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TRIAL CHAMBER
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The Hague, 12 November 1996

International
Criminal Tribunal
for the Former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

BLAŠKIĆ CASE UPDATE: CHAMBER GRANTS PARTIAL ANONYMITY TO TWO PROSECUTION WITNESSES

In a decision rendered on **5 November 1996**, Trial Chamber I partially accepted a request by the Prosecutor, dated 17 October 1996, for protective measures for victims and witnesses. On behalf of witnesses B and C, described as "*Bosnian Muslim civilians who can provide direct testimony in relation to all counts contained in the indictment*", the Prosecutor requested total anonymity, both in respect of the media and the public and the accused.

As far as the request concerned anonymity vis-à-vis the public and the media, the Chamber granted the following, which were unopposed by the Defence:

- * that the names, addresses, whereabouts and other identifying information concerning the pseudonym witnesses B and C be sealed and excluded from the Tribunal's public records;
- * that such information concerning witnesses B and C, where it is already contained in existing public documents of the Tribunal, be expunged;
- * that Tribunal documents identifying witnesses B and C be withheld from the public and the media; and
- * that the evidence of B and C be given *in camera*.

As far as the request to withhold the identity of B and C from the accused is concerned, the Trial Chamber noted that a balance must be struck between the rights of the accused and the protection of witnesses. "*In principle, the rights of the Defence shall take precedence, but the protection of the witnesses will at times also claim its right loud and clear.*"

While the Chamber found it almost inconceivable that an accused could be afforded a fair trial, adequate time for preparation of his defence and the opportunity for intelligent cross-examination of Prosecution witnesses without knowing his accuser's identity and the substance of the accusations, it recognised that total anonymity could be granted in exceptional circumstances.

The Chamber stated that the Prosecutor must provide objective evidence that the witnesses' testimonies are important; that the burden is on the Prosecutor to prove that these witnesses are trustworthy; and that the Victims and Witnesses Unit should provide clarification regarding the effectiveness of its witness protection scheme. The Prosecutor must also provide relevant proof regarding the exceptional character of the conflict situation on which her application is based.

The Chamber gave the Prosecutor until November 15 to file such additional proofs, absent which she must turn over to the Defence by 7 December at the latest identifying data relating to B and C and their full statements.
