



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER I**

Before:

Judge Erik Møse, presiding

Judge Navanethem Pillay

Judge Andrézia Vaz

Decision of: 17 January 2002

**THE PROSECUTOR**

v.

**ELIZAPHAN NTAKIRUTIMANA**

**GERARD NTAKIRUTIMANA**

*Case No. ICTR-96-10-T  
and ICTR-96-17-T*

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**DECISION ON THE DEFENCE APPLICATION FOR AN EXTENSION OF  
TIME FOR SUBMISSION OF WITNESS STATEMENTS  
Rule 67(A) of the Rules of Procedure and Evidence**

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**For the Prosecutor:**

Mr. Charles Adeogun-Phillips

Mr. Wallace Kapaya

Ms. Boi-Tia Stevens

**For the Defence:**

Mr. Ramsey Clark

Mr. David Jacobs

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** ("the  
Tribunal");

**SITTING** as Trial Chamber I, composed of Judges Erik Møse, presiding, Navanethem Pillay, and Andrézia Vaz ("the Chamber");

**BEING SEIZED OF** a Defence application, filed on 7 January 2002, for an extension of time in which to submit Defence witness statements ("the application");

**CONSIDERING** the Prosecution's response dated 10 January 2002 ("the response");

**HEREBY DECIDES** the application.

## **SUBMISSIONS OF THE PARTIES**

### **Defence**

1. The Defence refers to the Presiding Judge's memorandum of 6 November 2001 confirming an agreement reached at an informal status conference, namely that the Defence's witness statements relating to alibi would be submitted by 1 December 2001, while remaining statements would be submitted by 4 January 2002. The Defence was to commence presentation of its case on 14 January 2002 and complete it by 15 February 2002. On 27 November 2001, Mr Medvene, Counsel for Gérard Ntakirutimana, notified the Chamber that for medical reasons he would not be available in January; on 12 December 2001, he requested permission to withdraw from the case. New Counsel was assigned by decision of the Registrar on 19 December 2001, following the Chamber's granting of the withdrawal request.
2. The application refers to the difficulties faced by the Defence during this period, as a consequence of the unexpected illness of Counsel for Gérard Ntakirutimana. In the absence of Mr Medvene, Counsel for Elizaphan Ntakirutimana undertook the burden of preparing witness statements for witnesses who would testify on behalf of both Accused, but without knowledge sufficient to assure the adequacy of the statements from the perspective of Gérard Ntakirutimana. Nevertheless, the Defence was able to file six alibi witness statements on 7 December 2001 and an additional nineteen alibi witness statements on 18 December 2001. By that date a decision had been taken by the Chamber to postpone commencement of the Defence case by three weeks, to 4 February 2002, to run over an initial period of two weeks, with the balance of the case to be heard in April 2002, after a recess of more than six weeks.
3. According to the application, because of the aforementioned difficulties, one important alibi witness for Gérard Ntakirutimana (a nurse at the Mugonero Hospital) was overlooked in the final submission of alibi witness statements. The application concludes by making the following requests:
  - a) An extension of time to 25 January 2002 to present nine to twelve non-alibi witness statements. This would enable new Counsel for Gérard Ntakirutimana to review and approve all Defence witness statements.

b) An extension of time to 25 January 2002 to present the witness statement of the overlooked alibi witness, on the understanding that that witness would not be called before the second period of the Defence case, in April 2002.

### **Prosecution**

4. The Prosecution's response refers to the Chamber's ruling of 17 September 2001 "that the Defence ... will have to give further details concerning the notice of alibi as soon as possible and not later than the commencement of December this year".<sup>[1]</sup> It then refers to a letter from Mr Clark, dated 30 November 2001, explaining that due to the bad health of Mr Medvene the Defence would not be able to meet the 1 December 2001 deadline. No formal application for an extension of time was made.

5. The Prosecution complains in relation to the first installment of alibi witness statements, filed on 7 December 2001, that the identity of only three of the six witnesses was revealed and that no details were given as to the addresses or personal particulars of four of the six witnesses. The Prosecution makes essentially the same complaint about the nineteen alibi witness statements filed on 18 December 2001: with two exceptions only pseudonyms were shown, and no addresses whatsoever were included.

6. The Prosecution also refers to the Defence Alibi Witness List, filed on 19 December 2001, showing the names and country/city locations of the aforementioned twenty-five Defence alibi witnesses. The Prosecution complains that "the list did not include any details as to the physical addresses of such witnesses nor did it include any details as to their gender, ages, date of birth or other personal identifying information that may be used by the Prosecution in carrying out its investigations".

7. The Prosecution's remaining submissions may be summarised as follows:

a) Rule 67(A)(ii) of the Tribunal's Rules of Procedure and Evidence stipulates that a Defence notice of alibi must be provided to the Prosecution before commencement of trial. The Defence's failure to provide the Prosecution with a notice of alibi prior to trial violated Rule 67(A)(ii).

b) The above violation was prejudicial to the Prosecution's case as it prevented the Prosecution from calling witnesses to rebut the defence of alibi because particulars of the alibi were not known to the Prosecution during the presentation of its case.

c) In consequence, the Defence should be prevented from calling any witnesses in support of alibi save for the Accused themselves. The Defence's application to add another alibi witness to its list should therefore be denied.

d) In the alternative, the Defence should provide the Prosecution with further and better particulars of the alibi witnesses, namely their full names, religion, present physical addresses, addresses in 1994, present occupation, date and place of birth, present nationality, nationality at birth, cellule, secteur, commune and prefecture of origin,

occupation in 1994, name of parents, marital status, and, where applicable, name and date of birth of spouse.

e) The proceedings should be adjourned for at least one month from the date of receipt of further and better particulars of Defence alibi witnesses. This is necessary in the interests of justice so as to give the Prosecution time to carry out investigations into the alibi claim and possibly to obtain statements from rebuttal witnesses.

## **DELIBERATIONS OF THE CHAMBER**

8. Before deciding the two requests that form part of the Defence's application, the Chamber will address the Prosecution's submissions summarised in paragraph 7, above.

9. The pertinent provisions of Rule 67 state:

Subject to the provisions of Rules 53 and 69:

(A) As early as reasonably practicable and in any event prior to the commencement of the trial: ...

(ii) The defence shall notify the Prosecutor of its intent to enter:

(a) The defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi; ...

(B) Failure of the defence to provide such notice under this Rule shall not limit the right of the accused to rely on the above defences.

10. By its first submission (see para. 7(a), above) the Prosecution appears to wish to reopen a matter decided by the Chamber in its ruling of 17 September 2001. That ruling did not state that the Defence was in violation of Rule 67(A)(ii), but referred to special circumstances that mitigated the application of the Rule.<sup>[2]</sup> It suffices to note that the Defence did indeed file a notice of alibi in good time, on 11 September 2001. The notice stated the places at which the Accused claimed to have been in the April-July 1994 period, and named five alibi witnesses. The notice added that "[a] number of such other witnesses have been located and talked to outside Rwanda ... but whether they will testify has not been determined. ... Other witnesses are being sought."

11. The Prosecution's second submission is also unpersuasive, as important aspects of the prospective alibi defence had been submitted. For example, the notice of alibi stated that from 27 April 1994 to 17 July 1994 both Accused were in Mugonero "nearly all the time", except for trips to certain named places, and neither Accused was ever in Bisesero. The Prosecution led numerous witnesses alleging that the Accused were frequently during the relevant period in Bisesero, thus countering the Accused's claim. The

Prosecution has not demonstrated that its case has been set back by the limitations of the alibi notice or by the Chamber's ruling.

12. Therefore, the Chamber is not inclined to grant the Prosecution's third submission (para. 7(c), above). Six days after the agreed deadline of 1 December 2001 the Defence filed the first set of alibi witness statements; eleven days later it filed another nineteen such statements; and finally, on 19 December 2001, it supplied the names and contact details of the intended alibi witnesses. The reason for the delay was that the Defence team was facing considerable hardship as a result of the ill-health and subsequent withdrawal of Mr Medvene. Efforts were undertaken swiftly to secure a replacement. This is well documented in letters from Mr Clark to the Presiding Judge dated 30 November 2001, 14 December 2001 (two letters), and 17 December 2001; and also in the present application.

13. As to the Prosecution's fourth submission, in the Chamber's opinion the Defence has, as of 19 December 2001, supplied the Prosecution with all information required by the relevant provision of Rule 67(A). The Alibi Witness List gave a contact person with telephone number alongside the name of each alibi witness, and stated that "[m]ore definitive addresses are available for five of the witnesses, but the remainder are in refugee camps, or temporary housing and can be reached most readily through the contact named which is the way the defense contacts the witness". While the Defence demanded that the Prosecution not interview any of its witnesses without prior authorisation by the Chamber, it was clearly open to the Prosecution to discover the current address of a Defence witness by telephoning the number listed alongside the witness's name. Moreover, information about the sex, nationality, occupation in 1994, in most cases age, and in some cases religion, of each witness was provided to the Prosecution as part of the 25 alibi witness statements.

14. It follows that the Prosecution's fifth submission, that proceedings should be adjourned for at least one month from the date of receipt of further and better particulars, must be denied. The Prosecution now has more time to conduct investigations in relation to the alibi and other witnesses than it had in terms of the timetable of the 6 November 2001 memorandum.

15. The Chamber will now consider the Defence's two requests. The first relates to non-alibi witness statements. According to the agreement reached on 6 November 2001, these statements would be disclosed to the Prosecution 10 days prior to the date of commencement of the Defence case, originally scheduled for 14 January 2002. The proposed extension of the disclosure deadline to 25 January 2002 is exactly 10 days prior to the new commencement date, so no disadvantage results to the Prosecution. The extension is also reasonable in view of the need for Mr Jacobs, new Counsel for Gérard Ntakirutimana, to prepare.

16. The second request concerns the addition of an alibi witness to the current list of twenty-five such witnesses. The Chamber accepts Mr Clark's explanation that in the difficult circumstances brought about by Mr Medvene's illness and withdrawal, the Defence overlooked this witness. The witness may be added to the list and the statement

submitted by 25 January 2002. She will not be heard until April 2002. However, the Defence is requested to reveal the witness's name and address to the Prosecution immediately.

**FOR THESE REASONS THE CHAMBER:**

**GRANTS** the Defence application.

**REQUESTS** the Defence to disclose the remaining alibi witness's name and address to the Prosecution immediately.

Arusha, 17 January 2002

Erik Møse  
Presiding Judge

Navanethem Pillay  
Judge

Andrésia Vaz  
Judge

(Seal of the Tribunal)

[\[1\]](#) Transcripts of 17 September 2001 pp. 38-39.

[\[2\]](#) See *ibid.* pp. 36-39.