



UNITED NATIONS  
NATIONS UNIES

ICTR-01-75-1  
13-09-10  
(293-289)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

293  
PM

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 13 September 2010

**THE PROSECUTOR**

v.

**Jean-Bosco UWINKINDI**

**CASE NO. ICTR-2001-75-PT**

JUDICIAL RECORDS/ARCHIVES  
UNICTR  
2010 SEP 13 11:19 AM  
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**ORDER FOR PROTECTIVE MEASURES**

*Rules 69, 72 and 75 of the Rules of Procedure and Evidence*

**Office of the Prosecution:**  
Richard Karegyesa  
Rashid Rashid

**Defence Counsel for Jean-Bosco Uwinkindi:**  
Claver Sindayigaya  
Iain Edwards

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1. On 3 September 2010, the Chamber met with the Parties for an informal pre-trial meeting ("Meeting"). At the Meeting, it was decided that the Chamber would order, *proprio motu*, interim protective measures to potential Prosecution witnesses in order to expedite disclosure to Jean-Bosco Uwinkindi and facilitate his investigations.

2. Pursuant to Article 21 of the Statute, the Tribunal has the duty to provide for the protection of victims and witnesses. Such protective measures shall include, but shall not be limited to, the conduct of *in-camera* proceedings and the protection of victims' identities. To this end, Rule 69 provides that under exceptional circumstances, either of the parties may apply to a Trial Chamber to order that the identity of a witness or victim who may be in danger or at risk not be disclosed until the Chamber decides otherwise.

3. Rule 75 authorises a Judge or a Chamber, *proprio motu* or at the request of either party, the victim or witness concerned, or of the Witnesses and Victims Support Section ("WVSS"), to order appropriate measures to safeguard the privacy and security of victims and witnesses. These measures must be consistent with the rights of the Accused, including his or her right to a fair trial, and are subject to the condition imposed by Rule 69 (C) which requires that the identity of the victim or witness shall be disclosed to the Defence in sufficient time prior to the trial to allow adequate time for preparation of the Defence case.

4. Protective measures for victims and witnesses are granted on a case-by-case basis where the Chamber determines the appropriateness of such protective measures.<sup>1</sup> Further, the moving party should demonstrate how the witness is relevant and important to the party's case and the measures should be strictly necessary.<sup>2</sup> The jurisprudence also holds that a real fear for a witness' safety exists and that an objective justification for that fear may be expressed by persons other than the witnesses themselves.<sup>3</sup>

5. The Chamber determines that, in order to expedite the investigation process by the Defence while ensuring protection for potential Prosecution witnesses, it is appropriate to *proprio motu* order disclosure of the unredacted statements of all potential Prosecution

<sup>1</sup> *Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Nyiramasuhuko's Strictly Confidential *Ex Parte* Under Seal Motion for Additional Protective Measures for Defence Witness WBNM (TC), 17 June 2005, paras. 8-9 (citing *Prosecutor v. Théoneste Bagosora, Aloys Ntabakuze, and Anatole Nsengiyumva*, Case No. ICTR-96-7-I, Decision on the Extremely Urgent Request Made by the Defence for Protective Measures for Mr. Bernard Ntuyahaga, 13 September 1999, para. 28).

<sup>2</sup> *id.*

<sup>3</sup> See e.g., *Prosecutor v. Idelphonse Hategekimana*, Case No. ICTR-00-55B-PT, Decision on Prosecution Extremely Urgent Motion for Protective Measures, 16 January 2009, para. 4; *Prosecutor v. Simon Bikindi*, Decision on Protective Measures for Prosecution Witnesses (TC), 4 September 2006, para. 7; *Prosecutor v. Tharcisse Renzaho*, Decision on Prosecutor's Motion for Protective Measures For Victims and Witnesses to Crimes Alleged in the Indictment (TC), 17 August 2006, paras. 7,10.

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witnesses to the Defence. These statements will be subject to normal protective measures to ensure that the identities of these witnesses are not disclosed or publicized pending the granting of protective measures in this proceeding and these protections will stay in effect until the filing of the Prosecution's Pre-Trial Brief, or if the Prosecution files a motion for protective measures prior to that date, until the Chamber issues the protective measures decision.

**FOR THESE REASONS, THE CHAMBER**

**I. ORDERS** disclosure of all unredacted statements of potential Prosecution witnesses as listed in Annex 1 to this Order as well as any subsequent potential Prosecution witnesses whom the Prosecution informs the Defence of (in writing), subject to the following protections which will remain in effect until further notice:

- i. The pseudonyms given to the witnesses by the Prosecution shall be used whenever referring to such protected witnesses in ICTR proceedings, communications, and discussions, both between the parties and with the public. The use of such pseudonyms shall last until such time as the Trial Chamber orders otherwise or until the witness affirmatively waives their right to protective measures in writing or on oath.
- ii. The names, addresses, whereabouts, and other information that might identify or assist in identifying any protected witness (hereinafter "Identifying Information") must be sealed by the Registry and not be included in public or non-confidential ICTR records;
- iii. To the extent that any Identifying Information is contained in existing records of the Tribunal, such Identifying Information must be expunged from the public record of the Tribunal and placed under seal;
- iv. Identifying information shall not be disclosed to the public or the media;
- v. Until such time as Protective measures are lifted pursuant to a Trial Chamber order, the Accused or any member of the Defence team shall not attempt, or encourage or otherwise aid any person in an attempt to make any independent determination of the identity of any protected witness;
- vi. Neither the Accused nor any member of the Defence team shall make any contact with a protected witness, unless the consent of the person concerned

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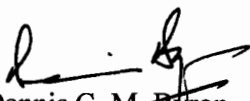
290

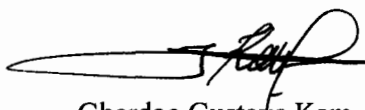
has first been confirmed. The Accused or any member of the Defence team shall contact the Prosecution and the WVSS, who shall determine whether such consent exists. In the even that such consent exists, the WVSS shall facilitate the interview;

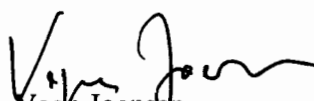
- vii. The Accused and the Defence team shall keep confidential to itself any Identifying Information, and shall not expose, share, discuss or reveal, directly or indirectly, any such information to any other person or entity; and
- viii. The Accused or the Defence team shall provide in writing to the WVSS and the Prosecution, a designation of all officially authorized persons working on the Defence team who will have access to any Identifying Information. The Accused or the Defence team shall notify in writing to the WVSS, and the Prosecution, of any such persons leaving the Defence team, and confirm that such person has remitted all materials containing Identifying Information;

**II. ORDERS** that these protections will remain in effect until the filing of the Prosecutions' Pre-Trial Brief, or with respect to the witnesses concerned, if the Prosecution files a motion for protective measures prior to that date, until the Chamber issues the protective measures decision.

Arusha, 13 September 2010, done in English.

  
Dennis C. M. Byron  
Presiding Judge

  
Gberdao Gustave Kam  
Judge

  
Vagn Joensen  
Judge

[Seal of the Tribunal]

**ANNEX 1**

# ANNEX 1

THE PROSECUTOR v. JEAN UWINKINDI

(ICTR-2001-75-I)

PROVISIONAL LIST OF PSEUDONYMS OF POTENTIAL PROSECUTION WITNESSES

8 SEPTEMBER 2010

1. CDA
2. CDB
3. CDC
4. CDD
5. CDE
6. CDF
7. CDH
8. CDI
9. CDG
10. CCU
11. CCV
12. CCW
13. CCX
14. CCY
15. CCZ
16. BZE
17. BZF
18. BZG
19. BZH
20. BZI
21. BZJ
22. BZK



# 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. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Trial Chamber III A. N'Gum
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Appeals Chamber / Arusha Chamber II F. A. Talon		<input type="checkbox"/> Appeals Chamber / The Hague K. K. A. Afande R. Muzigo-Morrison
<b>From:</b>	<input checked="" type="checkbox"/> Chamber III <i>K. ARDAUCI</i> (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. <i>UWINKINDI</i>		<b>Case Number:</b> ICTR-01-75	
<b>Dates:</b>	Transmitted: <i>13/9/2010</i>		Document's date: <i>13/9/2010</i>	
<b>No. of Pages:</b>	<i>4 + 1 Annex</i>	<b>Original Language:</b>	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
<b>Title of Document:</b>	<i>order for Protective Measures</i>			
<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"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Confidential		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
		<input type="checkbox"/> Submission from non-parties		
		<input type="checkbox"/> Submission from parties		
		<input type="checkbox"/> Accused particulars		

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

**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

**CMS SHALL NOT take any action regarding translation.**

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input checked="" 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

**CMS SHALL NOT take any action regarding translation.**

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

English  French  Kinyarwanda

**KINDLY FILL IN THE BOXES BELOW**

<input type="checkbox"/> <b>The OTP is overseeing translation.</b> 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"/> <b>DEFENCE is overseeing translation.</b> 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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### 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: