

**UNITED
NATIONS**

MICT-13-33
19-12-2016
(1439 - 1436)

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Mechanism for International Criminal Tribunals

Case No.: MICT-13-33

Date: 19 December 2016

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Aminatta Lois Runeni N'gum

Registrar: Mr. John Hocking

Order of: 19 December 2016

PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

PUBLIC

**DECISION ON A MOTION TO RECLASSIFY THE REGISTRAR'S
SUBMISSION AND FOR AN EXTENSION OF TIME**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Richard Karegyesa

Counsel for Jean de Dieu Kamuhanda:

Mr. Peter Robinson

Received by the Registry
Mechanism for International Criminal Tribunals
19/12/2016 17:13

A handwritten signature in black ink, appearing to be 'ASW', written over the printed text of the receipt box.

I, AMINATTA LOIS RUNENI N’GUM, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;¹

RECALLING that, on 23 November 2016, I ordered: (i) the Witness Support and Protection Unit of the Mechanism (“WISP”) to inform me of any information and its view on the implications that rescinding the protective measures granted to Witness ALM in the case of *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54, might have on the witness’s immediate family in view of the fact that the witness is deceased; and (ii) Mr. Jean de Dieu Kamuhanda and the Office of the Prosecutor of the Mechanism (“Prosecution”) to file submissions and supporting information, if any, identifying factors that weigh for or against the rescission of Witness ALM’s protective measures under Rule 86(A) of the Rules of Procedure and Evidence of the Mechanism (“Rules”) within 7 days of the submissions of the WISP;²

NOTING the “Registrar’s Submission pursuant to Order of 23 November 2016” filed on 7 December 2016 (“Registrar’s Submission”) and classified as confidential and *ex parte* because it “contains information pertaining to a protected Witness”,³

BEING SEISED OF Kamuhanda’s motion filed on 13 December 2016, in which he requests: (i) the reclassification of the Registrar’s Submission from confidential and *ex parte* to confidential so that he and the Prosecution may have access to and comment on it;⁴ and (ii) the deadline for his submissions, as set out in the Order of 23 November 2016, to be extended until seven (7) days after he has received the Registrar’s Submission;⁵

NOTING the Prosecution’s submission in compliance with the Order of 23 November 2016 filed on 14 December 2016, wherein it, *inter alia*, opposes the Motion on the basis that Kamuhanda has not shown good cause for the requests for reclassification and extension of time;⁶

¹ Order Assigning a Single Judge to Consider an Application pursuant to Rule 86(H), 15 March 2016.

² Order on Remand of a Decision Declining to Rescind Protective Measures for a Deceased Witness, 23 November 2016 (“Order of 23 November 2016”), p. 2.

³ Registrar’s Submission, n. 2.

⁴ Motion to Reclassify Registrar’s Submission and for Extension of Time, 13 December 2016 (“Motion”), para. 1.

⁵ Motion, paras. 1, 2.

⁶ Prosecution’s Consolidated Submissions pursuant to Order on Remand of a Decision Declining to Rescind Protective Measures for a Dece[a]sed Witness and Response to Kamuhanda’s Motion to Reclassify Registrar’s Submission and for Extension of Time, 14 December 2016 (“Response”), para. 5. In particular, the Prosecution argues that: (i) the wording in the Order of 23 November 2016 suggests that the Registrar’s Submission was intended only for the Single Judge; (ii) the Registrar has the discretion to file submissions relating to witness protection on a confidential and *ex parte* basis; and (iii) the Registrar’s Submission should have no bearing on Kamuhanda’s ability to file submissions or provide supporting information requested by the Order of 23 November 2016. Response, paras. 6, 7.

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CONSIDERING that, as parties in the cases of *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54, and *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. MICT-13-33, Kamuhanda and the Prosecution have access to the filings cited in the Registrar's Submission,⁷ and that the remainder of the information contained therein does not require *ex parte* classification with respect to Kamuhanda and the Prosecution;⁸

FINDING, therefore, that the *ex parte* classification of the Registrar's Submission may be lifted with respect to Kamuhanda and the Prosecution;⁹

CONSIDERING FURTHER that allowing Kamuhanda and the Prosecution to evaluate and comment on the Registrar's Submission may assist in adjudicating Kamuhanda's request to rescind Witness ALM's protective measures and that good cause therefore exists to grant the requested extension of time;

PURSUANT TO Article 20 of the Mechanism's Statute and Rules 55 and 86 of the Rules;

HEREBY ORDER:

1. The Registry to lift the *ex parte* status of the Registrar's Submission with respect to Kamuhanda and the Prosecution and serve them with a copy thereof;
2. Kamuhanda to file submissions as indicated in the Order of 23 November 2016 within seven (7) days of his receipt of the Registrar's Submission; and
3. The Prosecution to file any submission on the Registrar's Submission within seven (7) days of its receipt thereof.


⁷ Registrar's Submission, paras. 1-4.

⁸ Registrar's Submission, paras. 5-9.

⁹ See *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Vlastimir Đorđević's Motion for Access to Transcripts, Exhibits and Documents, 16 February 2010, para. 10 (recalling that "*ex parte* material, being of a higher degree of confidentiality, by nature contains information which has not been disclosed *inter partes* because of security interests of a State, other public interests, or privacy interests of a person or institution") (internal references omitted).

Done in English and French, the English version being authoritative.

Done this 19th day of December 2016,
At Arusha,
Tanzania



Judge Aminatta Lois Runeni N'gum
Single Judge

[Seal of the Mechanism]





**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/
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I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	MICT Registry/ Greffe du MPTI	<input checked="" type="checkbox"/> Arusha/ Arusha	<input type="checkbox"/> The Hague/ La Haye
From/ De :	<input checked="" type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Defence/ Défense	<input type="checkbox"/> Prosecution/ Bureau du Procureur
Case Name/ Affaire :	Prosecutor v. Jean de Dieu Kamuhanda		Case Number/ Affaire n° : MICT-13-33
Date Created/ Daté du :	19 December 2016	Date transmitted/ Transmis le :	19 December 2016
		No. of Pages/ Nombre de pages :	4
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda
		<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser) :
Title of Document/ Titre du document :	Decision on a Motion to Reclassify the Registrar's Submission and for an Extension of Time		
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ Non classifié	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue	<input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu
	<input type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ Art. 86 H) requérant exclu	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ Amicus curiae exclu
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