



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Karin Hökberg
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 14 June 2005

THE PROSECUTOR

v.

André RWAMAKUBA

Case No. ICTR-98-44C-PT

**DECISION ON PROSECUTION MOTION FOR NOTICE OF ALIBI AND
RECIPROCAL INSPECTION**

*Rules 67(A)(ii)(a) and 67(C) of the Rules of Procedure and Evidence, Article 19 of the
Statute*

Office of the Prosecutor:

Don Webster

Dior Fall

Adama Niane

Tamara Cummings-John

Defence Counsel

David Hooper

Andreas O'Shea

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“Tribunal”),

SITTING as Trial Chamber III, composed of Judges Dennis C. M. Byron, Presiding, Karin Hökberg and Gustave Gberdao Kam (“Chamber”);

BEING SEIZED of the “Prosecutor’s Request to be served with Particulars of Notice of Alibi pursuant to Rule 67(A)(ii)(a) and for Reciprocal Disclosure pursuant to Rule 67(C)” (“Motion”), filed on 3 June 2005;

CONSIDERING the Defence Response thereto filed on 6 June 2005;

CONSIDERING the Defence “Confidential Notice of Alibi” and the Corrigendum thereto filed respectively on 8 and 14 June 2005 (“Notice of Alibi”);

HEREBY DECIDES the Motion pursuant to Rule 73 of the Rules of Procedure and Evidence (“Rules”).

INTRODUCTION

1. The trial in the current case commenced on 9 June 2005. On 3 June 2005, the Prosecution filed a Motion seeking a Chamber order that the Defence notifies the Prosecutor of its intention to enter a defence of alibi and allows inspection of any documents and photographs that the Accused intends to use as evidence at trial.

2. The Prosecution requests the Defence to file, if applicable, a notice of alibi pursuant to Rule 67(A)(ii) of the Rules, in relation to the presence of the Accused in Gikomero between 10 and 12 April 1994, at Kayanga Health Centre between 10 and 13 April 1994, and at Butare University Hospital between 20 and 28 April 1994.

3. The Prosecution contends that its right of inspection has been triggered in accordance with Rule 67(C) of the Rules since the Defence has previously requested inspection and disclosure of material by the Prosecution under Rule 66(B) of the Rules. Finally, the Prosecution requests the Chamber to establish reasonable guidelines for compliance with Rule 67 of the Rules.

4. While the Defence contends, in its Response, that the Prosecution requests are both premature and unfounded, at the Pre-Trial Conference held on 6 June 2005, it undertook to provide particulars of the Notice of Alibi and to permit inspection of the Defence materials by the Prosecution.

5. On 8 June 2005, the Defence filed a confidential alibi notice. The dates and the locations referred to in the said Notice were clarified at the hearing held on 14 June 2005 and accordingly corrected in the Corrigendum to the confidential alibi notice filed by the Defence the same day. The Defence envisages presenting evidence that between 6 April 1994 and 30 April 1994, the Accused was in fact at various times in Gisenyi, Giterama

and Kigali, whereas the Prosecution alleges that he was at the Butare University Hospital or in Gikomero commune. Notice is also given that the Accused was in Anvers (Belgium) for a period of 6 months between 23 September 1993 and 10 March 1994 and in Aswa (Egypt) for a period between 17 March 1994 and 29 March 1994. To support these assertions, Professor Mercenier and Dr Monet and Professor Van Balen will be called as witnesses. At the hearing held on 14 June 2005, the Defence furthermore indicated that it was in possession of statements for two of these witnesses and will allow the Prosecution to look at them.

DELIBERATIONS

On the Defence Notice of Alibi

6. While the Defence provides Notice of Alibi for the period between 6 April 1994 and 30 April 1994, neither names of witnesses nor evidence upon which the Defence intends to rely to establish it are provided. The Defence submits that the Accused will probably not come to give evidence and that investigations are still conducted. It claims therefore that it has not yet decided on calling any particular witness on alibi and will be in a better position to make such a decision when alleged ambiguities in the Prosecution case concerning the witness' disclosure over dates will have been cleared up through oral testimony. With respect to the alibi for 23 September 1993 to 10 March 1994 and for 17 to 29 March 1994, the addresses of the three potential alibi witnesses are not specified since the Defence would not have been able to contact them.

7. Pursuant to Rule 67(A)(ii)(a) of the Rules, as early as reasonably practicable and in any event prior to the commencement of the trial, the Defence shall notify the Prosecution of its intent to enter a defence of alibi. Such a notification has to specify both the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi. While failure of the Defence to provide such notice does not limit the right of the Accused to rely on a defence of alibi, the Chamber has to ensure that the trial is fair and expeditious.^[1] Disclosure of complete notice of alibi at the earliest stage of the proceedings ensures the fairness of the trial and proper administration of justice.^[2] When relying on a defence of alibi, the Defence is obliged to specify the names and addresses of witnesses on which the Accused intends to rely^[3].

8. Accordingly, the Chamber is of the view that the information provided in the Notice of Alibi is not sufficient to comply with the requirements set out by Rule 67 of the Rules. The Indictment and the witness statements disclosed under Rule 66 of the Rules provides sufficient notice as to the dates and times for which the Prosecution witnesses will testify and for which the alibi is invoked. The Defence should therefore specify names and addresses of witnesses and any other evidence upon which the Accused intends to rely to establish the alibi. The Chambers notes in addition that the Defence is still in the process of conducting investigations. In view of that particular circumstance and that the trial has already started, the Defence should continuously disclose such information that it discovers at a later stage and on which it intends to rely to establish the alibi.

On the Request for Reciprocal Inspection

9. Rule 67 (C) prescribes, if the Defence made a request pursuant to Rule 66(B) of the Rules, reciprocal inspection by the Prosecution of any books, documents, photographs and tangible objects, which are within the custody or control of the Defence and which it intends to use as evidence at the trial.

10. The Defence does not contest that it inspected documents in the Prosecution's custody or control in accordance with Rule 66 (B) or made such a request. In addition, during the hearings held on 6 and 14 June 2005, the Defence stated its intention to fully comply with all obligations imposed by the Rules.

11. The Chamber is therefore satisfied that requirements set out by Rule 67(C) of the Rules are met. The Prosecution should be allowed to inspect any books, documents, photographs and tangible objects, which are within custody or control of the Defence and which it intends to use as evidence at the trial.

12. In view of the undertaking of the Defence, the Chamber does not consider that it is necessary to establish reasonable guidelines for compliance with Rule 67 of the Rules.

FOR THE ABOVE REASONS, THE CHAMBER

I. ORDERS the Defence to disclose to the Prosecution as soon as possible the names and addresses of witnesses and any other evidence upon which the Accused intends to rely to establish defence of alibi, in accordance with Rule 67 (A)(ii)(a);

II. DIRECTS the Defence to permit the Prosecution to inspect any books, documents, photographs and tangible objects in the custody or control of the Defence and which it intends to use as evidence at the trial;

III. DENIES the remainder of the Motion.

Arusha, 14 June 2005, done in English.

Dennis C. M. Byron
Presiding Judge

Karin Hökberg
Judge

Gberdao Gustave Kam
Judge

[Seal of the Tribunal]

[\[1\]](#) See Article 19 of the Statute of the Tribunal.

[\[2\]](#) See *Prosecutor v. Rutaganda*, Case No. ICTR-93-A, Judgment (AC), 12 May 2003, par. 241.

[3] See *Prosecutor v. Ndayambaje et al.*, Case No. ICTR-96-8-T, *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, *Prosecutor v. Nsabimana and Alphonse Nteziryayo*, Case No. ICTR-97-29-T, Joint Case No. ICTR-98-42-T, Decision on the Confidential Prosecutor's Motion to Be Served with Particulars of Alibi Pursuant to Rule 67(A) (ii) (A) (TC), 1 March 2005, par. 27.