

ICTR-01-72-1  
14-2-2007  
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INTERNATIONAL  
CRIMINAL TRIBUNAL

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

**Before Judges:** Inés Mónica Weinberg de Roca, Presiding  
Florence Rita Arrey  
Robert Fremr

**Registrar:** Adama Dieng

**Date:** 14 February 2007

THE PROSECUTOR

v.

Simon BIKINDI

Case No. ICTR-2001-72-T

JUDICIAL RECORDS/ARCHIVES  
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DECISION ON PROTECTIVE MEASURES FOR DEFENCE WITNESSES

**Office of the Prosecutor:**

William T. Ege  
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**Defence Counsel:**

Willfred Ngunjiri Nderitu  
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Jack Muriuki

INTRODUCTION

- 1. In its confidential Motion, the Defence moves the Chamber, under Articles 19, 20, and 21 of the Statute of the Tribunal (the "Statute") and Rules 34, 69, and 75 of the Rules of Procedure and Evidence (the "Rules"), to issue protective orders for potential Defence witnesses who have not affirmatively waived their right to protective measures and who reside (i) in Rwanda, (ii) in other African states, and (iii) outside the continent of Africa.<sup>1</sup> The Defence submits that these potential witnesses fear for their safety and that of their close relatives. In support of its argument, the Defence relies upon the general security situation and adds that these fears are justified by the dangers and insecurities described in the reports annexed to the Motion and by the scope of the intended evidence given by the Defence witnesses.
- 2. The Prosecution did not respond to the Motion.

DELIBERATIONS

- 3. Article 21 of the Statute provides for the protection of victims and witnesses. Such protective measures may include the conduct of *in camera* proceedings and the protection of personal identity. Rule 69 of the Rules provides that either Party may apply to the Chamber to order non-disclosure of the identity of the witnesses who may be in danger or at risk. Subject to these measures, Rule 69(C) of the Rules requires the identity of witnesses to be disclosed to the other Party in adequate time for preparation.
- 4. Rule 75 of the Rules elaborates several specific protective measures that the Chamber may order to safeguard the identity of witnesses such as the sealing or expunging of names and other identifying information that may otherwise appear in the Tribunal's public records; the assignment of a pseudonym to a witness; and permitting witness testimony in closed session. Protective measures for witnesses are granted on a case-by-case basis. According to the jurisprudence of this Tribunal protective measures may be granted to a witness pursuant to Rule 75, upon a showing that the testimony of the witness is relevant and important to the Party's case, there is a real fear for the safety of the witness or his family and there is an objective basis underscoring that fear.<sup>2</sup> These fears may be expressed by persons other than the witnesses themselves. Furthermore, any measure taken should be strictly necessary such that if a less restrictive measure can secure the required protection, that measure should be applied.<sup>3</sup> The Chamber shall also

<sup>1</sup> Confidential "Motion by the Accused Simon Bikindi for Protective Measures for Defence Witnesses", filed on 9 October 2006, para. 17 (the "Motion").

<sup>2</sup> See, e.g., Decision on Protective Measures for Prosecution Witnesses, 4 September 2006, para. 7 (the "Decision on Prosecution Witnesses"); *Prosecutor v. François Karera*, Decision on Defence Motion for Protection of Witnesses, 9 February 2006, para. 2; *Prosecutor v. Juvénal Ruzumbarara*, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 31 January 2006, para. 9 (the "Ruzumbarara Decision"); *Prosecutor v. Tharcisse Renzaho*, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 17 August 2005, paras. 7, 10 (the "Renzaho Decision"); *Prosecutor v. Aka Muhimana*, Decision on Defence Motion for Protective Measures for Defence Witnesses, 6 July 2004, para. 17 (the "Muhimana Decision"); *Prosecutor v. Aloys Simba*, Decision on Prosecution Request for Protection of Witnesses, 4 March 2004, para. 4; *Prosecutor v. Théoneste Bagosora*, Decision on the Extremely Urgent Motion Made by the Defence for Protection Measures for Mr. Bernard Ntuyahaga, 13 September 1999, paras. 21, 28.

<sup>3</sup> See, e.g., *Prosecutor v. Théoneste Bagosora et al.*, Decision on the Extremely Urgent Motion Made by the Defence for Protection Measures for Mr. Bernard Ntuyahaga, 13 September 1999, para. 28.



- consider the fairness of the trial, which favours identical or similar protective measures for both Prosecution and Defence witnesses.<sup>4</sup>
5. The Defence requests blanket protection for all its potential witnesses, which currently number sixty-seven. The documents on which the Defence relies mainly concern the situation of persons who have been appearing before Gacaca courts in Rwanda and the situation of Juvenal Uwilingiyimana. Those documents annexed to the Motion are reports of journalists and human rights organizations. The Defence has not provided the specific relevance of each of its witnesses referred to in the Motion, nor has it provided that the individual fears of the potential witnesses it intends to call are well founded.
  6. Nevertheless, the Chamber is mindful of previous decisions of this Tribunal regarding protective measures for potential witnesses. The Chamber considers that there is evidence of possible threats against Rwandan nationals living in Rwanda or other states which indicates that potential witnesses rightly fear for their security and that of their close relatives if their participation in the proceedings of this Tribunal is known.<sup>5</sup> The Chamber, based on the information provided, follows previous decisions regarding protection for Defence witnesses and accepts the existence of these fears amongst Defence witnesses, and their objective justification.<sup>6</sup>
  7. Moreover, the Chamber notes that many of the measures sought by the Defence are similar to those ordered in the Chamber's Decision on Prosecution Witnesses, and that such measures have been granted regularly by the Tribunal. In the interests of the fairness of the trial, the Chamber favours the adoption of similar measures.

## FOR THE ABOVE REASONS, THE CHAMBER

I. **GRANTS** the Motion in part, and accordingly

II. **ORDERS** that the names, addresses, whereabouts of, and other identifying information concerning potential Defence Witnesses CZTH, KVH, CSH, DJH, AFH, JCH, RVH, DIH, KZH, DQH, CPH, XH, CFR, FEH, DLH, CUH, HCH, AHH, WUH, CSH2, CCH, AQH, QZQH, JH, IQH, CUH, QLA, DHA, DIK, WQK, DFQ, DVK, CQK, XBK, HZDLK, XRS, DZS, KMS, YXR, DVR, RSC, DUC, CQC, DIC, KZCBP, KRQ, ASQ1, ASQ2, XUV, FIV, FLV, IUX, CQR, CZSR, DQR, DYR, DZZR, TIER, XVBR, HSR, HVR, CBX, ESDX, HZTX, XRX, JTX, DUR be sealed by the Registry and not included in any public or non-confidential record of the Tribunal:

<sup>4</sup> *Prosecutor v. Théoneste Bagosora et al.*, Decision on the Extremely Urgent Motion Made by the Defence for Protection Measures for Mr. Bernard Ntuyahaga, 13 September 1999, paras. 21, 28; *Prosecution v. Théoneste Bagosora et al.*, Decision on Bagosora Motion for Protection of Witnesses, 1 September 2003, para. 2; *Prosecutor v. Aloys Simba*, Decision on Prosecution Request for Protection of Witnesses, 4 March 2004, para. 4; *Prosecutor v. Aiko Mubimuna*, Decision on Defence Motion for Protective Measures for Defence Witnesses, 6 July 2004, para. 17; *Prosecutor v. Tharcisse Benzabho*, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 17 August 2005, paras. 7, 10; *Prosecutor v. Juvenal Rugambarara*, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 31 January 2006, para. 9; *Prosecutor v. François Karera*, Decision on Defence Motion for Protection of Witnesses, 9 February 2006, para. 2; *Prosecutor v. Joseph Seragendo*, Decision on Motion for Protection of Witnesses, 1 June 2006, para. 2.

<sup>5</sup> See, e.g., Decision on Prosecution Witnesses, para. 9; *Prosecutor v. Tharcisse Muvunyi*, Decision on Tharcisse Muvunyi's Motion for Protection of Defence Witnesses, 28 October 2005, para. 10.

<sup>6</sup> See, e.g., *Prosecutor v. Théoneste Bagosora et al.*, Decision on Bagosora Motion for Protection of Witnesses, 1 September 2003, para. 3.

III. **ORDERS** that the names, addresses, whereabouts of, and other identifying information concerning potential Defence witnesses identified in II. above be communicated only to the Witnesses and Victims Support Section ("WVSS") personnel by the Registry in accordance with the established procedure and only in order to implement protective measures for the concerned individuals;

IV. **ORDERS** that any names, addresses, whereabouts of, and other identifying information which might identify or assist in identifying potential Defence Witnesses identified in II. above on file in the Tribunal's public records, or any other information which would reveal the identity of the concerned witnesses, be expunged from those documents;

V. **PROHIBITS** the disclosure to the public or the media of the names, addresses, whereabouts of, and any other identifying information or any other data on file with the Registry, or any other information which would reveal the identity of potential Defence Witnesses identified in II. above, as well as the photographing, the audio and video recording, the sketching of any of those potential Defence witnesses, at any time or place, without leave of the Chamber and the Parties;

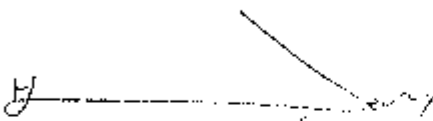
VI. **ORDERS** that the Prosecution notify the Defence in writing and on reasonable notice of its wish to contact potential Defence witnesses identified in II. above. Upon receipt of such request, the Defence shall immediately, with the prior consent of the person sought to be contacted, undertake the necessary arrangements to facilitate such contact;

VII. **ORDERS** the Prosecution to keep confidential to itself all information identifying any witness identified in II. above and shall not, directly or indirectly, disclose, discuss or reveal any such information;


VIII. **ORDERS** the Defence to submit a written request to the Chamber, or a Judge thereof, to lift the protective measures respecting potential Defence witnesses identified in II. above, should those measures no longer be necessary after appropriate investigation and verification; and

IX. **FURTHER ORDERS** that the pseudonyms presently provided by the Defence be used whenever referring to potential Defence witnesses identified in II. above during the proceedings, communications, and discussions between the Parties to the trial and the public.

Arusha, 14 February 2007, in English.

  
Inés Mónica Weinberg de Roca  
Presiding Judge

  
Florence Rita Arrey  
Judge

  
Robert Fremr  
Judge

[Seal of the Tribunal]





## TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION  
(Art. 27 of the Directive for the Registry)

### I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

<b>To:</b>	<input type="checkbox"/> Trial Chamber I N. M. Orialo	<input type="checkbox"/> Trial Chamber II R. N. Koumbo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hornelwou	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J-P Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
<b>From:</b>	<input checked="" type="checkbox"/> Chamber II Karine Ardault (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
<b>Case Name:</b>	The Prosecutor vs. Simon BIKINDI		<b>Case Number:</b> ICTR-2001-72-T	
<b>Dates:</b>	Transmitted: 14 February 2007		Document's date: 14 February 2007	
<b>No. of Pages:</b>	4	<b>Original Language:</b>	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
<b>Title of Document:</b>	Decision on Protective measures for Defence Witnesses			
<b>Classification Level:</b>	<b>TRIM Document Type:</b>			
<input type="checkbox"/> Ex-Parte	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence	<input type="checkbox"/> Submission from non-parties
<input type="checkbox"/> Strictly Confidential / Under Seal	<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal	<input type="checkbox"/> Submission from parties
<input type="checkbox"/> Confidential	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book	<input type="checkbox"/> Accused particulars
<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities	

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CMS SHALL take necessary action regarding translation.

Filing Party hereby submits only the original, and will **not submit** any translated version.

Reference material is provided in annex to facilitate translation.

**Target Language(s):**

English  French  Kinyarwanda

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CMS SHALL NOT take any action regarding translation.

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Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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Filing Party will be submitting the translated version(s) in due course in the following language(s):

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### III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	<b>COMMENTS</b>	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: