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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal International pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judge: Dennis C. M. Byron, Presiding

Registrar: Adama Dieng

Date: 4 October 2005

THE PROSECUTOR

v.

André RWAMAKUBA

Case No. ICTR-98-44C-T

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**DECISION ON PROSECUTION MOTION FOR DISCLOSURE OF WITNESS
LIST AND WITNESS STATEMENTS**

Rules 54 and 73ter of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
Dior Fall
Adama Niane
Tamara Cummings-John

Defence Counsel
David Hooper
Andreas O'Shea

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

SITTING as Trial Chamber III, composed of Judge Dennis C. M. Byron, Presiding (“Chamber”) pursuant to Rule 54 of the Rules of Procedure and Evidence (“Rules”);

BEING SEIZED of the “Prosecution Motion for Disclosure of Witness Lists and Witness Statements” (“Motion”), filed on 22 September 2005;

CONSIDERING the Defence Reply thereto dated of 27 September 2005 but filed on 28 September 2005;

NOW DECIDES the Motion on the basis of the written briefs of the parties pursuant to Rule 73(A) of the Rules of Procedure and Evidence (“Rules”).

1. The trial in the current case commenced on 9 June 2005 with the presentation of the Prosecution Case. On 13 September 2005, the Chamber denied the Prosecution’s request for adjournment and granted extension of time for the Defence to file a motion for judgement of acquittal pursuant to Rule 98*bis* of the Rules.¹

2. In the instant Motion, the Prosecution notes that no date is fixed for the resumption of the Defence Case and that the Chamber was not “emphatic in its recollection of 31 October 2005 as the definitive date for the commencement of the Defence case”. Relying on Rule 69(C) of the Rules, the Prosecution requests the Chamber to order the Defence to disclose the identifying information of all protected Defence witnesses and their statements no later than 1 October 2005.

3. The Defence submits that the Motion is moot because the Chamber has already ruled on the matter on 21 September 2005. It furthermore contends that the Motion also constitutes an abuse of process since the Prosecution did not oppose the Defence motion for protective measures. In the Defence’s view, however, if the judicial calendar stated 30 October 2005 for the beginning of the Defence Case, this must be reviewed due to the length of the Prosecution case. Accordingly, it invites the Chamber to set a trial date in consultation with the parties.

4. The Decision of 21 September 2005 has already ruled that the Defence has to disclose the identifying information of the Defence protected Witnesses, including alibi witnesses, thirty (30) days before the commencement of trial.²

5. With respect to the date of the commencement of the Defence Case, the Chamber expressed, from the very beginning, its preference for the 31 October 2005. While the Chamber is in process of scheduling a teleconference to discuss and confirm this matter with the parties, the date of 31 October 2005 remains the current effective date for the resumption of the trial. The Prosecution request regarding the disclosure of identifying information of Defence witnesses is therefore moot. It however does not constitute an abuse of process.

6. The Prosecution also submits that, in accordance with the principles of fairness and equality of arms between the parties, the Chamber should impose on the Defence the same disclosure obligations as prescribed for the Prosecution under Rule 66 of the Rules. The Defence does not oppose this Prosecution application.

¹ T., 13 September 2005, p. 13-14 and 17-18. See also *Prosecutor v. Rwamakuba*, Case No. ICTR-98-44C-T (“*Rwamakuba*”), Decision on Prosecution Motion for Reconsideration or, in the Alternative, Certification to Appeal Chamber’s Decision Denying Request for Adjournment (TC), 29 September 2005.

² *Rwamakuba*, Decision on Defence Motion for Protective Measures (TC), 21 September 2005:


XII. The identifying information withheld by the Defence in accordance with this order shall be disclosed by the Defence to the Prosecution no later than thirty (30) days before the commencement of the trial session during which the concerned witnesses are scheduled to testify.

7. Pursuant to Rules 73ter and 54 of the Rules, the Chamber considers that the Defence has to provide the Chamber and the Prosecution with the written statements of each witness whom the Defence intends to call to testify. It is however clear that a document which is not in the possession to the Defence cannot be subject to disclosure. This order is also subject to Rule 70(A) of the Rules, which prescribes that internal documents prepared by a party in connection with the investigation or preparation of the case are not subject to disclosure.

FOR THE ABOVE REASONS, THE CHAMBER

- I. **GRANTS** in part the Motion, and **ORDERS** the Defence to provide the Chamber and the Prosecution with copies of the written statements of each witness whom the Defence intends to call to testify, no later than twenty-one (21) days before the commencement of the trial.
- II. **REMINDS** the Defence obligation to disclose the identifying information of the protected witnesses to the Prosecution no later than thirty (30) days before the commencement of the trial session during which the concerned witnesses are scheduled to testify.
- III. **DENIES** the remainder of the Motion.

Arusha, 4 October 2005, done in English.


 Dennis C. M. Byron
 Presiding
