



UNITED NATIONS  
NATIONS UNIES

ICTR-00-56-T  
26-05-2011  
(30620-30617)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

30620  
Mwano

OR: ENG

TRIAL CHAMBER II

**Before Judges:** Asoka de Silva, *Presiding*  
Taghrid Hikmet  
Seon Ki Park

**Registrar:** Adama Dieng

**Date:** 26 May 2011

THE PROSECUTOR

v.

Augustin NDINDILYIMANA et al.

CASE No. ICTR-00-56-T

JUDICIAL RECORDS ARCHIVE  
2011 MAY 26 P 2 20

DECISION ON THE PROSECUTOR'S URGENT *EX PARTE* MOTION TO VARY  
THE PROTECTIVE MEASURES FOR WITNESS AWC

*Rules 75(F) & (G) of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**  
Hassan Boubacar Jallow  
Richard Karegyesa  
Frederick Nyiti

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## INTRODUCTION

1. On 12 July 2001, the Chamber ordered protective measures for Prosecution witnesses.<sup>1</sup> That Order is applicable to Witness AWC.<sup>2</sup> On 18, 19, 20 and 23 January 2006, Witness AWC testified as a protected witness before this Chamber in both closed and open sessions.
2. On 20 July 2010, the Prosecution filed the current urgent and *ex parte* motion seeking to vary the protective measures granted to Witness AWC. The Prosecution seeks to disclose the witness' statements, transcripts, personal information sheets, and exhibits tendered during testimony to the Investigating Judge of the Republic of France in relation to proceedings there against Eugene Rwamucyo and Agathe Kanziga.<sup>3</sup> The Prosecution further requests that the protective measures for Witness AWC be varied so that the witness can testify openly, under his own name, in the French proceedings.<sup>4</sup> The Prosecution submits that the requested disclosure will facilitate the proceedings in France against Rwamucyo and Kanziga for crimes committed in the territory of Rwanda in 1994.<sup>5</sup>

## DELIBERATIONS

3. Rule 75 of the Rules of Procedure and Evidence regulates the protection of witnesses in proceedings before this Tribunal and allows for protective orders to be varied or rescinded. Although Rule 75 does not refer to proceedings before other jurisdictions, the jurisprudence of the Tribunal has held that the interests of justice require a broad interpretation of Rule 75, and therefore, with the consent of the witness, and where appropriate, protective measures may be varied or rescinded at the request of States or parties to proceedings before other jurisdictions.<sup>6</sup>

<sup>1</sup> *Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-2000-56-I, Order for Protective Measures for Witnesses (TC), 12 July 2001.

<sup>2</sup> *Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-2000-56-I, Order for Protective Measures for Witnesses (TC), 12 July 2001.

<sup>3</sup> *Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Prosecutor's Urgent Confidential *Ex Parte* Motion to Vary the Protective Measures for Witness AWC, 20 July 2010 ("Motion").

<sup>4</sup> Motion, para. 5.

<sup>5</sup> Motion, paras. 1-5.

<sup>6</sup> *Prosecutor v. Muhimana*, Case No. 95-1B, Decision on Prosecution's urgent *Ex Parte* Motion to Unseal and Disclose Personal Information Sheets and Rescind Protective Measures for Certain Witnesses (TC), 13 August 2008, ("Muhimana Decision") para. 5; *Prosecutor v. Simba*, Case No. ICTR-01-76-R75, Decision on Charles Munyaneza's Motion for Disclosure of Documents Related to Protected Witnesses Before the Tribunal (TC), 9 April 2008, para. 5.

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4. Having reviewed Witness AWC's affidavit annexed to the Prosecution's motion, the Chamber notes that Witness AWC has consented to the rescission of the protective measures so that he may testify in the French proceedings against Rwamucyo and Kanziga.

5. The Chamber recalls that case law has established that assistance to national prosecutions of crimes committed in Rwanda in 1994 is consistent with the goals of state cooperation contained in the Statute of the Tribunal, the completion strategy and Security Council Resolutions 1503 and 1534.<sup>7</sup> The Chamber recalls that information relating to a protected witness may be disclosed to a party in another case not before this Tribunal provided that the applicant demonstrates that it is likely to assist the case materially or that there is a good chance that it would. This condition is satisfied when it is demonstrated that a factual nexus exists between the cases before the Tribunal and the case or cases before the domestic jurisdiction.<sup>8</sup>

6. The Chamber is satisfied that a sufficient factual nexus exists between the proceedings before this Chamber and the proceedings in the Republic of France, on the basis that they both relate to the international crimes that were committed in the territory of Rwanda in 1994. The Chamber notes, however, that Exhibit D78<sup>9</sup>, submitted under seal during Witness AWC's testimony, discloses the identity of other protected witnesses who have not agreed to have their identities disclosed. Accordingly, the Chamber considers that it is in the interests of justice to grant the motion with the exception of Exhibit D78, which shall not be released from the applicable protective measures.

**FOR THE ABOVE REASONS, the Chamber**

- I. GRANTS** the Prosecution's motion, except in regard to Exhibit D78;
- II. ORDERS** that the protective measures granted to Witness AWC in this case shall not apply to his testimony in proceedings before French authorities against Eugene Rwamucyo and Agathe Kanziga; and
- III. REQUESTS** the Registry to: (1) rescind the protective measures in place for Witness AWC; and (2) unseal and provide copies of the transcripts of Witness

<sup>7</sup> See, e.g., *Muhimana* Decision, para. 7, n.6, collecting cases.

<sup>8</sup> *Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on the Prosecution Motion to Unseal and Disclose to the Canadian Authorities the Closed Session Transcripts of Witness ANA (TC), 23 March 2007, para. 10.

<sup>9</sup> Defence Exhibit 78, List of Protected Names and their Acronyms.

*SPAR*

AWC's testimony in open and closed session, personal information sheets, and exhibits tendered during testimony, except for Exhibit D78, to the Prosecution for the purpose of transmission to the French authorities.

Arusha, 26 May 2011, done in English.

Read and approved

Asoka de Silva  
Presiding Judge

Read and approved



[Seal of the Tribunal]

Seon Ki Park  
Judge

# 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)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input checked="" type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu
	<input checked="" type="checkbox"/> OIC, JLSD P. Besnier	<input type="checkbox"/> OIC, JPU C. K. Hometowu	<input type="checkbox"/> F. A. Talon (Appeals/Team IV)
From:	<input checked="" type="checkbox"/> Chamber II (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)
	<input type="checkbox"/> Other: (names)		
Case Name:	The Prosecutor vs. NDINDILIYIMANA, Augustin, et al.		Case Number: ICTR-00-56-T
Dates:	Transmitted: 26 May 2011		Document's date: 26 May 2011
No. of Pages:	5 (incl. this sheet)	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	DECISION ON THE PROSECUTOR'S URGENT EX PARTE MOTION TO VARY THE PROTECTIVE MEASURES FOR WITNESS AWC		
Classification Level:		TRIM Document Type:	
<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 checked="" type="checkbox"/> Confidential		<input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars	
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## II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

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

☐ Reference material is provided in annex to facilitate translation.

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

☐ Filing Party hereby submits **BOTH** 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

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<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
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