

MICT-13-30
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**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No. MICT-13-30

Date: 13 August 2015

Original: English

SINGLE JUDGE

Before: Judge Vagn Joensen, Single Judge

Registrar: Mr. John Hocking

Order of: 13 August 2015

THE PROSECUTOR

v.

JEAN-PAUL AKAYESU

PUBLIC

**ORDER IN RESPECT TO THE REGISTRAR'S SUBMISSION PURSUANT TO RULE
31(B) REGARDING PROTECTED WITNESS DCX**

**Received by the Registry
Mechanism for International Criminal Tribunals**

13/08/2015 17:07

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1. **I, VAGN JOENSEN**, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) am seized of a request from the Registrar to formally reclassify a motion filed in the case of *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4 (“Akayesu case”) before the International Criminal Tribunal for Rwanda (“ICTR”) as confidential.¹

I. BACKGROUND

2. On 17 November 2014, the Registrar filed confidential and *ex parte* submissions stating that a “Motion for the Appearance and Protection of Witnesses Called by the Defence” (“Motion”), filed by the Defence in the *Akayesu* case on 1 December 1997,² was publically available through the website of the ICTR, as late as 13 November 2014.³ While the Motion was not filed confidentially, the ICTR Trial Chamber rendered a Decision on the Motion and Ordered that the Motion “not be disclosed to the public”.⁴
3. The Registrar states that the Motion has since been removed from public accessibility through the ICTR website, in order to protect the named witnesses.⁵ However, to avoid any potential ambiguity, the Registrar requests that an Order be issued which verifies that the Motion should be formally reclassified as “confidential”.⁶

II. DISCUSSION

4. Pursuant to Annex 2 of Security Council Resolution 1966 (2010), jurisdiction for all judicial functions related to the protection of witnesses and victims in cases completed by the ICTR has been transferred to the Mechanism.⁷
5. In the present matter, the Motion contains information identifying Witness DCX and other Defence witnesses by their names and as witnesses in the *Akayesu* case and in its Decision on the Motion, the ICTR Trial Chamber ordered that it “shall not be disclosed to the public”.⁸
6. Rule 86(A) of the Mechanism Rules of Procedure and Evidence, read in conjunction with Rule 2(C), provides that a Single Judge may, *proprio motu*, order appropriate measures for

¹ Confidential and *Ex Parte* Registrar’s Submission Pursuant to Rule 31(B) Regarding Protected Witness DCX, 17 November 2014, para. 14 (“Registrar’s Submissions”).

² *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Motion for the Appearance and Protection of Witnesses Called by the Defence, 1 December 1997 (“Motion”).

³ Registrar’s Submissions, para. 11.

⁴ *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Decision on a Motion for the Appearance and Protection of Witnesses Called by the Defence, 9 February 1998, p. 4.

⁵ Registrar’s Submissions, para. 12.

⁶ *Id.*, para. 14.

⁷ Security Council Resolution 1966 (2010), S/RES/1966 (2010), Annex 2, Transitional Arrangements, Article 5.

⁸ *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Motion for the Appearance and Protection of Witnesses Called by the Defence, 1 December 1997; *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Decision on a Motion for the Appearance and Protection of Witnesses Called by the Defence, 9 February 1998, p. 4.

the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.

7. Considering that protective measures for the witnesses referenced in the Motion remain in effect and that the Motion discloses identifying information of protected Defence witnesses, I find that a formal Order verifying the Motion's security designation as "confidential" is warranted to ensure the continued effectiveness of existing protective measures.

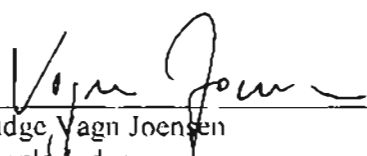
III. DISPOSITION

FOR THE FOREGOING REASONS, I

- I. **ORDER** the Registrar to formally reclassify the 1 December 1997 "Motion for the Appearance and Protection of Witnesses Called by the Defence" filed in the case of *The Prosecutor v. Jean-Paul Akayesu* as "confidential";
- II. **ENJOIN** any person or organisation, including media organisations, in possession of the Motion, whether in whole or in part, from disclosing it or any protected witness information contained therein to any other person or organisation and is warned that any such disclosure may result in proceedings for contempt by the Mechanism or, upon referral from the Mechanism, before a national court against the person or organisation who makes the disclosure; and
- III. **INSTRUCT** the Registrar to inform me of any difficulties in fulfilling the present Order.

Done in English and French, the English being authoritative.

Done this 13th day of August 2015,
At Arusha,
Tanzania



Judge Vagn Joensen
Single Judge

[Seal of the Mechanism]

