



Mechanism for International Criminal Tribunals

Case No: MICT-13-33

Date: 21 September 2015

Original: English

SINGLE JUDGE

Before: Judge Vagn Joensen, Single Judge

Registrar: Mr. John Hocking

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

PUBLIC

**REGISTRAR'S RULE 31(B) SUBMISSION FOLLOWING THE
DECISION OF 13 AUGUST 2015**

Rule 31(B) of the Rules of Procedure and Evidence

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. Richard Karegyesa
Mr. Cheickh Bangoura

Counsel for Jean de Dieu Kamuhanda:

Mr. Peter Robinson

Counsel for Amici Curiae:

Mr. John Philpot, ADAD
Ms. Colleen Rohan, ADC-ICTY

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Mechanism for International Criminal Tribunals

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1. Pursuant to Rule 31(B) of the Rules of Procedure and Evidence of the Mechanism for International Criminal Tribunals (“Mechanism”), as well as the Single Judge’s “Decision on ADAD-ICTR and ADC-ICTY Motions for Leave to Submit *Amicus Curiae* Observations and Decision on Application for Leave to Reply”,¹ the Registrar respectfully provides the following comments for the consideration of the Single Judge.
2. The Registrar maintains the view that requests to WISP to contact witnesses on behalf of the parties in this completed case should be approved first by a Judge, on a case-by-case basis.
3. Because the Single Judge has indicated that he is not contemplating “a global regime in post-conviction cases before the Mechanism”, but rather is addressing only “Kamuhanda’s requests in relation to witnesses in his case”,² comments are limited to this individual case.
4. Mr. Kamuhanda seeks an all-encompassing variation of protective measures for every actual and potential Prosecution witness in his case. The regime put forth by Mr. Kamuhanda and the *Amici curiae* pertains to at least 39 witnesses. This raises a number of concerns.
5. First, and as previously observed, the regime could negatively impact WISP’s neutrality.³
6. In addition, the proposed regime would create a precedent allowing potentially unlimited requests for WISP to contact protected witnesses. This could have an adverse impact on WISP’s ability to ensure “to the extent possible that the experience of testifying does not result in further harm, suffering or trauma to the witness”.⁴ Indeed, “[r]epeatedly approaching protected witnesses on the same matter is likely to cause anxiety for the witnesses and should be avoided”,⁵ and such repetition seems more likely absent judicial determination of the requests.
7. Furthermore, opening the floodgates to such requests – without judicial oversight as to their underlying merit – could unnecessarily strain the limited resources of WISP and distract it from performing its core functions pursuant to Article 20 of the Statute of the Mechanism. It

¹ *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. MICT-13-33 (“*Kamuhanda*”), Decision on ADAD-ICTR and ADC-ICTY Motions for Leave to Submit *Amicus Curiae* Observations and Decision on Application for Leave to Reply, public, 13 August 2015.

² *Id.*, para. 9.

³ See *Kamuhanda*, Registrar’s Rule 31(B) Submission Following the Order for Submissions of 8 July 2015, public, 23 July 2015, para. 13.

⁴ Policy for the Provision of Support and Protection Services to Victims and Witnesses, 26 June 2012, Art. 6(3).


⁵ *The Prosecutor v. Jean-Baptiste Gatete*, Case No. MICT-13-42, Decision in Respect to the Application for Variation of Protective Measures, public redacted version, 15 May 2013, para. 8.

could also impact the ability of the Mechanism to fulfill the expectation that it will diminish its functions and size over time.⁶

8. Should the Single Judge nonetheless be inclined to grant Mr. Kamuhanda's request for a blanket variation of the protective order for 39 witnesses, the Registrar notes that WISP is unable at this point to make any assessment of the protection or support needs of the so-far unidentified witnesses whom it may be asked to contact. The Registrar therefore reserves his right to address the Single Judge or Chamber on any future individual requests.

Respectfully submitted,



 John Hocking
Registrar

Dated this 21st day of September, 2015
At The Hague,
The Netherlands.

⁶ See Security Council resolution 1966, 22 December 2010, para. 7 (“*Emphasizing* that, in view of the substantially reduced nature of the residual functions, the [Mechanism] should be a small, temporary and efficient structure, whose functions and size will diminish over time [...]”).