

ICTR-00-56A-I
03-03-2011
(17-15)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

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

Registrar: Mr. Adama Dieng

Date: 3 March 2011

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THE PROSECUTOR
v.
Protais MPIRANYA

Case No. ICTR-00-56A-71 bis

**DECISION ON MOTION FOR THE PRESERVATION OF EVIDENCE
BY SPECIAL DEPOSITION FOR A FUTURE TRIAL**

Rule 71 bis of the Rules of Procedure and Evidence

Office of the Prosecutor:
Mr. Hassan B. Jallow
Mr. Richard Karegyesa
Ms. Ifeoma Ojemeni Okali

Duty Counsel:
Mr. Francis K. Musei

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BACKGROUND

1. On 15 February 2011, the Prosecution filed a motion for the preservation of evidence by special deposition, pursuant to Rule 71 *bis* of the Rules of Procedure and Evidence (“Rules”).¹ By a Decision dated 17 February 2011, the President of the Tribunal, acting under Rule 71 *bis* (C), designated the present Trial Chamber to adjudicate the Prosecution’s motion. By the same Decision, the President also instructed the Registrar to immediately appoint a Duty Counsel, pursuant to Rule 44 *bis*, to represent the interests of the Accused.² On 18 February 2011, the Trial Chamber decided, by virtue of Rule 71 *bis* (D), to hear the Parties in writing. The Chamber also ordered the Parties to file their submissions within 14 days of the appointment of Duty Counsel, and any responses within three days of the filing of the submissions.³
2. On 28 February 2011, the Duty Counsel filed a response to the Motion indicating that the Defence “has no objection to the Prosecutor’s motion for an order to take and preserve evidence by special Deposition for a future trial.”⁴ Having heard the Parties, the Chamber now decides the Motion.

DELIBERATIONS

3. The Prosecution submits that despite reasonable efforts, the warrant of arrest against the Accused, Protais Mpiranya, remains unexecuted and that it is unlikely to be executed within a reasonable time. The Prosecution also argues that it is in the interests of justice to preserve the evidence in this case for potential use at a future trial in the event that the Accused is subsequently arrested. As noted earlier, the Duty Counsel has no objections to the taking of the depositions at this time.
4. Pursuant to Rule 71 *bis* (E), a designated Trial Chamber may grant a request for the preservation of evidence by special deposition if it is satisfied that: (i) reasonable efforts have been made to execute the warrant of arrest; (ii) the execution of the warrant of arrest is not likely to take place within a reasonable time; and (iii) it is in the interests of justice to do so.

¹ *The Prosecutor v. Protais Mpiranya*, Case No. ICTR-00-56A-I, Prosecutor’s Request for Preservation of Evidence by Special Deposition for a Future Trial (pursuant to Rule 71 *bis*), dated 5 February 2011 and filed on 15 February 2011 (the “Motion”).

² *The Prosecutor v. Protais Mpiranya*, Case No. ICTR-00-56A-I, Designation of a Trial Chamber to Consider the Prosecutor’s Request for Preservation of Evidence by Special Deposition for a Future Trial (Rule 71 *bis* of the Rules of Procedure and Evidence), 17 February 2011.

³ *The Prosecutor v. Protais Mpiranya*, Case No. ICTR-00-56A-71 *bis*, Order for Submissions (Rule 71 *bis* (D) of the Rules of Procedure and Evidence), 18 February 2011.

⁴ *The Prosecutor v. Protais Mpiranya*, Case No. ICTR-00-56A-I, Defence Response to the Prosecutor’s Request for Preservation of Evidence by Special Deposition for a Future Trial (pursuant to Rule 71 *bis*), 28 February 2011.


5. The Chamber has considered the motion and, in particular, the various steps taken by the Office of the Prosecutor and different law enforcement agencies to apprehend the Accused. The Chamber is satisfied that, despite reasonable efforts, the warrant of arrest issued against Mpiranya on 12 April 2002 remains unexecuted. Furthermore, the Chamber is of the view that the execution of the warrant is not likely to take place within a reasonable time.

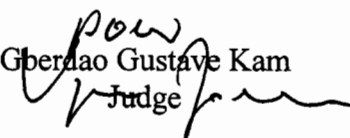
6. The Chamber notes Mpiranya's position as a high-profile fugitive and has considered the importance of his apprehension and trial to the many victims of his alleged crimes. The Chamber is also mindful of the increased risk of deterioration of the evidence with the passage of time, as well as the possibility of the further loss of evidence resulting from the demise of Prosecution witnesses. Under these circumstances, the Chamber concludes that it is in the interests of justice that evidence relating to the indictment be preserved for a future trial by special deposition.

FOR THE FOREGOING REASONS, THE CHAMBER

- I. **GRANTS** the Motion;
- II. **ORDERS** the taking of the evidence of the Prosecution witnesses via special deposition;
- III. **REQUESTS** the Registrar, pursuant to Rule 71 bis (G)(i), to issue a public notice of the present Decision and the arrest warrant against the Accused; and
- IV. **REQUESTS** the Registrar, pursuant to Rule 71 bis (G)(ii), to assign to the Counsel representing the interests of the Accused such staff as the Registrar deems necessary.

Arusha, 3 March 2011, done in English.


Denis C.M. Byron
President


Gerdao Gustave Kam
Judge


Vagn Joensen
Judge

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