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International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

Press Release . Communiqué de presse
(Exclusively for the use of the media. Not an official document)

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The Hague, 18 February 2002
CC/P.I.S./660e

PROTECTIVE MEASURES FOR WITNESSES TESTIFYING AT THE ICTY

Today, Monday 18 February 2002, the first Prosecution witness in the trial of Slobodan Milošević has begun giving his testimony.

During the course of its case, the Prosecution is expected to request that some of these witnesses be granted protective measures. It is also possible for the accused to request similar protective measures for witnesses that he might call.

The Statute of the Tribunal, in line with the major legal systems around the world, states that the International Tribunal “*shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim’s identity*”.

In addition, Rule 69 of the Tribunal’s Rules of Procedure and Evidence (RPE) stipulates the following:

- (A) In exceptional circumstances, the Prosecutor may apply to a Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk until such person is brought under the protection of the Tribunal.
- (B) In the determination of protective measures for victims and witnesses, the Trial Chamber may consult the Victims and Witnesses Section.
- (C) Subject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence.

Rule 75 of the RPE envisages a range of measures that can be ordered by the Judges to protect witnesses’ identities:

- (A) A Judge or a Chamber may, *proprio motu* or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Section, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.
- (B) A Chamber may hold an in camera proceeding to determine whether to order:
 - (i) measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with a victim or witness by such means as:
 - (a) expunging names and identifying information from the Tribunal's public records;
 - (b) non-disclosure to the public of any records identifying the victim;
 - (c) giving of testimony through image- or voice- altering devices or closed circuit television; and
 - (d) assignment of a pseudonym;

Internet address: <http://www.un.org/icty>

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(ii) closed sessions, in accordance with Rule 79;

(iii) appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television.

(C) A Chamber shall, whenever necessary, control the manner of questioning to avoid any harassment or intimidation.

(D) Once protective measures have been issued in respect of a victim or witness, only the Chamber granting such measures may vary or rescind them or authorise the release of protected material to another Chamber for use in other proceedings. If, at the time of the request for variation or release, the original Chamber is no longer constituted by the same Judges, the President may authorise such variation or release after consulting with any Judge of the original Chamber who remains a Judge of the Tribunal and after giving due consideration to matters relating to witness protection.

All members of the public, including journalists, are subject to the Trial Chamber's orders. Any violation of such an order, especially matters relating to the protection of witnesses, could constitute a contempt of court, and as such, incur a penalty as stipulated by Rule 77 of the Rules of Procedure and Evidence.

In order to prevent the disclosure of the identities of protected witnesses, proceedings are broadcast with a 30-minute delay.
