



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

211  
ju

ICR-00-56A-1  
01 August 2011  
(211 - 209)

**IN THE TRIAL CHAMBER**

**Before:** Judge Florence Rita Arrey, Judge

**Registrar:** Mr Adama DIENG

**Date of Filing:** 01 August 2011

UNICTR  
JUDICIAL RECORDS/ARCHIVES  
RECEIVED

2011 AUG - 1 P 4: 29  
[Signature]

**The Prosecutor  
versus  
Protais Mpiranya**

**Case No.: ICTR-2000-56A-I**

**Defence motion for the preservation of evidence pursuant to Rule 71 *bis* (I) of the Rules of Procedure and Evidence (RPE)**

**Office of the Prosecutor**

Hassan b. Jallow  
Richard Karegyesa  
Ms Ifeoma Ojemeni Okali  
Ms Cecilia Tillada

**Duty Counsel**

Mr Francis Msei

**A. Background**

1. On 15 February 2011, the prosecutor filed a motion for the preservation of evidence by special depositions pursuant to Rule 71 *bis* of the Rules of Procedure and Evidence, hereinafter the Rules.
2. By a decision dated 17 February 2011, the President of the Tribunal designated this Trial Chamber to adjudicate the Prosecution's motion. The President also instructed the Registrar to immediately appoint a Duty Counsel to represent the interest of the accused.

3. On 18 February 2011, the Trial Chamber decided to hear the parties in writing.
4. On 28 February 2011, the Duty Counsel so appointed filed a written response to the prosecution's motion indicating that he did not object to the prosecution's motion for an order to take special depositions for future trial.
5. On 3 March 2011, Trial Chamber III decided the prosecution's motion granting the taking of the evidence of the Prosecution witnesses via special deposition, and requesting the Registrar to issue a public notice thereof.<sup>1</sup>
6. On 28 June 2011, Judge Florence Rita Arrey, designated to conduct the special depositions proceedings as a Trial Chamber, issued an order scheduling disclosure of evidence and granting protective measures to prospective prosecution witnesses. Particularly, the Chamber requested "the Registrar to ensure that the interests of Protais Mpiranya continue to be adequately represented by a Duty Counsel."<sup>2</sup>
7. On 07 and 11 July 2011, in a strictly confidential memorandum<sup>3</sup>, the prosecution disclosed under Rule 66(B) various materials to the Defence including its anticipated witnesses' statements, transcripts records from previous cases, and upon Defence own request, the prosecution committed to make further disclosures under Rules 66(B) and Rule 68.
8. On 12 and 21 July 2011, the parties agreed to the Trial Chamber internal proposal that the special deposition should start on 10 October 2011; pursuant to which the Trial Chamber ordered that the special deposition will start on 10 October 2011.
9. By this motion the Defence seeks a decision that it be allowed to conduct its own investigations for the purposes of cross-examining the prosecution witnesses and the preservation of its own evidence for future trial.

#### A. Defence arguments

10. It is the Defence submission that the interest of justice will be served if it is allowed, to conduct its own investigations for the purposes of enabling it to cross-examine the prosecution witnesses or testing any other pieces of evidence the prosecution intends

---

<sup>1</sup> *The prosecutor v. Protais Mpiranya*, Decision on motion for the preservation of evidence by special depositions for a future trial: Rule 71 bis of the rules of Procedure and Evidence, Case No. ICTR. – 00 – 56A-71 bis, 3 March 2011

<sup>2</sup> *The Prosecutor v. Protais Mpiranay*, 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 of the Rules of Procedure and Evidence), Case No. ICTR-00-56A, 71 bis, 28 June 2011

<sup>3</sup> See *The Prosecutor v. Protais Mpiranya* (Case No. ICTR-2000-56A-I-Rule 71bis): Disclosure of Materials under Rule 66 (B)

to lead. The Defence further submits that, after the prosecution's evidence and evaluation thereof, it intends to lead its own evidence in view to preserving such evidence for future trial.

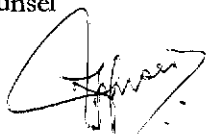
- 11. The Defence argues that this motion complies with Rule 71 *bis*(K), particularly where it refers to the provisions of Rule 73 *ter*, 75 to 77, Rule 81, Rules 90 – 91.
- 12. The Defence contends that the proceedings before this Tribunal are basically adversarial by their very nature, and that though Rule 71 *bis* is quite novel, it does not depart from this basic principle. This requires that both the prosecution and the defence be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. In *Prosecutor v. Kayishema and Ruzindana*<sup>4</sup>, the Appeals' Chamber, quoting the European Court of Human Rights, interpreted this principle as obligating the Trial Chamber to insure that the other party be aware that the observations have been filed and gets a real opportunity to comment thereon.
- 13. The Defence maintains that it will need to cross examine prosecution witnesses and test any other evidence the prosecution will seek to preserve. The Defence will further evaluate such evidence, and decide whether to lead its own evidence. Both arguments are aimed at serving the interest of justice and preserving the interest of the accused, thereby constituting a right of Defence.

For the reasons articulated above  
The Defence prays the Trial Chamber

- 1. To **grant** the motion as it is found in law and serves the interests of justice
- 2. To **authorize** the defence to conduct its own investigations for the purpose of enabling it to cross-examine the prosecution witnesses or testing any other pieces of evidence the prosecution intends to adduce.
- 3. To **authorize** the Defence to lead evidence if so warranted.

Mr. Francis K. Msei

Duty Counsel



<sup>4</sup> *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR – 95 – 1 – A, 1 June 2001, para. 80



# TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

**COURT MANAGEMENT SECTION**  
(Art. 27 of the Directive for the Registry)

**I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)**

<b>To:</b>	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Trial Chamber III A. N'Gum
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	Appeals Chamber / Arusha Chamber II F. A. Talon		<input type="checkbox"/> Appeals Chamber / The Hague K. K. A. Afande R. Muzigo-Morrison
<b>From:</b>	<input type="checkbox"/> Chamber (names)	<input checked="" type="checkbox"/> Defence Francis K. Msei (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
<b>Case Name:</b>	The Prosecutor vs Protais Mpiranya		<b>Case Number:</b> ICTR-2000-56A-71 bis	
<b>Dates:</b>	Transmitted: 01 August 2011		Document's date: 01 August 2011	
<b>No. of Pages:</b>	4	<b>Original Language:</b> <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda		
<b>Title of Document:</b>	Defence motion for the preservation of evidence pursuant to Rule 71 bis (I) of the Rules of Procedure and Evidence (RPE)			
<b>Classification Level:</b>		<b>TRIM Document Type:</b>		
<input type="checkbox"/> Ex Parte		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Confidential		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Judgement	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
			<input type="checkbox"/> Submission from non-parties	<input type="checkbox"/> Submission from parties
			<input type="checkbox"/> Accused particulars	

**II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)**

**CMS SHALL** take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.  
Target Language(s):

English  French  Kinyarwanda

**CMS SHALL NOT** take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

**CMS SHALL NOT** take any action regarding translation.

Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

English  French  Kinyarwanda

**KINDLY FILL IN THE BOXES BELOW**

<input type="checkbox"/> <b>The OTP</b> is overseeing translation. The document is submitted for translation to:  <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below:  Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> <b>DEFENCE</b> is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS):  Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**III - TRANSLATION PRIORITISATION (For Official use ONLY)**

<input type="checkbox"/> Top priority	<b>COMMENTS</b>	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: