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UNITED NATIONS  
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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding

**Registrar:** Adama Dieng

**Date:** 10 December 2004

**THE PROSECUTOR**

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA  
André RWAMAKUBA

Case No. ICTR-98-44-R75

JUDICIAL RECORDS/ARCHIVES  
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**ORDER ON PROTECTIVE MEASURES FOR PROSECUTION WITNESSES**

*Articles 19, 20 and 21 of the Statute; Rule 75 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Don Webster  
Holo Makwaia  
Dior Fall  
Gregory Lombardi  
Bongani Dyani  
Sunkarie Ballah-Conteh  
Tamara Cummings-John  
Takeh Sendze

**Defence Counsel:**

Dior Diagne Mbaye and Félix Sow,  
for Edouard Karemera  
Charles Roach and Frédéric Weyl,  
for Mathieu Ngirumpatse  
Peter Robinson, for Joseph Nzirorera  
David Hooper and Andreas O'Shea,  
for André Rwamakuba

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal"),**

**SITTING** as Trial Chamber III composed of Judge Dennis C. M. Byron, sitting pursuant to Rule 75 of the Rules of Procedure and Evidence ("Rules");

**CONSIDERING** the Appeals Chamber Decisions on the continuation of proceedings, filed on 28 September 2004 and 22 October 2004.<sup>1</sup>

**CONSIDERING** that the Chamber must ensure that no doubts about impartiality could affect the rehearing;

**CONSIDERING** that the Decisions of 6 July 2000, 12 July 2000 and 22 September 2000 providing protective measures for Prosecution witnesses<sup>2</sup> were amended by the Trial Chamber Decisions of 7 and 20 October 2003;<sup>3</sup>

**TAKING NOTE** of the views expressed by the both parties during the hearings held between 17 and 26 November 2004, in favour of the necessity that the protective measures for Prosecution witnesses, or the "spirit" of those protective measures, previously granted should remain in force;<sup>4</sup>

**CONSIDERING** Rule 75 of the Rules, vesting in a Judge the power to order *proprio motu*, "appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused";

**CONSIDERING** Articles 19, 20 and 21 of the Statute of the Tribunal ("Statute"), which ensure a fair trial to the accused but provide also for protective measures for witnesses if necessary;

**CONSIDERING** the general security status in the Great Lakes and the volatile security situation in Rwanda;

**CONSIDERING** that the evidence of the volatile security situation in Rwanda and neighboring countries, and of potential threats against Rwandans living in other countries,

<sup>1</sup> *Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera and André Rwamakuba (Karemera et al.)*, Case No. ICTR-98-44, Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 28 September 2004; *Karemera et al.*, Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 22 October 2004.

<sup>2</sup> Decision on the Prosecutor's Motion for Protective Measures for Witnesses (TC2), 6 July 2000; Decision on the Prosecutor's Motion for Protective Measures for Witnesses (TC2), 12 July 2000; Decision on the Prosecutor's Motion for Protective Measures for Witnesses (TC2), 22 September 2000.

<sup>3</sup> Decision on the Defence Motion for Modification of a Decision of 12 July 2000 on Protective Measures for Prosecution Witnesses (TC3), 7 October 2003; Decision on the Prosecutor's Motion for Special Protective Measures for Witnesses G and T and to Extend the Decision on Protective Measures for the Prosecutor's Witnesses in the Nzirorera and Rwamakuba Cases to Co-Accused Ndirumpatse and Karemera, and Defence's Motion for Immediate Disclosure (TC), 20 October 2003.

<sup>4</sup> See *Transcripts*, 17 November 2004, pp. 42-43; 22 November 2004, pp. 13, 17 and 25.



indicates that witnesses could justifiably fear that disclosure of their participation in the proceedings of this Tribunal would threaten their safety and security;

**CONSIDERING** also the documents filed by the Prosecution in support of its previous motion for special protective measures for witnesses G and T;<sup>5</sup>

**FOR THE ABOVE MENTIONED REASONS**, the Chamber **DECIDES** to amend the previous Decisions of 6 July 2000, 12 July 2000 and 22 September 2000 providing protective measures;

**ACCORDINGLY ORDERS** the following protective measures in respect of all Prosecution witnesses or potential Prosecution witnesses wherever they reside and who have not affirmatively waived their right to protective measures ("protected witness"):

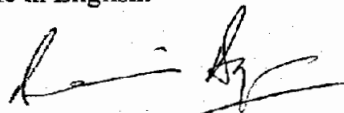
1. The names, addresses, whereabouts of, and other identifying information concerning protected witnesses shall be sealed by the Registry and not included in any public or non-confidential records of the Tribunal.
2. To the extent that any names, addresses, relations, whereabouts, or any other information tending to identify a protected witness is contained in existing public or non-confidential records of the Tribunal, it shall be expunged from these documents.
3. The names, addresses, whereabouts of, and other identifying information concerning the individuals cited above shall be communicated only to the Victims and Witness Support Unit personnel by the Registry in accordance with established procedure and only to implement protective measures for these individuals.
4. The names, addresses, whereabouts of, and any other identifying data in the supporting material or any other information on file with the Registry or any other information which would reveal the identity of these individuals, shall not be disclosed to the public or the media; and this order shall remain in effect after the termination of the trial.
5. The Defence and the accused persons shall not share, reveal or discuss, directly or indirectly, any documents or any information contained in any documents, or any other information which could reveal or lead to the identification of any individuals so designated to any person or entity other than the accused, assigned counsel or other persons working on the Defence team.
6. The Defence shall provide the Victims and Witness Support Unit with a designation of all persons working on the Defence team who will have access to any information concerning any protected witness, and shall advise the Victims and Witness Support Unit in writing of any changes in the composition of this team and ensure that any member leaving the Defence team has remitted all materials that could lead to the identification of protected persons specified.

<sup>5</sup> See *Prosecutor's Motion for Special Protective Measures for Witnesses G and T; and to Extend the Decisions on Protective Measures for Prosecution Witnesses in the Nzirorera and Rwamakuba Cases to Co-Accused Ngirumpatse and Karemera* and the confidential Annex thereto, 23 September 2003.

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7. Making or publicizing photographs, sketches, or audio and/or video recordings of protected witnesses at any time or place without leave of the Chamber or the protected witness, is prohibited.
8. The Defence shall notify the Prosecution in writing, on reasonable notice, of its wish to contact a protected victim or potential prosecution witness or a relative of such person. Should the witness or potential witness concerned agree to the interview, or the parents or guardian of that person, if that person is under the age of 18, the Prosecution shall immediately undertake all necessary arrangements to facilitate the interview. The Witnesses and Victims Support Section of the Tribunal may facilitate the interview.
9. The Defence shall not attempt to make an independent determination of the identity of any protected witness, nor encourage or otherwise aid any person in so doing.
10. The Prosecution shall designate a pseudonym for each Prosecution witness, which will be used whenever referring to each such witness in proceedings, communications and discussions between the Parties to the trial, and to the public, until such time that the Chamber otherwise decides.
11. The Prosecution is authorised to withhold disclosure of identifying information of the protected witnesses to the Defence, and to temporarily redact their names, addresses, locations and other identifying information as may appear in witness statements or other material disclosed to the Defence.
12. The identifying information withheld by the Prosecution in accordance with this order shall be disclosed by the Prosecution to the Defence no later than thirty (30) before the commencement of the trial session during which the concerned witnesses are scheduled to testify. The whereabouts of Prosecution witnesses G and T shall however never be disclosed to the Accused or the Defence.

Arusha, 10 December 2004, done in English.



Dennis C. M. Byron  
Presiding Judge

[Seal of the Tribunal]

