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UNITED NATIONS  
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**International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda**

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**TRIAL CHAMBER I**

Before: Judge Andresia VAZ  
Registrar: Mr. Adama DIENG  
Dated: 10 May 2002

JUDICIAL RECORDS/ARCHIVES  
ICTR

2002 MAY 13/14 9:59

**The Prosecutor**

**Versus**

**Jean Mpambara  
Case No. ICTR 2001-65-I**

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**PROSECUTOR'S RESPONSE TO DEFENCE REQUEST TO VARY ORDERS  
SOUGHT BY THE PROSECUTOR FOR PROTECTIVE MEASURES FOR VICTIMS  
AND WITNESSES TO CRIMES ALLEGED IN THE INDICTMENT**  
(Pursuant to Art 21, RR 69 and 75)

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Office of the Prosecutor:

- Richard Karegyesa
- Andra Mobberley

Defence Counsel:

- Mario Spandre

**MAY IT PLEASE YOUR HONOUR****A. INTRODUCTION**

1. On 27 March 2002, the Prosecutor filed a motion titled "Prosecutor's Motion For Protective Measures For Victims And Witnesses To Crimes Alleged In The Indictment" ("the Prosecutor's motion"). As is required, a draft order was filed with that motion.
2. On 7 May 2002, the Prosecution received a defence motion dated 6 May 2002, titled "Reponse a la Requete Du Procureur Visant L'Obtention De Mesures De Protection Des Temoins Et Victims" ("the Defence motion"). In summary, Defence counsel does not oppose the Prosecutor's motion. He seeks to vary the order sought in clause 15 (h) of the Prosecutor's Motion and requests that the Trial Chamber reject the order sought in clause 15 (l) of the Prosecutor's Motion.

**B. PROSECUTOR'S SUBMISSIONS****a. Defence Response Out of Time**

3. The Prosecutor's motion was filed on 27 March 2002. Pursuant to Rule 73 (D) of the Rules of Procedure and Evidence ("the Rules") a responding party must file any reply within 5 days from the date of receipt of a motion.
4. At page 2 of the Defence motion, counsel advises that the Prosecutor's motion was communicated to the defence on 2 April 2002. The defence response is dated 6 May 2002, more than a month after counsel received the document. Defence counsel has filed no application for an extension of time.
5. It is submitted that the defence response has been filed out of time and therefore ought to be struck out accordingly.
6. In the alternative, if Your Honour proceeds to consider the substance of the Defence response, the Prosecutor makes the submissions set out below.

**b. Translation of Court Documents**

7. Defence counsel has requested an order reminding the Prosecutor to see to it that the Registrar transmits to the accused all documents in the language he understands, including a French version of the Prosecutor's motion.
8. The Prosecutor respectfully submits that the preparation of certified translations of Court documents and transmission thereof to the accused is a function that falls squarely and exclusively within the ambit of the Registrar's authority in this jurisdiction. Accordingly, any Orders from the Trial Chamber concerning these matters ought to be addressed to the Registrar direct.

- c. **Variation of the Twenty-One Day Period for Disclosure of Information Identifying Witnesses**
9. Defence counsel seeks to vary paragraph 15(h) of the Prosecutor's motion, set out below:
- "15.h. Prohibiting the disclosure to the Defence of the names, addresses, relations, whereabouts of, and any other identifying data which would reveal the identities of victims of potential prosecution witnesses, and any information in the supporting material on file with the Registry, until such time as the Trial Chamber is assured that the witnesses have been afforded an adequate mechanism for protection and allowing the Prosecutor to disclose any material provided to the Defence in a redacted form until such a mechanism is in place; and in any event, that the Prosecutor is not required to reveal the identifying data to the Defence sooner than twenty one (21) days before the victim or witness is to testify at trial;"
10. First, Defence counsel seeks to add to the phrase "unless otherwise decided by the Trial Chamber, pursuant to Rule 69 (A) of the Rules" to this clause. It is submitted that this modification is superfluous as it is implicit that the Trial Chamber can vary any orders in the proper circumstances if required.
11. Second, Defence counsel seeks the following two related orders:
- a. that the Prosecutor hastily pursue the witnesses she intends to call so that they are placed rapidly under the protection of the Tribunal; and
  - b. that as soon as the said witnesses are placed under the Tribunal's protection, their identities as well as unredacted versions of their written statements be communicated to the defence.
12. The Prosecutor opposes the variation and orders sought. If granted, their separate and combined effect would be to make the witnesses' identities known at an early stage of proceedings and to render nugatory the twenty one day pre-testimony disclosure period sought in clause 15(h) above.
13. The twenty one day period is consistent with the usual practice of this Tribunal, as is confirmed in its jurisprudence, and there are no special circumstances that would justify a departure from the norm in this case (*The Prosecutor v Karemera Decision on the Prosecutor's Motion for Protective Measures for Witnesses* dated 6 July 2000 [see paragraph 11]; *The Prosecutor v Tharcisse Muvunyi & Others ICTR 2000-55-I Decision on the Prosecutors Motion for Orders for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment* dated 25 April 2001 [see paragraph 26]; *The Prosecutor v Musabyimana Case No ICTR 2001-62-I Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses* dated 19 February 2002 [see paragraph 30]).

14. It is submitted that the approach suggested by defence counsel would undermine the integrity of the witness protection programme provided for in Article 21 of the Statute and in Rules 69 and 75 of the Rules and is unnecessary for the fair and proper conduct of the Trial as the orders sought by the Prosecutor are consistent with the rights of the accused as set out in Article 20 of the Statute.
15. Accordingly, the Prosecutor strongly opposes the variations sought by defence counsel.
16. If the defence application is granted in this regard, the Prosecution seeks equivalent orders so that the same measures are applied in respect of all witnesses to be called by the defence.

**d. Reporting on Witness Protection Matters**

17. Defence counsel seeks an order that the Prosecutor inform the Trial Chamber before whom the case is pending, and the Defence, of the measures taken to place the witnesses under the protection of the Tribunal and the state of progress of her steps.
18. The Prosecutor opposes the order sought, which is superfluous and fundamentally misconstrues the functions and practices of the various units of the ICTR in respect of witnesses. Witness protection measures take effect once the Prosecutor has forwarded the particulars and locations of witnesses under seal to the Victims and Witnesses Support Section (*The Prosecutor v Tharcisse Muvunyi & Others ICTR 2000-55-I Decision on the Prosecutor's Motion for Orders for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment* dated 25 April 2001 at paragraph 28), and this is contingent on timetabling orders issued by the Trial Chamber. It is for the Witness Protection Unit to make arrangements with witnesses to secure their protection. This is a function of the Registry, not of the Prosecutor. The Prosecutor has no control over this matter.

**e. Accused's Access to Privileged Information on Victims and Witnesses**

19. Defence counsel also asks the Trial Chamber to reject clause 15.(1) of the Prosecutor's motion which seeks an order:

"15.(1) Prohibiting the accused individually from personally possessing any material which includes or might lead to discovery of the identity of any protected witness, including but not limited to any copy of a statement of a witness even if the statement is in redacted form, unless the Accused is, at the time in possession, in the presence of Counsel, and instructing the United Nations Detention Centre authorities to ensure compliance with the prohibition set out in this paragraph."
20. Defence Counsel cites the decision in *The Prosecutor v Tharcisse Muvunyi & Others ICTR 2000-55-I Decision on the Prosecutor's Motion for Orders for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment* dated 25 April 2001 in support of their application. That decision in turn cites the Trial

Chamber's decision in *The Prosecutor v Nsabimana and Nteziryayo* dated 21 May 1999. The Prosecutor submits that the *Muvunyi* decision is not applicable as the order sought was in different terms.

21. However, it is accepted that the decision in *Nsabimana*, cited above, and in *The Prosecutor v Musabyimana Case No ICTR 2001-62-I Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses* dated 19 February 2002 (see paragraph 31) are relevant. Both decisions rejected a clause drafted in terms similar to clause 15(1) of the Prosecutor's motion.
22. Notwithstanding, the Prosecutor submits that a different approach is now required.
23. Clause 15(1) of the Prosecutor's motion is designed to ensure that privileged information on witnesses is not improperly shared between accused at the United Nations Detention Facility or otherwise.
24. The interchange of statements among accused in the United Nations Detention Centre is a practical and real difficulty, which has recently been commented upon by Trial Chamber II. During the trial of *The Prosecutor v Ntagerura et al Case No. ICTR-97-36-T*, Defence counsel produced a redacted witness statement, which had been given by one accused to another accused in the United Nations Detention Facility. Judge Williams addressed Defence counsel on the issue as follows:

“Even if the law was not breached in the manner in which you received the statement from the accused, the spirit of witness protection was breached. And you could see that we were very concerned yesterday, and I expressed it. We were concerned about the situation where no witness was protected at all. The whole witness protection system could break down, and this interchange of statements among various accused in the Detention Centre does not seem to be a desirable practice. And this is a matter that, at the appropriate time, we will have to make a ruling on or we will have to find some method to prevent this sort of thing from occurring. It is not proper, it is not appropriate. It destroys the whole principle of witness protection, ...” [see English Transcript of 12 September 2001 page 7 line 13 to page 8 line 6.] [emphasis added].

25. It is submitted that a different approach to that taken in *Musabyimana* and *Nsabimana*, cited above, is both appropriate and necessary. In matters of witness protection, prevention is better than cure. On this basis the Prosecutor requests that the Trial Chamber dismiss the defence application on this matter and grant the order sought in clause 15(1) of the Prosecutor's motion.

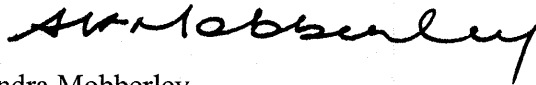
**C. RESERVING THE RIGHT TO BE HEARD**

26. As the defence motion has been filed in French, and as no translation is yet available, the Prosecutor reserves her right to make oral submissions on this matter.

**D. THE PROSECUTOR'S PRAYER**

27. The Prosecutor requests that the Trial Chamber **DISMISS** the Defence motion in its entirety.

Dated at Arusha on 10 May 2002



Andra Mobberley  
Assistant Trial Attorney

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<b>Case Name:</b>	The Prosecutor vs. <b>MPAMBARA</b>			<b>Case Number: 2001-65-I</b>		
<b>Date:</b>	Transmitted: <b>13.5.02</b>	Document's date: <b>10.5.2002</b>	No. of Pages: <b>6</b>			
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<b>Doc. Title</b>	<b>Prosecutor's Response to Defence <del>motion</del> Request for various Orders sought by the Prosecutor for protective measures for victims + witnesses to crimes alleged in the indictment</b>					

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