



UNITED NATIONS  
NATIONS UNIES

ICTR-2001-72-T  
2-8-2007  
(3919 - 3917)

3919  
Duffy

International Criminal Tribunal for Rwanda  
Tribunal pénal International pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Inés Mónica Weinberg de Roca, Presiding  
Florence Rita Arrey  
Robert Fremr  
  
**Registrar:** Adama Dieng  
  
**Date:** 02 August 2007

3919-2 A.D.E.  
Duffy

**THE PROSECUTOR**

v.

**Simon BIKINDI**

*Case No. ICTR-2001-72-T*

**DECISION ON THE DEFENCE MOTION TO FILE PROPOSED LIST OF  
WITNESSES AND STATEMENT OF AGREED AND CONTESTED MATTERS OF  
FACTS AND LAW**

Article 20 of the Statute, Rules 69, 73 ter and 75 of the Rules of Procedure and Evidence

**Office of the Prosecutor:**  
William T. Egebe  
Sulaiman Khan  
Veronic Wright  
Patrick Gabaake  
Iain Morley  
Amina Ibrahim  
Gilain Disengi Mugeyo

**Defence Counsel:**  
Andreas O'Shea  
Jean de Dieu Momo

## INTRODUCTION

1. On 22 February 2007, after calling 20 witnesses, the Prosecution closed its case.<sup>1</sup> The Defence case is scheduled to commence on 24 September 2007.<sup>2</sup> On 26 June 2007, the Chamber issued a Scheduling Order requesting the Defence to file by 24 July 2007:
  - a. Admissions by the Parties and a statement of other facts not in dispute;
  - b. A statement of contested matters of facts and law;
  - c. Its proposed list of witnesses including the name or pseudonym of each witness, the points in the Indictment concerning which each witness is expected to testify, the summary of the facts on which each witness is expected to testify, and the estimated duration of the length of examination of each witness.
2. The Defence filed a Motion to File Proposed List of Witnesses and Statements of Agreed and Contested Matters of Facts and Law<sup>3</sup> on 24 July 2007 that complied with point II of the Scheduling Order of 26 June 2007. In this Motion, the statements of Defence Witnesses HSR, QUTI, DQR, CZSR, RSC, HVR, CQK, DUC, ESDX, KZCBP, DZS, KMS, XVBR, XBK, CQR, WQK, HZTX, DIK, FLV, KRQ, ASQ1, JTX, DFA, FIV, ASQ2, QLA, XUV, CNA, CFR are redacted. The Defence seeks leave of the Chamber to redact any identifying information for those witnesses until a time to be decided by the Chamber in a decision on protective measures. The Prosecution has not filed a response to the Defence Motion.

## DELIBERATIONS

4. As a preliminary matter, the Chamber notes that the proposed witness list filed by the Defence on 24 July 2007 differs from the list of potential witnesses who were granted protective measures on 14 February 2007.<sup>4</sup> Consequently, the Chamber, under Rules 69 and 75 of the Rules of Procedure and Evidence (the "Rules") applies to Defence Witnesses QUTI, DFK, JIH, YSS, CNA, CFR and FIAT the protective measures that were applied to other potential Defence witnesses in its Decision of 14 February 2007.
5. During the status conference of 15 May 2007, the Defence indicated its intention to file a new motion for protective measures for Defence witnesses<sup>5</sup>. No such motion has yet been filed. No date has been yet decided for disclosure to the Prosecution of the identification particulars of the Defence Witnesses. The Chamber recalls that the Defence will start its case in fewer than two months from now. On the basis of Rules 69 (C) and 75 of the Rules as well as the arguments raised by the Parties during the status conference of 15 May 2007, the Chamber decides that all identifying information concerning the Defence Witnesses shall be disclosed to the Prosecution twenty-one (21) days before the beginning of the Defence case.
6. The Chamber notes that the Defence in its Motion of 24 July 2007 filed a list of 71 factual witnesses, including 56 core witnesses and 15 reserve witnesses. The Defence also indicated in its Motion the intention to call one expert and the Accused person to testify.

<sup>1</sup> T. 22 February 2007, p. 2.

<sup>2</sup> Scheduling Order, 26 June 2007.

<sup>3</sup> The "Motion of 24 July 2007".

<sup>4</sup> Decision on Protective Measures for Defence Witnesses, 14 February 2007 ("Decision on 14 February 2007").

<sup>5</sup> T. 15 May 2007, pp. 5-6.

The Chamber also notes that, in its Motion, the Defence indicated that it "will endeavour to further reduce the number of core witnesses prior to the commencement of the trial".<sup>6</sup>

7. Pursuant to Rule 73 *ter* (D) of the Rules, the Chamber may "order the Defence to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts". The calling of each witness shall be justified by the necessity of a fair trial, a trial without undue delay and a complete defence pursuant to Article 20 of the Statute.<sup>7</sup> Having carefully reviewed the Defence Motion of 24 July 2007 and the Defence witness statements, the Chamber is of the view that many of the proposed Defence witnesses will testify about the same facts. Consequently the Chamber urges the Defence to reduce significantly the number of witnesses called to testify in its case.

**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the Defence Motion; and

**ORDERS** that the protective measures granted for potential Defence witnesses in the Decision of 14 February 2007 be applied to Defence Witnesses QUTI, DFK, JIH, YSS, CNA, CFR and FIAT;

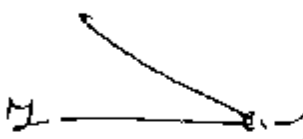
**ORDERS** the Defence to seriously review its witness list with a view to downsizing the total number of witnesses to be called, as well as reducing the number of witnesses who are being called to prove the same facts.

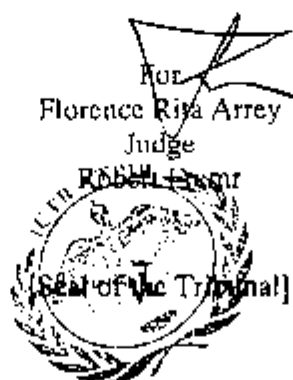
**ORDERS** the Defence to file a revised and reduced list of witnesses by 13 August 2007;

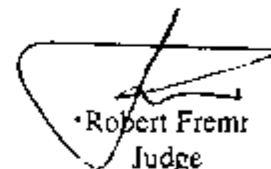
**ORDERS** the Defence to disclose to the Prosecution non-redacted witness statements and identifying information of all the witnesses to be called twenty-one (21) days before the beginning of the Defence case; and

**REITERATES** its Scheduling Order of 26 June 2007.

Arsha, 02 August 2007, in English.

  
Iné Mónica Weinberg de Roca  
Presiding Judge  
signed in Buenos Aires



  
Robert Fremr  
Judge

<sup>6</sup> T : Motion of 24 July 2007, para.4.

<sup>7</sup> T : Prosecutor v. Elie Ndatambaje et al., Scheduling Order, 13 December 2006.