



UNITED NATIONS  
NATIONS UNIES

ICTR-97-31-T  
12-03-2007  
(4706-4703)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

4706  
S. Mulla

ORIGINAL: ENGLISH

**TRIAL CHAMBER I**

**Before:** Judge Erik Mose, presiding  
Judge Sergei Alekseevich Egorov  
Judge Florence Rita Arrey

**Registrar:** Adama Dieng

**Date:** 12 March 2007

**THE PROSECUTOR**

v.

**Tharcisse RENZAHO**

*Case No. ICTR-97-31-T*

JUDICIAL RECORDS ARCHIVE  
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**DECISION ON DEFENCE REQUEST FOR PROTECTIVE MEASURES**

**The Prosecution:**  
Jonathan Moses  
Katya Melliush  
Ignacio Tredici

**The Defence:**  
François Cantier  
Bamabé Nekuic

S. Mulla

4705

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

**SITTING** as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Sergei Aleksevich Egorov, and Judge Florence Rita Arrey;

**BEING SEIZED OF** the Defence request for witness protection measures, filed on 17 January 2007;

**CONSIDERING** the Prosecution response, filed on 19 January 2007;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. This motion for special measures protecting the identity of witnesses to be called on behalf of the Defence is brought under Articles 19 and 21 of the Statute of the Tribunal and Rules 69 and 75 of the Rules of Procedure and Evidence. In particular, the Defence requests that it be permitted to disclose to the Prosecution the identifying information of each witness on a rolling basis, twenty-one days before each witness is scheduled to testify.<sup>1</sup> The Defence also asks that this information be limited to the name and pseudonym of the witness, the date and place of birth, the names of the witness's parents, the ethnic origin, religion, and the address and occupation in April 1994 of the witness.<sup>2</sup>

2. The Prosecution does not object to the Defence motion, but requests that disclosure be made as by the Prosecution, *i.e.*, en bloc, twenty-one days before the start of the Defence case.<sup>3</sup> It is also submitted that the witness identification disclosures should contain the same types of information as given to the Defence for Prosecution witnesses, including the present address and point of contact of each witness.<sup>4</sup>

**DELIBERATIONS**

3. Pursuant to Article 19 of the Statute, the Tribunal must conduct the proceedings with due regard for the protection of victims and witnesses. Article 21 obliges the Tribunal to provide in its Rules 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. Rule 75 of the Rules elaborates several specific witness protection measures that may be ordered, including sealing or expunging names and other identifying information that may otherwise appear in the Tribunal's public records, assignment of a pseudonym to a witness, and permitting witness testimony in closed session. Subject to these measures, Rule 69 (C) requires the identity of witnesses to be disclosed to the Prosecution in adequate time for preparation.

4. Measures for the protection of witnesses are granted on a case-by-case basis. The jurisprudence of this Tribunal and of the International Criminal Tribunal for the Former Yugoslavia requires that the witnesses for whom protective measures are sought must have a real fear for the safety of the witness or her or his family, and there must be an objective justification for this fear. These fears may be expressed by persons other than the witnesses

<sup>1</sup> Motion, para. 4 (g).

<sup>2</sup> Motion, para. 4 (h).

<sup>3</sup> Response, paras. 2-4.

<sup>4</sup> Response, paras. 5-6.

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themselves. Trial fairness, also an important consideration, favours similar or identical protection measures for Defence and Prosecution witnesses.<sup>5</sup>

5. The Defence has submitted that its witnesses do fear for their safety and that these fears are justified by the dangers and insecurities described in the reports attached as annexes to the Defence's motion. The Chamber 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> Accordingly, the Chamber finds that the conditions for ordering witness protection measures are satisfied.

6. The measures sought by the Defence are substantially identical to those previously ordered in respect of Prosecution witnesses in the present case. The Defence has not shown any reason for which the Chamber should deviate from the protection measures afforded to Prosecution witnesses. The interests of trial fairness and administrative simplicity strongly favour the adoption of identical measures, which are enumerated below in language customarily adopted in such orders.<sup>7</sup>

7. Similarly, following the procedure employed by the Prosecution in regard to its own witnesses, the Chamber makes a general order that the Defence shall disclose unredacted witness information to the Prosecution twenty-one days prior to the commencement of the Defence case.

**FOR THE ABOVE REASONS, THE CHAMBER**

**HEREBY ORDERS that:**

1. The Defence shall designate pseudonyms for each of the witnesses for whom it claims the benefits of this Order, and that pseudonym shall be used in Tribunal proceedings, communications and discussions, both between the parties and with the public.
2. The names, addresses, whereabouts, and other identifying information concerning the protected witnesses shall be sealed by the Registry and not included in any public or non-confidential Tribunal records, or otherwise disclosed to the public.
3. In cases where any identifying information of the protected witnesses appears in the Tribunal's public records, this information shall be expunged from the said records and placed under seal.
4. The names and identities of the protected witnesses shall be forwarded by the Defence to the Registry in confidence, to be communicated to the Witnesses and Victims Support Unit only to implement protective measures for such witnesses.

<sup>5</sup> *Prosecutor v. Karera*, Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006; *Prosecutor v. Bagosora et al.*, Decision on Bagosora Motion for Protection of Witnesses, 1 September 2003, p. 2; Decision on Kabiligi Motion for Protection of Witnesses (TC), 1 September 2003, p. 2; *Prosecutor v. Niyitegeka*, Decision (Defence Motion for Protective Measures for Defence Witnesses) (TC), 14 August 2002, p. 4.


<sup>6</sup> See the decisions referred to in footnote 5. See also *Prosecutor v. Semanza*, Decision on the Defence Motion for Protection of Witnesses (Rule 75) (TC), 24 May 2001, p. 3; *Prosecutor v. Ruggiu*, Decision on the Defence's Motion for Witness Protection (TC), 9 May 2000, p. 3.

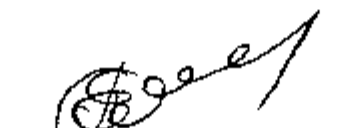
<sup>7</sup> The witness protection orders governing Prosecution witnesses are contained in the Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 17 August 2005.


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5. No person shall make audio or video recordings or broadcastings and shall not take photographs or make sketches of the protected witnesses, without leave of the Chamber and the parties.
6. The Prosecution and any representative acting on its behalf, shall notify the Defence in writing prior to any contact with any of its witnesses and, if the witness consents, the Defence shall facilitate such contact.
7. The Prosecution shall keep confidential to itself all information identifying any protected witness, and shall not, directly or indirectly, share, discuss or reveal any such information.
8. The Defence shall temporarily withhold disclosure to the Prosecution of the identifying information of the protected witnesses and temporarily redact that information from material disclosed to the Prosecution. However, such information shall be disclosed by the Defence to the Prosecution twenty-one days prior to commencement of the Defence case, in order to allow adequate time for the preparation of the Prosecution pursuant to Rule 69 (C) of the Rules.

Arusha, 12 March 2007.

  
Erik Mose  
Presiding Judge

  
Sergei Alekseevich Egorov  
Judge

  
Florence Rita Arrey  
p.p. 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 checked="" type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometownu	<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. Alande
<b>From:</b>	<input checked="" type="checkbox"/> Chamber I R Mitra (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. Renzaho		<b>Case Number:</b> ICTR-97-31-1	
<b>Dates:</b>	Transmitted: 12.03.07		Document's date: 12.03.07	
<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 Defence Request for Protective Measures			
<b>Classification Level:</b>		<b>TRIM Document Type:</b>		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Confidential		<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
		<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
		<input type="checkbox"/> Submission from non-parties		
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		<input checked="" type="checkbox"/> Accused particulars		

### II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

<b>CMS SHALL take necessary action regarding translation.</b> <input checked="" type="checkbox"/> Filing Party hereby submits only the original, and <b>will not submit</b> any translated version. <input type="checkbox"/> Reference material is provided in annex to facilitate translation. <b>Target Language(s):</b> <input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda			
<b>CMS SHALL NOT take any action regarding translation.</b> <input type="checkbox"/> Filing Party hereby submits <b>BOTH</b> the original and the translated version for filing, as follows:			
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Translation	in	<input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
<b>CMS SHALL NOT take any action regarding translation.</b> <input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s): <input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda			
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<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:		<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	

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<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input checked="" type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: