



UNITED NATIONS
NATIONS UNIES

ICTR-00-56A-1
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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MURRAY

OR: ENG

TRIAL CHAMBER III

Before: Judge Florence Rita Arrey

Registrar: Mr. Adama Dieng

Date: 28 June 2011

THE PROSECUTOR

v.

Protais MPIRANYA

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

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**ORDER SCHEDULING DISCLOSURE OF EVIDENCE AND GRANTING PROTECTIVE MEASURES TO
PROSPECTIVE PROSECUTION WITNESSES**

*Article 21 of the Statute and Rules 54, 66 (A), 69 and 71 bis (K) 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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INTRODUCTION

1. On 3 March 2011, the Trial Chamber granted¹ the Prosecution's Motion for the preservation of evidence by special deposition.²
2. On 24 May 2011, the President of the Tribunal designated me, Judge Florence Rita Arrey, to conduct the special deposition proceedings in the case against Protais Mpiranya.³
3. I now consider, *proprio motu*, the disclosure obligations of the Prosecution in advance of the preservation of evidence hearings.

DELIBERATIONS

4. Pursuant to Rule 54 of the Rules of Procedure and Evidence, a Judge, acting *proprio motu*, may issue such orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial. Further, pursuant to Rule 71 *bis* (K) (i), the Single Judge has the same powers as a Trial Chamber.
5. Rule 71 *bis* (K) (iii) states that "disclosure pursuant to Rule 66 (A) (i) and (ii) shall be made no later than 60 days before the time set for the commencement of the taking of depositions". Rule 66 (A) (i) and (ii) require, respectively, the disclosure of "copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the accused", and "copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial".
6. Article 21 of the Statute of the Tribunal imposes a duty to provide for the protection of victims and witnesses. Such protective measures shall include, but are not limited to, the conduct of *in camera* proceedings and the protection of the victims' and witnesses' identities. Pursuant to Rule 75, a Judge may *proprio motu* order appropriate measures to safeguard the privacy and security of victims and witnesses. These measures must be consistent with the rights of the accused person and are subject to the condition imposed by Rule 69 (C), which requires that the identity of the victims and witnesses shall be disclosed to the Defence in sufficient time prior to the start of the trial in order to allow

¹ *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, 3 March 2011.

² *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, dated 5 February 2011 and filed on 15 February 2011.

³ *The Prosecutor v. Protais Mpiranya*, Case No. ICTR-00-56A-71 *bis*, Memorandum: Notice of Designation, 24 May 2011.

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the Defence appropriate time for the preparation of its case. Rule 71 *bis* (K) states that Rule 69, *inter alia*, applies *mutatis mutandis* to preservation of evidence proceedings.

7. Protective measures for victims and witnesses are usually granted on a case-by-case basis, following a Judge's or Trial Chamber's assessment of the appropriateness of such protective measures. It is for the moving party to demonstrate why the protective measures are necessary.⁴ I note that the Prosecution has not made any request for the protection of potential witnesses. I further note that the special deposition proceedings are scheduled to start in the beginning of October 2011. However, in light of the circumstances of these proceedings, I deem it in the interests of justice for the Defense Duty Counsel to have access to the relevant materials in unredacted format a sufficient period prior to the commencement of the proceedings in order to fully prepare. I also consider it necessary that these potential Prosecution witnesses be provided with protective measures to ensure that their identities are not disclosed or publicized. These protective measures shall remain in place until further notice.
8. Therefore, I conclude that unredacted versions of the relevant materials should be disclosed to the Duty Counsel, and that protective measures should be granted to all prospective Prosecution witnesses. I will later, if necessary, order that protective measures be lifted or amended.

FOR THE FOREGOING REASONS, I

- I. ORDER** the Prosecution to disclose to the Duty Counsel, pursuant to Rule 71 *bis* (K) (iii), the supporting material that accompanied the Indictment in non-redacted form within 10 days of this Order;
- II. ORDER** the Prosecution to disclose to the Duty Counsel, pursuant to Rule 71 *bis* (K) (iii), the statements of witnesses the Prosecution intends to call during the Rule 71 *bis* proceedings in non-redacted form within 10 days of this Order;
- III. GRANT** protective measures to all potential witnesses as follows:

⁴ See *The 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; *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, 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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- i. The pseudonyms given to the witnesses by the Prosecution shall be used whenever referring to such protected witnesses in proceedings before this Tribunal, as well as in communications and discussions both between the Parties and with the Public;
- ii. The names, addresses, whereabouts, and other information that might identify or assist in identifying any protected witness ("identifying information") must be sealed by the Registry and shall not be included in public or non-confidential ICTR records;
- iii. To the extent that any identifying information of the witnesses is contained in existing records of the Tribunal, such identifying information shall be expunged from the public records of the Tribunal and placed under seal;
- iv. The Duty Counsel and members of his team shall keep confidential to themselves any identifying information, and shall not expose, share, discuss or reveal, directly or indirectly, any such information to any other person or entity;
- v. Identifying information shall not be disclosed to the public or the media;
- vi. The Duty Counsel and the members of his team shall not attempt, encourage or otherwise aid any person in an attempt to make any determination of the identity of any protected witness;
- vii. The Duty Counsel and members of his team shall not make or attempt to make any contact with any protected witnesses unless the consent of the relevant witness has first been confirmed. Should the Duty Counsel or his team desire to contact a protected witness, he or they shall first contact the Prosecution and the Witnesses and Victims Support Section (WVSS) who shall determine whether such consent exists. In the event that such consent exists, the WVSS shall facilitate the interview; and
- viii. The Duty Counsel shall provide in writing to the WVSS and the Prosecution, a designation of all officially authorized persons working on the Duty Counsel's team who will have access to the identifying information of the protected Prosecution witnesses. The Duty Counsel shall notify the WVSS and the Prosecution in writing of any modification of the Duty Counsel's team and confirm that any person leaving the Duty Counsel's team has remitted all materials containing identifying information.

- IV. **ORDER** that these protective measures will remain in effect until any further order of the Single Judge or a future Trial Chamber;
- V. **REQUEST** the Registrar to inform WVSS of the protective measures granted in this Order; and
- VI. **REQUEST** the Registrar to ensure that the interests of Protais Mpiranya continue to be adequately represented by Duty Counsel.

Arusha, 28 June 2011, done in English.

