UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 1 June 2005

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

DECISION ON MOTION TO HARMONIZE AND AMEND WITNESS PROTECTION ORDERS AND TO PERMIT INVESTIGATIONS

The Prosecution
Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid

The Defence
Raphaël Constant
Paul Skolnik
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA,

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the Prosecution "Motion to Harmonize and Amend Witness Protection Measures", filed on 14 March 2005;

CONSIDERING the Responses of the Defence for Nsengiyumva, Ntabakuze, and Bagosora, filed on 21, 24, and 30 March 2005 respectively; the Submissions of the Registrar, filed on 3 May 2005; the further Response of the Nsengiyumva Defence, filed on 9 May 2005; the Nsengiyumva "Urgent Motion" filed on 24 May 2005; the Prosecution Response thereto, filed on 26 May 2005; and the oral submissions of the parties on 1 March 2005 and on 21, 26 and 28 April 2005;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Prosecution requests that the orders protecting the identity of Defence witnesses be harmonized and modified in accordance with a model attached to its motion. In particular, four significant changes are proposed:

(i) that the "Prosecution team in this case", to which disclosure of the identity of Defence witnesses is presently limited, be permitted to share that information with any person working on behalf of the Office of the Prosecutor (OTP);

(ii) that the Prosecution be allowed to reveal the identity of protected witnesses to third parties for the purposes of investigation;

(iii) that the prohibition against contacting Defence witnesses apply only to "Prosecution Counsel in this case", and not to any person acting on behalf of the OTP;

(iv) that the Registry be ordered to transmit a letter from the Prosecution to all protected witnesses, asking for an interview prior to their testimony.

2. On 26 April 2005, several weeks after the motion had been filed, the Prosecution attempted to introduce a prior statement of Defence Witness LT-1, which it had obtained from the immigration authorities of a state.[1] The Defence objected that the document had been obtained by revealing the witness's identity to a third party, in violation of the witness protection orders and that, accordingly, the statement should not be admitted. The Chamber will therefore determine (i) whether the existing orders prohibit inquiries to third parties, including national immigration authorities, about a Defence witness; and, if so, (ii) whether

[1] T. 26 April 2005 pp. 63-65; T. 28 April 2005 pp. 86-89. The Chamber adjourned the witness's testimony concerning the document before it was introduced in court, pending further submissions from the parties. T. 26 April 2005 pp. 63, 80.

the orders should be modified to allow such inquiries, as requested in the Prosecution's motion.

25016

DELIBERATIONS

Standard of Review

3. A Chamber has inherent jurisdiction to reverse or revise a previous decision where new material circumstances have arisen that did not exist at the time of the decision, or when convinced that the decision was erroneous and has caused prejudice or injustice to a party.[2] The exercise of this power is discretionary and limited to particular circumstances.[3] As no new material circumstances have been cited by the Prosecution, the Chamber shall assess whether its previous decisions were erroneous and, if so, whether they have caused any prejudice or injustice justifying modification of the orders.[4]

(i) Disclosure Within the Office of the Prosecutor

4. The Defence witness protection orders require the "Prosecution team in this case" to "keep confidential to itself all information identifying any witness subject to this order ...".[5] The Prosecution argues that the Chamber has mechanically transposed the language used in protective orders applicable to the Defence, which are structured as teams. According to the Prosecution, its trial teams, unlike the Defence, cannot be insulated from the Office of the Prosecutor of which they are an integral part. Disclosure obligations to other Accused, the duty to conduct investigations based on any information received, and professional collegiality amongst Prosecution counsel, require the free dissemination of information within the Office of the Prosecutor, in Arusha and Kigali alike.

5. The Chamber considers that the reference to "team" is not, as suggested, an unthinking repetition of the language used in the Prosecution witness protection orders. Restrictions on dissemination of witness identities are motivated by the need to afford the highest level of protection to prospective witnesses who might otherwise be subject to intimidation, or the justifiable fear of intimidation. The principle that access should be limited to those with a real need for the information, to minimize the possibility of inadvertent or intentional disclosure, applies with equal force to the Prosecution. Disclosure has frequently been restricted to the "Prosecution team" in previous witness protection orders.[6]

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[2] *Mucic et al.*, Judgement and Sentence Appeal (AC), 8 April 2003, para. 49.

[3] *Id.*; *Bagosora et al.*, Decision on Prosecutor's Second Motion for Reconsideration of the Trial Chamber's 'Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73 bis (E)' (TC), 14 July 2004, para. 7.

[4] The Prosecution asserts that "a considerable period of time has elapsed since the making of the first orders and circumstances have changed, both factually and procedurally in that the trial is now at a different phase". The only change in circumstance identified, however, is that Defence witness disclosure began on 12 November 2004. The existence of disclosure was not a fact material to the decision. Indeed, the decision anticipated the commencement of disclosure.

[5] Three of the Defence witness protection orders are, in substance, identical: *Bagosora et al.*, Decision on Ntabakuze Motion for Protection of Witnesses (TC), 15 March 2004; *Bagosora et al.*, Decision on Kabiligi Motion for Protection of Witnesses (TC), 1 September 2003; *Bagosora et al.*, Decision on Bagosora Motion for Protection of Witnesses (TC), 1 September 2003. The Nsengiyumva witness protection decision was rendered long before the start of the present trial, and the joinder of the four accused in a single trial: *Nsengiyumva*, Decision on Protective Measures for Defence Witnesses and Their Families and Relatives (TC), 5 November 1997. The latter order does not make any reference to, or distinction between, the Prosecution or the "Prosecution team in this case".

[6] *Bizimungu et al.*, Decision on Prosper Mugiraneza's Motion for Protection of Defence Witnesses (TC), 2 February 2005, p. 5 ("The Prosecution shall designate to the Chamber and the Defence all persons working on the immediate Prosecution team who will have access to any information which may reveal or lead to the identification of Defence witnesses"); *Gacumbitsi*, Decision on Defence Motion for Protective Measures for

6. The Prosecution argues that its mandate to investigate, the practicalities of organization, and disclosure obligations in other trials require dissemination of protected identities to anyone working for the Office of the Prosecutor. The Chamber disagrees. Neither the general duty to investigate crimes nor professional collegiality can supersede the specific obligations of a witness protection order, which is itself authorized under Article 21 of the Statute. Disclosure obligations in other trials do not determine whether the information must be shared. Where, by court order, information is restricted to a single trial team, the Prosecution cannot be bound to disclose the information in another trial.[7] Furthermore, the Prosecution has failed to convincingly explain why information cannot be circumscribed to members of this trial team, as has been required in the past.[8]

7. The term "Prosecution team in this case" is neither vague nor impracticable. Operative paragraph 8 of the witness protection orders provides that the Prosecution itself shall designate the members of the team. The Prosecution may designate anyone, including support staff or senior management, who is actively and directly engaged in work pertaining to this trial. No undue burden to the work of the Prosecution has been established.

8. No error has been established which could require modification of the decision. On the contrary, the Chamber is convinced that in this case limiting disclosure to the Prosecution team strikes the best balance between the needs of trial preparation, and the legitimate needs of witness protection.

(ii) Disclosure to Third Parties for Investigation

9. The order proposed by the Prosecution creates an exception to the non-disclosure obligation where "necessary for the purposes of investigation into the background of any witness, and only for the purposes of obtaining such information, the individual may be identified by proper name but not by pseudonym or status as a defence witness". The Prosecution acknowledges that, in particular, it wishes to make such inquiries in order to obtain statements given by Defence witnesses to national immigration authorities.[9] The

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Defence Witnesses (TC), 25 August 2003, para. 8 (h) ("That the Prosecution provide to the Registry a designation of all persons working in the Prosecution team who will have access to any identifying information concerning the Protected Defence Witnesses, and that the Prosecution notify the Registry as soon as possible, in writing, of any person leaving its team ..."); *Niyitegeka*, Decision (Defence Motion for Protective Measures for Defence Witnesses) (TC), 14 August 2002, para. 13 (e) ("Prohibits the Prosecution from communicating and revealing to, or discussing with any person other than the immediate members of the Prosecution team in the instant case, whether directly or indirectly, any document, or any other information which could reveal or lead to the identification of the persons covered by the present measures"); *Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko's Motion for Protective Measures for Defence Witnesses and Their Family Members (TC), 20 March 2001, p. 3 ("That the Prosecution should notify the Chamber and the Defence of the status of members of the Prosecution team who have access to any [protected] information ...").

[7] Rule 75 (F)(ii), which provides that a protective measures "shall not prevent the Prosecution from discharging any disclosure obligations under the Rules", has no effect unless a disclosure obligation has already arisen. No such obligation could arise unless the Prosecution was, at the least, aware of the information. Furthermore, even actual awareness of a member of the present trial team could not be imputed to the Prosecution in a subsequent trial in which that member was involved, as that person would be bound not to disclose the protected information. Information that is not protected could, of course, be subject to disclosure, even if associated with a protected witness.

[8] The Registry is, of course, independent from the Office of the Prosecutor and has a separate obligation to ensure, for example, that its databases comply with the present order.

[9] Motion, para. 35. The investigations which the Prosecution wishes to undertake were more fully explained during a status conference, T. 1 March 2005: "The intentions are to obtain prior written statements by the witnesses. And because the majority of the Defence witnesses were Rwandan, and many of those witnesses now reside in other locations, when they enter the country where they now reside, wherever that may be, they will have made a statement about their involvement in the events of Rwanda in 1994. We want that statement; simple as that."

Prosecution has simultaneously argued, in support of its attempt to tender the purported statement of Witness LT-1 to a national immigration authority, that it is permitted to make such inquiries under the existing orders as long as it does not reveal that the person is a witness.

10. The Defence argues that such inquiries are, and should continue to be, prohibited by the protection orders. Inquiries to immigration authorities, in particular, would have an intimidating effect on Defence witnesses, many of whom are refugee claimants who fear deportation back to Rwanda. Discrepancies between statements to immigration authorities and sworn testimony before the Tribunal might ultimately lead to the witness's expulsion from their country of refuge. The Defence is said to be unequally affected by this concern, as most of its witnesses are refugees, whereas the majority of Prosecution witnesses reside in Rwanda. This unequal impact impairs the right of the Accused in Article 20 (4)(e) "to obtain the attendance and examination of witnesses under the same conditions as witnesses against him or her". The Nsengiyumva Defence also argues, in its lengthy submissions, that admission of statements obtained from national immigration authorities would seriously damage the integrity of the proceedings and should, therefore, be excluded under Rule 95. Disclosure of statements to immigration officials would entail a serious breach of confidentiality and privacy, in violation of domestic and international law. If inaccuracies in such statements are subsequently used to justify deportation of a witness back to Rwanda, the Tribunal shall have contributed to a violation of international refugee law.

11. The Chamber recalls that the Bagosora, Ntabakuze and Kabiligi witness protection orders require the Prosecution team to "keep confidential to itself all information identifying any witness subject to this order, and shall not, directly or indirectly, disclose, discuss of reveal any such information".[10] This wording does not, in the Chamber's view, prevent use of the witness's name to make reasonable inquiries. The essence of the prohibition is against disclosure of information that would, directly or indirectly, reveal that the person is a witness. The ultimate purpose of witness protection orders is to prevent partisans from one side or the other from harassing or intimidating witnesses for the other side. That purpose is satisfied if the role of the person in the trial proceedings remains secret. Though an inquiry about a person certainly signals interest, it does not necessarily reveal that the person is a witness. The object of the inquiry may, for instance, be a Prosecution source or prospective witness, whose prior statements the Prosecution is under an obligation to obtain and disclose to the Defence. The inquiring party must scrupulously avoid, expressly or impliedly, suggesting that the person is a witness for, or otherwise associated with, one side or the other.[11] If the third party demands explanations which would require revealing that information, then the investigation must cease. Inquiries conducted within these parameters do not give rise to a breach of the witness protection order.[12]

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[10] Para. 7. The relevant provision of the Nsengiyumva Order is worded only slightly differently than the other witness protection orders, providing that "the names, addresses, locations and other identifying information of the defence witnesses ... shall not be disclosed to the public or the media". "Identifying information", read in context, necessarily implies information which identifies the person as a witness. This limitation is identical to that imposed in the Bagosora, Ntabakuze and Kabiligi witness protection orders. Clause 6, to which reference is made by the Defence in its Joint Brief, concerns disclosure by the Registry prior to communicating the information to the Prosecution. The provision is not relevant to the requirements of post-disclosure confidentiality.

[11] The Prosecution avers that it has complied with this obligation in its inquiries regarding Witness LT-1. Prosecution Submissions on Defence Objection Raised During Cross-Examination of Defence Witness LT-1 on 26 April 2005, 28 April 2005, paras. 9, 13, 14.

[12] The Defence relies on a recent decision declaring that a Defence counsel had violated a witness protection order by making inquiries to a State about a Prosecution witness. *Karemera et al.*, Decision on the Prosecution Motion for Sanctions Against Counsel for Nzirorera for Violation of Witness Protection Order and for an Injunction Against Further Violations (TC), 19 April 2005. It is unclear whether the inquiry by Defence counsel

12. The Defence has itself tendered statements of protected Prosecution witnesses which were obviously obtained by making inquiries to third parties. On at least one occasion, the Defence frankly admitted that it had obtained prior statements of protected witnesses through the efforts of its investigators.[13] In support of a motion for a request for State cooperation under Article 28, the Defence urged the Chamber to order the government of Rwanda to disclose judicial dossiers in relation to a large number of Defence witnesses. While the Defence was concerned that the list should be disclosed in a manner so as not to indicate that these individuals were Prosecution witnesses, there was never any suggestion that disclosure, in and of itself, would violate the witness protection order.[14] In support of that motion, the Bagosora Defence subsequently filed a letter showing that it had made inquiries to the Rwandan government about a protected Prosecution witness.[15] During the cross-examination of Prosecution witnesses, the Defence asked questions about other protected witnesses whom it identified by name, again without disclosing their status as protected witnesses.[16] These events indicate that the Defence did not believe that such inquiries would violate the witness protection orders which are, in all material respects, identical to those now under consideration.

13. Some protective orders do expressly authorize reasonable investigations about protected witnesses. The protective orders in the *Gacumbitsi* case, for example, instruct the parties "in making [their] legitimate investigations and inquiries, to limit the exposure of witness identifying information and not disclose to any person the fact that the [witness] has testified or will be a witness before the Tribunal".[17] Virtually all witness protection orders issued at the International Criminal Tribunal for Yugoslavia create a similar exception or qualification.[18] The absence of an express exception in the decision presently under

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in that case disclosed that the person in question was a witness. If so, the decision is distinguishable from the present case.

[13] T. 16 June 2004 pp. 33, 35, Counsel for Kabiligi: ("I asked somebody to conduct investigations and send to me documents concerning the witnesses who are scheduled to appear here. I don't want to reveal to you all the elements that the Defence has on these proceedings. And these documents were sent to me here in Arusha via DHL, and I can even send that evidence about this to this Court. And I had to go through all the documents to know exactly what it was all about, whether to know whether to get some material from it to use or not ... But actually I received a pile of documents concerning various persons, some of whom appear here for testimony"); *id.* p. 35, Counsel for Ntabakuze: ("Mr. President, we received the documents from the same source, in the same fashion, so that correspondence Mr. Degli has will – in fact, we received ours after that, because we learned the documents came through there, too"); *id.* p. 36, Counsel for Bagosora ("Secondly, when we look at the contacts that we have had with Rwanda, and our contacts have been quite difficult, and in order to be honest with the Trial Chamber, it is impossible for us to obtain official documents. It is obvious that there are other means which are not legal means, so to speak. They are not illegal, but they are not the official channels to obtain the documents. And perhaps we shall have recourse to these means. Nevertheless, what I wanted to say is that -- what is the basis of the problem? If the Defence has to obtain documents from Rwanda, it is because Rwanda -- the office of the prosecutor did not undertake special efforts to obtain the documents from Rwanda").

[14] T. 16 December 2003 pp. 11-12 ("With regard to paragraph 6 the issue of procedure and judgements before Rwandan judiciary, we have serious problems regarding the drafting of this, because we did not know whether to use pseudonyms or whether we could use the names of people. But we did not want both sets of names in a document which could be made public and therefore endanger the witness's identity"). See *Bagosora et al.*, Requête conjointe de la défense aux fins d'obtenir la cooperation de l'état rwandais conformément à l'article 28 du statut du Tribunal (TC), 28 July 2003.

[15] *Bagosora et al.*, Request to the Government of Rwanda for Cooperation and Assistance Pursuant to Article 28 of the Statute (TC), 10 March 2004, Annex B (redacted).

[16] Such questions were asked, for example, about Witness BC, AE and XBG (T. 14 July 2003 pp. 59-60; other references occurred during open session and are omitted for witness protection reasons).

[17] *Gacumbitsi*, Decision on Prosecution Motion for Protective Measures for Victims and Witnesses (TC), 20 May 2003, p. 7; *Gacumbitsi*, Decision on Defence Motion for Protective Measures for Defence Witnesses (TC), 25 August 2003, p. 4.

[18] *Boskoski and Tarculovksi*, Interim Decision on Prosecution's Motion for Protective Measures for Victims and Witnesses (TC), 28 April 2005 ("except as may be reasonably necessary to allow them to prepare and participate in these proceedings and present a defence ..."); *Cermak and Markac*, Decision and Order on

24

25712

consideration does not reflect a choice to the contrary; rather, it simply reflects an assumption which is implied.

14. Though inquiries to immigration authorities may affect more Defence than Prosecution witnesses, this does not establish that investigations in general pose a substantially greater burden on the appearance of Defence witnesses. Prior inconsistent statements of Prosecution witnesses given in the course of proceedings before Rwandan courts, which were introduced during the present trial by the Defence on several occasions, could also (if revealed) have serious consequences under the law of that jurisdiction.[19]

15. No showing has been made that the document from the national immigration authorities was obtained by the Prosecution in violation of any law, domestic or international. The claims of confidentiality asserted by the Defence are speculative. At the moment, the Chamber has no knowledge of the manner by which the document was obtained, or its content. The special protection afforded to lawyer-client communications is circumscribed by Rule 97 as "between lawyer and client". Information which has been disclosed to a third party, with the consent of the client, is not governed by the cloak of privilege. Violation of national law might be a consideration in determining whether evidence should be excluded under Rule 95, as having been "obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings". The Chamber cannot consider whether evidence should be excluded under Rule 95 without more concrete information about the content of the document; the means by which it was obtained; and the law which was allegedly broken. The burden to make such a showing would rest with the Defence.

16. The Defence has suggested that the probative value of statements given to immigration authorities is minimal because of the particular vulnerability of asylum seekers, and is greatly outweighed by the alleged intimidating effect of such inquiries on prospective witnesses. Whether an alleged discrepancy in a witness's statement to immigration authorities affects the credibility of testimony is a matter for the Chamber's appreciation based on a variety of factors, including the vulnerability felt by refugee claimants which could lead to inaccurate representations. As long as Prosecution investigations are conducted in scrupulous adherence to the principles set out in this decision, protected witnesses are insulated from any prejudice arising from cooperation with the Tribunal.

17. The Chamber concludes that its prior decisions were correct and that there is no need to modify the existing Defence witness protection orders. Investigations by the Prosecution which do not, directly or indirectly, reveal that the protected person is a witness are permitted. The same rule applies – and did apply during the Prosecution case – to the Defence. If the Defence believes that a witness is in a particularly precarious situation, such that any indication of cooperation with the Tribunal could be a danger to the witness's security, then special protective measures may be sought. In the absence of further submissions, however, the Chamber would expect such cases to be exceptional.

Prosecution's Motion for Protective Measures for Victims and Witnesses (TC), 1 April 2004 ("except as reasonably necessary to allow them to prepare for and participate in these proceedings and present a defence ..."); *Seselj*, Decision on "Prosecution's Motion for Non-Disclosure of Materials Provided Pursuant to Rules 66 (A)(ii) and 68 and for Protective Measures for Witnesses During the Pre-Trial Phase (TC), 11 February 2004, ("[u]nless directly and specifically necessary for the preparation and presentation of this case, the Accused shall not disclose to the public ..."); *Stanisic and Simatovic*, Decision on Prosecution Motion for Protective Measures (TC), 1 August 2003 ("except to the limited extent that such disclosure to members of the public is directly and specifically necessary for the preparation and presentation of the accused's case ..."; *Oric*, Decision on Confidential Prosecutor's Motion for Protective Measures and Nondisclosure (TC), 28 July 2003.

[19] This danger should, however, be obviated for Prosecution and Defence witnesses alike by ensuring that any inconsistencies which could identify the witness are raised only in closed session.

25011

(iii) Transmittal of Prosecution Letter to Defence Witnesses

18. The Prosecution's proposed witness protection order requests the Registry to transmit a letter to Defence witnesses inviting them to meet with the Prosecution before their testimony. Although the Defence teams, whether out of courtesy or obligation, have already agreed to undertake reasonable efforts to transmit these letters, the Prosecution alleges an absence of good faith based on the small number of positive responses from Defence witnesses.[20]

19. The Chamber is satisfied that the Defence teams have conveyed the Prosecution request to their witnesses in good faith.[21] The low rate of favourable responses does not, in itself, demonstrate bad faith. Under these circumstances, there is no need to circumvent the Defence by way of the Registry. Protection orders have in the past consistently required that such requests be funnelled through the Defence, and no precedent to the contrary has been cited by the Prosecution.[22]

(iv) Prohibition on Contact With Defence Witnesses Limited to "Prosecution Counsel in this Case"

20. The Prosecution requests that the prohibition on contact with Defence witnesses be narrowed from "the Prosecution and any representative acting on its behalf" to "Prosecution counsel in this case". The prohibition would then be limited to those who are entitled to know the identity of Defence witnesses, as the protection order is currently formulated.

21. The restriction in the proposed order is unsupported by any precedent, or by argumentation as to why the obligation should be restricted to counsel. The principle of notification to the Defence would be seriously undermined, and could leave witnesses feeling intimidated by unexpected contact by the Prosecution. While coincidental and inadvertent contact with a Defence witness is an unavoidable possibility, the Prosecution can fulfil its obligations simply by asking its interviewees whether they are already a Defence witness. If the witness answers affirmatively, then the interview must terminate and the usual procedure and channels for requesting an interview must be followed.

(v) Harmonization of Protective Orders

22. Aside from the specific modifications proposed, the Prosecution argues compliance with divergent witness protection obligations is burdensome and may create an imbalance between the different Defence teams. The Nsengiyumva Defence expresses similar concerns in its submissions. The Chamber agrees and shall order that the Bagosora, Ntabakuze and Kabiligi orders, which are in all material respects identical, shall apply *mutatis mutandis* to the Nsengiyumva Defence, thus replacing the previous Nsengiyumva Order. For certainty and precision, the Chamber shall adopt the Ntabakuze Order as henceforth applicable *mutatis mutandis* to the Nsengiyumva Defence and its witnesses.

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[20] Motion, para. 53.

[21] See e.g. T. 21 April 2005 pp. 24-26.

[22] *Bizimungu et al.*, Decision on Prosper Mugiraneza's Motion for Protection of Defence Witnesses (TC), 2 February 2005, p. 6; *Muhimana*, Decision on Defence Motion for Protective Measures for Defence Witnesses (TC), 6 July 2004, paras. 5, 13; *Bizimungu et al.*, Decision on Defence Motion for Protective Measures for Defence Witnesses (TC), 8 June 2004, p. 5; *Kamuhanda*, Decision on Jean de Dieu Kamuhanda's Motion for Protective Measures for Defence Witnesses (TC), 22 March 2001.

FOR THE ABOVE REASONS, THE CHAMBER 25010

DENIES the Prosecution motion to amend the Defence witness protection orders;

DENIES the Defence objection to the tendering in court of a prior statement of Witness LT-1 on the ground that, by making inquiries to national immigration authorities, the Prosecution obtained the document in violation of the witness protection orders;

ORDERS that the "Decision on Ntabakuze Motion for Protection of Witnesses", decided on 15 March 2004, is henceforth applicable *mutatis mutandis* to the Nsengiyumva Defence and its witnesses.

Arusha, 1 June 2005

Erik Møse	Jai Ram Reddy	Sergei Alekseevich Egorov
Presiding Judge	Judge	Judge

[Seal of the Tribunal]