing hearing on 17 September 2007.³ Following the acceptance of the guilty plea, the Defence clarified that this Motion was only to encompass the witnesses to be heard at the sentencing hearing since no trial will ensue in this case.⁴

DISCUSSION

2. The Defence requests that protective measures be ordered for the witnesses it expects to testify on behalf of the Accused at his sentencing hearing. These witnesses are living in Rwanda, other areas of Africa, Europe and North America. The Defence notes the Chamber's Decision of 8 May 2006 which denied, without prejudice, the Defence's earlier motion requesting the same relief because it failed to provide supporting material.⁵ In the present Motion, the Defence submits three attachments as supporting documentation including two amnesty international reports, a letter from the Rwandan representative to the United Nations and a signed affidavit from its Defence investigator.

3. The Defence also notes the Chamber's Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, and argues that it is in the interests of justice to adopt similar measures for Prosecution and Defence Witnesses.⁶

4. Article 21 of the Statute of the Tribunal ("Statute") mandates that the Rules of Procedure and Evidence provide for protective measures of victims and witnesses. Rule 69 and 75 of the Rules articulate the particular measures which can be granted to protect the identity of a witness and how they can be ordered, either *proprio motu* by the Chamber, or by request from either party.

5. According to the jurisprudence, and as this Chamber recently stated in granting a request for protective measures, "the witness' subjective expressions of fear must be underscored by objective considerations to justify the grant of protective measures."⁷ The Chamber notes that although some of the supporting material submitted is outdated, there is no information that the situation has changed in the Great Lakes region, nor has the security

¹ « Requete Urgente En Prescription De Mesures Visant a la Protection Des Temoins a Decharge », filed on 10 July 2007.

² Draft T. 14 July 2007, p. 8.

³ Draft T. 14 July 2007, pp. 14-16.

⁴ Draft T. 14 July 2007, p. 16.

⁵ *Prosecutor v. Rugambarara*, Case No. ICTR-00-59-I, Decision on the Motion for Protective Measures for Defence Witnesses (TC), 8 May 2006.

⁶ *Rugambarara*, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment (TC), 31 January 2006.

⁷ *Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Decision on the Defence Motion for Protective Measures for Defence Witnesses (TC), 16 May 2007, para. 6 (citations omitted).

threat to potential witnesses at this Tribunal subsided. The Defence Investigator's affidavit confirms this fact.

6. The Chamber also finds that the protective measures requested by the Defence are substantially similar to those granted to the Prosecution, subject to some alterations. Indeed, in this instance, fairness dictates that similar measures are granted to both Defence and Prosecution witnesses.⁸ The Chamber concludes that protective measures are therefore warranted for witnesses coming to testify as character witnesses for the Defence in this case.

THE CHAMBER HEREBY ORDERS that:

- (a) the Defence for Rugambarara shall assign pseudonyms to each of its witnesses who has not waived his or her right to protective measures; the assigned pseudonyms shall be used at any time when referring to these witnesses during the course of the proceedings before this Tribunal and in communications and discussions between the parties and to the public;
- (b) the names, addresses, whereabouts and any other information capable of identifying these witnesses, including but not limited to familial and social relations, shall be kept confidential by the Registry and not be included in any non-confidential records of the Tribunal, or otherwise disclosed to the public or media, prior to, during and after the conclusion of this trial and any appeal. The identifying information shall be communicated to WVSS in accordance with established procedure and only in order to implement protective measures for the individual;
- (c) the names, address, whereabouts, relations, and any other information capable of identifying these witnesses contained in the existing records of the Tribunal shall be expunged from such records;
- (d) the Prosecution is prohibited from sharing or otherwise disclosing any information, documentary or otherwise, capable of identifying these witnesses, to any person or any entity outside the office of the Prosecutor;⁹
- (e) the Prosecution shall not attempt to make an independent determination of the identity of these witnesses, nor shall they encourage, or otherwise aid any other individual to do the same;
- (f) No photograph, audio or video recording or sketching of these witnesses shall be taken at any time or any place without the leave of the Trial Chamber;

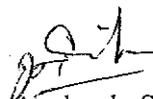
⁸ Id. at para. 8.

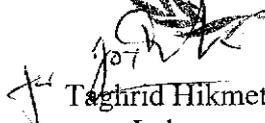
⁹ Although the Defence requested that the protected information be restricted to the trial team in this case, the Chamber is bound by the Appeals Chamber ruling in *Prosecutor v. Bagosora et al.* (AC), Decision on Interlocutory Appeals of Decision on Witness Protection Orders, 6 October 2005, which states that "[N]owhere in the Statute or Rules is it stated that the Prosecutor's obligations may be limited to specific teams within the Office of the Prosecutor, which in the practice of the Tribunal, are sometimes referred to as the "Prosecution" in an individual case. The ordinary meaning and context of the text of the Rules suggest that the obligations of the Prosecutor rest on him or her alone as an individual who is then able to authorize the Office of the Prosecutor as whole, undivided unit, in fulfilling those obligations." Consequently, the Chamber makes this order applicable to all of the members of the Prosecution.



- (g) The Prosecution and any representative acting on its behalf, upon approval of the Chamber shall notify the Defence for Rugambarara in writing prior to any contact with any of its witnesses and, if the witness consents, the Defence for Rugambarara shall facilitate such contact;
- (h) The Defence for Rugambarara may withhold disclosure to the Prosecution of the identity of the protected witnesses and temporarily redact their names, addresses, locations and other identifying information from material disclosed to the Prosecution. However, such information shall be disclosed by the Defence to the Prosecution at least 21 days prior to the set date for the sentencing hearing, in order to allow adequate time for the preparation of the Prosecution pursuant to Rule 69(C) of the Rules.¹⁰
- (i) The Chamber may order any additional measures which may be required at the time of a witness' testimony, and upon request.

Arusha, 25 July 2007, done in English.


Asoka de Silva
Presiding Judge



Taghrid Hikmet
Judge


Seon Ki Park
Judge

[Seal of the Tribunal]

¹⁰ The Defence requested that it be able to withhold the witnesses identifying information from the Prosecution up until only 7 days prior to each expected testimony. For fairness purposes and in line with the jurisprudence of the Tribunal, the Chamber finds that a 21-day delay is more appropriate in this case.

