



ICTR-01-74-T
07-03-2006
(7278 - 7276)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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TRIAL CHAMBER I

Before: Judge Erik Møse
Judge Sergei Alekseevich Egorov
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 7 March 2006

THE PROSECUTOR

v.

François KARERA

Case No. : ICTR-01-74-T

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DECISION ON MOTION FOR FURTHER ALIBI PARTICULARS

The Prosecution

Charles Adeogun-Phillips
Memory Maposa
Peter Tafah
Florida Kabasinga

The Defence

Carmelle Marchessault
Peter Kelliher
Alexandre Bergevin
Rita Francis

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED OF the Prosecution "Motion for Further and Better Alibi Particulars", filed on 23 January 2006; and the Corrigendum thereto, filed on 24 January 2006;

CONSIDERING the Defence Response, filed on 30 January 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence has notified the Prosecution of its intent to enter an alibi defence, describing the whereabouts of the Accused that contradict allegations in the Indictment, and disclosing the names of the witnesses who will provide the alibi testimony. The Prosecution complains that the notice of alibi is deficient in that the present physical addresses of the alibi witnesses have not been specifically identified.

DELIBERATIONS

2. Rule 67 (A)(ii)(a) requires the Defence to 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". The Appeals Chamber has ruled that Rule 67 (A) (ii) (a) does not require the Defence to produce all the evidence supporting the alibi, but that sufficient details must be given to "[allow] the Prosecution to organize its evidence and to prepare its case prior to the commencement of the trial on the merits".¹

3. Rule 67 (A)(ii)(a) does not expressly require the Defence to provide the present physical address of each witness. The reference to "addresses" might, for example, refer to the witness's physical address at the time of the events; alternatively, it might require disclosure of a general address, such as the city or country of current residence. The Defence is not required to provide the present physical address of non-alibi witnesses under Rule 73 *ter* (B)(iii)(a). Adopting the position of a Prosecution team in another case, this Chamber has held that "the witness's activities in 1994, parentage and birthplace, and country of present residence" provide sufficient identifying information to allow the Prosecution to conduct its investigations.² It would seem anomalous to require the Defence to provide more detailed

¹ *Rutaganda*, Judgement (AC), 26 May 2003, para. 241. See also *Kayishema and Ruzindana*, Judgement (AC), 1 June 2001, para. 111 ("the purpose of entering a defence of alibi ... is only to enable the Prosecution to consolidate evidence of the accused's criminal responsibility with respect to the crimes charged"). Contrary to the Prosecution's suggestion, the Defence is not obligated at this stage to disclose a full, complete and accurate account of the alibi defence. The Prosecution has referred to *Semanza*, Decision on the Prosecutor's Motion for Leave to Call Rebuttal Evidence and the Prosecutor's supplementary Motion for Leave to Call Rebuttal Evidence (TC), 27 March 2002, para. 12. However, this passage concerned the significance of advance notification of an alibi defence, rather than the content of such notification.

² *Bagosora et al.*, Decision on Sufficiency of Defence Witness Summaries (TC), 5 July 2005, para. 8; *Bagosora et al.*, T. 21 April 2005 p. 2 ([Prosecution Counsel]: "So the key information that potentially disrupts the cross-examinations, leads to the identification, is with respect to parentage, location, and the location specifically with respect to birth and location in Rwanda in 1994. We are not so concerned about location at the present time; merely a country of origin is satisfactory with respect to that. We don't need addresses or postal

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particulars about alibi witnesses than regular witnesses. Furthermore, the Defence witness protection order applicable in this case requires the Prosecution to contact Defence witnesses with the assistance of Defence counsel.³ Under these circumstances, it is difficult to understand how the present physical address of these alibi witnesses would assist the Prosecution in making its investigations. In light of the witness protection concerns manifested by the Defence, the Chamber considers that "addresses of witnesses" must be considered as referring either to their address during the events to which they will testify, or requires only their present address in general terms, such as their city or country of residence. In the present case, the Defence has provided the addresses of the witnesses in 1994. Absent further argumentation from the Prosecution this is considered sufficient.

4. The Defence claims that the Prosecution, by attaching the notice of alibi, breached an agreement between the parties to keep the witness identifying information confidential. The motion, and its corrigendum, are filed as "strictly confidential". Only a limited number of ICTR staff have access to such documents, and witness identifying information is routinely filed with the Tribunal in this manner. Under these circumstances, no breach of confidentiality has occurred.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

Arusha, 7 March 2006



Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Florence Rita Arrey
Judge

[Seal of the Tribunal]



codes or phone numbers or anything of that sort. But with respect to 1994 and birth, what we really need is to get information down to at least the *secteur* level, the *quartier*, *commune*, and *secteur*. And the purpose of that is simply to make sure that we're dealing with the same person. You heard me say this morning that when it came to this other fellow on the spelling list, there were some seven different persons that we know of that that could potentially have been. And this is common. There's a lot of similarity in names, and we need to have that kind of information to determine it. MR. PRESIDENT: Yes. Any problem with this? Should be no problem. So we just decide now that there is a need to provide this to the Prosecution. T. May 2005 p. 30 ([The Presiding Judge reading Prosecution requests]: "Roman II: 'Provide comprehensive witness personal information for all of these witnesses by following the standard for attached'. You have the Chamber's support there as well").

³ *Karera*, Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006, p. 3 ("The Prosecution and any representative acting on its behalf, shall notify the Defence for Karera in writing prior to any contact with any of its witnesses and, if the witness consents, the Defence for Karera shall facilitate such contact").