

ICTR-97-36A-T
02-07-2009
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

Before: Judge Florence Rita Arrey, Presiding
Judge Mparany Richard Rajohnson
Judge Aydin Sefa Akay

Registrar: Mr Adama Dieng

Date: 02 July 2009

The PROSECUTOR

v.

Yussuf MUNYAKAZI

Case No. ICTR-97-36A-1

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Prosecution's Response to Munyakazi's Motion for Protective Measures for Defence Witnesses

Office of the Prosecutor

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PROSECUTOR'S RESPONSE

BACKGROUND

1. The trial in this case commenced on 20 April 2009 before Trial Chamber I.
2. On 4 June 2009, the Prosecution closed its case. Following a Pre-Defence Conference held on 8 June 2009, the Trial Chamber scheduled the 31st August 2009 for the commencement of the Defence case and ordered the Defence to file its Motion for Protective Measures as soon as possible and in any case not later than 30 June 2009.
3. On 29 June 2009, the defence filed a motion for protective measures for an unspecified number of Defence witnesses pursuant to article 21 of the Statute and Rules 54, 69, and 75 of the Rules and Procedure and Evidence of the Tribunal (The Rules).

PROSECUTION'S SUBMISSIONS

4. The Prosecution respectfully submits that while it recognizes that Article 21 of the statute empowers the Tribunal to make rules for the protection of victims and witnesses, such protective measures are granted on a case by case basis and in relation to justifying supporting material, including affidavits and reports on the current security in a particular region where a witness may reside.¹ Also, in *Prosecution v. Bagosora et al* the trial Chamber laid down the following criteria:

“ Firstly, the testimony of the witness must be relevant and important to the party's case. Secondly, there must be a real fear for the safety of the witness and a objective basis underscoring the fear. Thirdly, any measure taken should be strictly necessary. If a less restrictive measure can secure the required protection, that measure should be applied.”²
5. The prosecution states that the instant defence motion is fundamentally defective in several respects in that it fails to meet the established threshold for the orders sought. The Prosecution cites the following reasons for its contention:

¹ *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-T, Order for Witness Identifying Information and justification for Witness Protective Measures, para 6.

² *The Prosecutor v. Theoneste Bagosora and others*, Case N0. ICTR-96-7-1, Decision on the Extremely Urgent Request Made by the Defence for Protection Measures for Mr Bernard Ntuyahaga (TC), 13 September 1999, para 28.

- a) The defence motion does not identify specific witnesses in respect of whom protective measures are sought nor does it contain any justification for the requested protective measures. Since the motion requests blanket protection for all potential witnesses the Chamber is not in a position to evaluate the relevance of the testimony of individual witnesses.
 - b) The Prosecution further submits that in order to meet the criterion of "real fear underscored by an objective basis" stipulated in the *Bagosora* decision, the witness's subjective fear is insufficient and must be underscored by objective considerations. Therefore, justifying supporting material, including affidavits and reports on the current security situation in locations where the witnesses reside must accompany the motion to enable the Chamber make an objective assessment.
6. For the foregoing reasons, the Prosecution respectfully requests the Trial Chamber to deny the motion.

ALTERNATIVELY,

The Prosecution prays the Chamber to defer its decision on the Motion pending the filing of the witness list and necessary justifications by the defence.

RESPECTFULLY SUBMITTED

Dated at Arusha this 2nd day of July 2009



SEGUN JEGEDE
TRIAL ATTORNEY

TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

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From:	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input checked="" type="checkbox"/> Prosecutor's Office Dennis Mabura Assistant Trial Attorney (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Yussuff Munyakazi			Case Number: ICTR-97-36A-T
Dates:	Transmitted: 2 July 2009		Document's date: 2 July 2009	
No. of Pages:	Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda			
Title of Document:	Prosecution's Response to Munyakazi's Motion for Protective Measures for Defence Witnesses			
Classification Level:		TRIM Document Type:		
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