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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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Demp

TRIAL CHAMBER III

ENGLISH
Original: FRENCH

Before: Judge Andréia Vaz, presiding
Judge Flavia Lattanzi
Judge Rita Arrey

Registrar: Adama Dieng

Date filed: 6 July 2004

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THE PROSECUTOR

v.

FRANCOIS KARERA

Case No. ICTR-2001-74-I

**DECISION ON DEFENCE MOTION TO SET ASIDE A DECISION BY THE
REGISTRAR AND TO ENSURE RESPECT FOR THE BASIC RIGHTS OF
THE ACCUSED, INCLUDING THE RIGHT TO MAKE FULL ANSWER AND
DEFENCE**

*(Articles 19 and 20 of the Statute and Rules 19(A), 33(A) and 73(A)
of the Rules of Procedure and Evidence)*

Office of the Prosecutor:
Charles Adeogun-Philips
Boa Tia Stevens

Counsel for the Defence:
Carmelle Marchessault
Steven Kelliher
Alexandre Bergevin

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (hereinafter referred to as the "Tribunal")

SITTING as Trial Chamber III (hereinafter referred to as the "Chamber"), composed of Judge Andrésia Vaz, presiding, Judge Flavia Lattanzi and Judge Florence Rita Arrey;

BEING SEIZED of the "Motion to set aside a decision by the Registrar and to ensure respect for the basic rights of the Accused, including the right to make full answer and defence (Articles 19 and 20 of the Statute and Rule 73 of the Rules of Procedure and Evidence);

CONSIDERING the Registrar's response of 24 March 2004, the Defence reply filed on 13 May 2004, and the Registrar's rejoinder of 7 June 2004;

CONSIDERING the Statute of the Tribunal (hereinafter referred to as the "Statute") and the Rules of Procedure and Evidence (hereinafter referred to as the "Rules"), in particular Articles 19 and 20 of the Statute, and Rules 19(A) and 33(A) of the Rules, as well as the Directive on the Assignment of Defence Counsel (hereinafter referred to as the "Directive")

RULES as follows, based on written briefs of the parties, in accordance with Rule 73(A) of the Rules.

Introduction

1. By an administrative Decision of the Registry, dated 24 September 2004 (Annex 1 in support of the Motion), the Defence was informed that investigations into the François Karera case would be suspended temporarily. On 27 October 2003, Lead Counsel for the Accused requested the Registrar to reconsider his decision (Annex 2 in support of the Motion). Since it received no reply from the Registrar, the Defence on 14 March 2004 seized the Trial Chamber in accordance with Articles 19 and 20 of the Statute and Rule 73 of the Rules, praying it to issue appropriate orders to end the suspension of investigations into the François Karera case.

Submissions of the Parties

The Defence (*Motion*)

2. According to the Defence, the Registrar's decision to suspend investigations is inappropriate and unfair, and vitiates the trial as a whole in the future as it hampers its preparation to respond to Prosecution charges.

3. The Defence alleges that the serious charges brought against the Accused require considerable time to seek out witnesses. Consequently, its investigations cannot be suspended until commencement of the trial has been scheduled.

4. The Defence submits that suspension of investigations, even for a while, is prejudicial to the investigative work that has already been done and prevents the Defence from maintaining contacts with people likely to testify for the Defence. It is

of the opinion that such suspension infringes the right of the Accused to make full answer and defence, in violation of Article 20 of the Statute.

5. Lastly, the Defence alleges that such suspension violates the principle of equality of arms between the parties by depriving the Accused of the financial resources necessary for the preparation of his case.

6. Based on this, the Defence prays the Trial Chamber to grant its motion, set aside the above-mentioned decision of the Registrar by ordering him to permanently end the suspension of Defence investigations and assess the work plans submitted by the team on their merits in the case, recognize and/or find that the right to a Defence team is part and parcel of the fundamental rights of the Accused and issue any other order it deems appropriate.

The Registrar (Response)

7. The Registrar recalls that on 24 March 2003, the Defence was informed that it had already met with 158 potential witnesses which exceeded estimates for the Legal Aid Programme, during the pre-trial stage (Annex 1 in support of the Response). In this correspondence, the Registrar requested Lead Counsel to submit a work plan based on discussions already held with the Accused and the charges brought against him. On 14 March 2003, following clarifications given by the Lead Counsel, the entire Defence team was authorized to come to Arusha to have working sessions with the Accused, in addition to conducting a fact-finding mission in Rwanda from 17 August 2003, with Lead Counsel, co-Counsel and the Legal Assistant. Subsequently, on 10 September 2003, Lead Counsel submitted a request for one of her investigators to meet with 32 potential Defence witnesses in five different countries. The request prompted the Registry's letter, dated 24 September 2003, addressed to the Defence and has led to this motion. The Registrar notes that as of the date of the said letter, he had already approved numerous work plans submitted by the Defence, allowing its members to meet with 222 witnesses located in several countries.¹

8. Regarding Defence submissions on its preparations, the Registrar submits that the charges preferred against the Accused in the present case are precise and that any defence must seek to challenge them. As a result, the intensity of preparations of such defence cannot depend only on disclosures of documents made by the Prosecution, documents that the Prosecution produces to support its charges against François Karera. The Registrar agrees that the Defence should be given enough time to prepare its case, and recalls that, in this instant case, the Accused has been given the necessary resources, based on the already approved work plans, as well as adequate time to prepare its case, since commencement of the case is not yet scheduled.

9. Concerning Defence allegation that Article 20 has been violated, the Registrar submits that the impugned letter did not terminate the mandate and contracts of members of the Defence team, who are allowed to charge the Tribunal for any reasonable and necessary work undertaken for the preparation of the case. ~~The Accused is thus fully represented.~~ Furthermore, recalling that the impugned decision

¹ The Registrar informs the Trial Chamber that only 23 statements have been disclosed to date. The Registrar indicates that the average number of Defence witnesses in similar cases is about 20 whereas the Defence calls an average of 25 witnesses.

is a temporary one, the Registrar affirms that if the Defence submits sound reasons justifying the necessity for new investigations at this stage of the case, he will be keen to consider them favourably.

10. Consequently, the Registrar submits that the rights of the Accused have not been violated, and prays the Trial Chamber to dismiss the Defence motion as frivolous.

The Defence (*Reply*)

11. The Defence submits that its preparation cannot be contingent upon progress in the case and the Registrar's perception of it or the Prosecutor's diligence in conducting prosecution, or still upon the Tribunal's judicial calendar.

12. The Defence alleges that the Registrar has exceeded, in his claims, his powers and thus violates the rights of the Accused by suspending preparations for his defence.

13. The Defence rejects that the measure is a temporary one since it is still in force to date and, indeed, denies the Accused adequate time and the necessary facilities to prepare his defence. Thus, it is not possible to have a fair trial since the Defence cannot work to challenge the counts in the Indictment.

14. The Defence also alleges that since the arrest and the acts date back to 20 October 2001 and 1994 respectively, the search for Defence witnesses to take statements from them in view of their possible appearance is still more difficult due to their various geographical locations. The decision to suspend investigations makes any investigation an exception to the rule whereas it should be the rule given the international character of the case.

The Registrar (*Rejoinder*)

15. The Registrar informs the Trial Chamber that the preparatory work of the Defence has two parts. The first part consists of an analysis of the case documents and location of Defence witnesses, while the second concerns meetings with such witnesses after the Registrar's approval of a plan established to that effect by the Defence. The Registrar specifies that the first part which is the core of the preparatory work has never been stopped. Thus, Defence investigators are, indeed, continuing their investigations in their places of residence.

16. The Registrar recalls that in all, the work plans already approved within the space of 10 months of preparation cover 17 countries, whereas the work plans rejected by the impugned decision focused on five other countries and 32 new potential witnesses. The Registrar has reimbursed, to these various headings, the bills of costs submitted in this regard by the Defence in January, February and March 2004.

17. The Registrar recalls that he has little control over investigation mission reports submitted by the Defence, which are covered by the confidentiality of relations between the Accused and the Defence team. The Registrar acknowledges that his control is limited to the number of potential witnesses known by pseudonyms met by the Defence, that is, 222 in number, whereas the Prosecutor has allegedly disclosed the statements of only 24 Defence witnesses likely to be called to testify.

The Registrar is of the opinion that assessment of the reasonable character of the number of potential Defence witnesses met by the Defence must take into account the probable number of Prosecution witnesses, and that it is the duty of Lead Counsel to exert strict control over the work done by her investigators.

Deliberations

18. The Trial Chamber notes that in accordance with Article 16(1) of the Statute and Rule 33(A) of the Rules, the Registrar is responsible for the administration and servicing of the Tribunal. Such responsibilities include, pursuant to the Directive on the Assignment of Defence Counsel, the management of the Tribunal’s Legal Aid. The Trial Chamber notes that the work of the Defence team for an indigent Accused falls within this Legal Aid, and that the Registrar also assumes the responsibility of whether or not to approve the work of investigators of such a team.

19. The Trial Chamber recalls that, if the Registrar exercises extensive discretionary powers in managing the Legal Aid of the Tribunal, he is nevertheless obliged to ensure that an indigent Accused is assigned competent legal representation, without any abuse of the Legal Aid Programme,² and that his decisions should be fair procedurally and substantially.

20. In the present case, the Defence requests the Trial Chamber, in particular, to set aside the Registrar’s decision, since suspension of investigations would affect the fair character of the trial. The Trial Chamber notes that, indeed, it has an overall mandate to ensure the fair character of the trial. However, in accordance with Rule 19(A) of the Rules, the President of the Tribunal shall “supervise the activities of the Registry”. Similarly, according to Rule 33(A) of the Rules, the Registrar shall be “responsible for the administration and servicing of the Tribunal” “[u]nder the authority of the President”. The Trial Chamber notes that, based on these two provisions, it is well established in the jurisprudence of the Tribunal that control over the Registrar’s administrative decisions does not fall within the jurisdiction of the Trial Chamber³ but that of the President. It therefore behoves the President to rule on whether the Registrar’s administrative decisions are fair both procedurally and substantially.⁴

21. The Trial Chamber concludes that control over the Registrar’s decision to temporarily suspend investigations by the Defence team does not fall within its jurisdiction. Consequently, it finds the motion inadmissible.

² See Decision of the President of the Tribunal in *The Prosecutor v. Augustin Bizimungu*, Case No. ICTR-00-56T, “Decision on an application for review of the Registrar’s decision denying the requested assignment of Emmanuel Rwirangira as a defence investigator”, 10 June 2004

³ See *The Prosecutor v. Ndindiliyimana*, Case No. ICTR-00-56-I, “Decision on Augustin Ndindiliyimana’s motion for an order that the Registrar hold a hearing on the suspension of the contract of his investigator Pierre-Claver Karangwa” (TC), 12 November 2002, para. 16.

⁴ See Decision of the President in *Bizimungu*, “Decision on an application for review of the Registrar’s decision denying the requested assignment of Emmanuel Rwirangira as a defence investigator”; *The Prosecutor v. Joseph Nzirorera*, Case No. ICTR-98-44-T, The President’s decision on a motion filed by the Defence appealing the Registrar’s decision of 16 August 2002, 22 January 2003, para. 5; *The Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, The President’s decision on the application by Arsène Shalom Ntahobali for review of the Registrar’s decisions pertaining to the assignment of an investigator, 13 November 2002, para. 4.

FOR THE FOREGOING REASONS,

THE TRIAL CHAMBER

FINDS the motion inadmissible.

Arusha, 5 July 2004

[Signed]

Andrésia Vaz
Presiding Judge

Flavia Lattanzi
Judge

Florence Rita Arrey
Judge

[Seal of the tribunal]
