



**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 B. Bossa

Registrar: Mr Adama Dieng

Date: 13 December 2006

The PROSECUTOR

v.

Joseph NZABIRINDA
Case No. ICTR-01-77-PT

**DECISION ON NZABIRINDA'S UNDER SEAL-EXTREMELY URGENT MOTION
FOR PROTECTIVE MEASURES FOR CHARACTER WITNESSES**

Office of the Prosecutor

Mr Hassan B. Jallow
Mr Stephen Rapp
Mr William Egbe

Defence Counsel

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

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 des témoins,*” dated 5 December 2006 but filed on 11 December 2006 (the “Motion”);

NOTING that the Prosecution does not oppose the Motion;¹

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 in favour of Witnesses LZI, LBH, LBG, CAN and LDK. It alleges that those witnesses will be called as character witnesses following the plea agreement between Joseph Nzabirinda and the Office of the Prosecutor.
2. The Defence submits that witnesses for whom such measures are sought expressly required protection as an essential condition for their testimony before the Chamber. Furthermore the Defence asserts that it fears for the safety of its witnesses in light of what has happened to some “genocide trial” witnesses or to their relatives, after having testified before the Tribunal.
3. The Defence submits that both Witnesses LZI and CAN currently reside in Rwanda and their relationship with the Accused could really jeopardize their security if they were to testify openly. As for Witness LDK, the Defence alleges that she resides outside Rwanda but most of her family members, including her mother still live within that country. This witness wishes to safeguard her privacy against potential threats and troubles that might occur in case her neighbours find out that she came to testify in Arusha. With regard to Witness LBH, the Defence argues that she belongs to a religious congregation which has expressed fears for the safety of the witness and that of the congregation itself if she testifies under her real identity and openly. Finally, Witness LBG fears for her safety and that of her children given the nature of relationship she has with the Accused.
4. Accordingly, the Defence requests the aforesaid witnesses be granted wide protective measures including the sealing of their identities from the public and the media.

¹ On 11 December 2006, Counsel for the Prosecution indicated that he does not oppose the Motion in an electronic mail addressed to the Chamber Coordinator.

DELIBERATIONS

5. 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. The Chamber may also do so *proprio motu*.²
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.³ The Chamber further recalls that “any fears expressed by potential witnesses themselves that they may be in danger or at risk are *not in themselves* sufficient to establish any real *likelihood* that they may be in danger or at risk. Something more than that must be demonstrated to warrant an interference with the rights of the accused which these redactions represent.”⁴
7. The Chamber has reviewed the Defence arguments with respect to the need to safeguard the privacy and security of Witnesses LZI, LBH, LBG, CAN and LDK, and finds that the fears expressed by the concerned witnesses appear to be underscored by an objective basis. The Chamber will therefore consider if the measures sought are in conformity with the case law which governs the matter.
8. The Chamber observes that the measure referred to in Paragraph 25 of the Motion requesting that the identity of the character witnesses concerned, their addresses, whereabouts, or any other document which might reveal their identity, be placed under seal and not appear on any document of the Tribunal, is consonant with the current practice of both the Tribunal⁵ and this Chamber.⁶ Accordingly, the Chamber grants that measure with respect to Witnesses LZI, LBH, LBG, CAN and LDK.
9. The Chamber further observes that the sealing of identifying information sought in Paragraph 32 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 27 and 32 of the Motion moot.
10. The Chamber notes the measure indicated in Paragraph 26 of the Motion requiring the Registry to only communicate the identity of the witnesses concerned or any information that might reveal their identity to the Witnesses and Victims Support Section. The Chamber observes that this is consonant with the Tribunal’s practice.⁷ However, the Chamber also notes that the measure does not provide disclosure timeframes of the witnesses’ identifying information to the Prosecution. The Chamber recalls that Rule

² *Le Procureur c. Kupreskic*, Case No. IT-95-16, « *Décision relative à la requête de l'accusation aux fins de reporter la communication des déclarations de témoins* », 21 May 1998, para.7.

³ *The Prosecutor v. Nzabirinda*, « Decision on Prosecutor’s Motion for Protective Measures for Victims and Witnesses », 4 May 2004, para.5.

⁴ *The Prosecutor v. Radoslav Brdanin & Momir Talic* “Decision on Motion by Prosecution for Protective Measures”, 3 July 2000, para.26.

⁵ See for example, *The Prosecutor v. Karemera* (TC), Order on Protective Measures for Prosecution Witnesses, 10 December 2004, p. 2.

⁶ *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.

⁷ *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.

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.” The Chamber grants that measure with respect to Witnesses LZI, LBH, LBG, CAN and LDK and orders that the disclosure of the identity of those witnesses to the Prosecution be carried out 21 days before the witnesses are scheduled to testify.

11. As for the measure indicated in Paragraph 28 of the Motion requesting that the Prosecution shall not communicate the identity of the witnesses concerned, as well as their addresses, whereabouts, or any other information likely to reveal their 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 granted.⁸
12. The Chamber considers that the measure referred to in Paragraph 29 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 practice⁹ and thus grants that measure for Witnesses LZI, LBH, LBG, CAN and LDK.
13. The Chamber notes that the measure sought in Paragraph 30 of the Motion and which requests that the public and the media be prohibited from taking photographs and making sketches, or audio and/or video recordings of the witnesses concerned, unless authorised to do so by the Chamber, is consonant with the Tribunal’s practice.¹⁰ Therefore, the Chamber grants the aforesaid measure for Witnesses LZI, LBH, LBG, CAN and LDK.
14. As to the measure indicated in Paragraph 31 of the Motion allowing the Defence to designate each witness it intends to call 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 practice¹¹ and is necessary for the protection of witnesses. It therefore grants that measure with respect to Witnesses LZI, LBH, LBG, CAN and LDK.

FOR THE ABOVE REASONS,

THE TRIAL CHAMBER

GRANTS the measures requested in Paragraphs 25, 26, 28, 29, 30, and 31 of the Motion.

DECLARES MOOT the measures requested in Paragraphs 27 and 32 of the Motion.

⁸ *The Prosecutor v. Bisengimana*, Decision on Bisengimana’s Extremely Urgent Motion for Protective Measures for Character Witnesses, 20 December 2005, para. 12.

⁹ *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.

¹⁰ *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.

¹¹ *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.

Arusha, 13 December 2006

Arlette Ramaroson
Presiding Judge

William H. Sekule
Judge

Solomy B. Bossa
Judge

[Seal of the Tribunal]