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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 Judges:** Inés Mónica Weinberg de Roca, Presiding  
Florence Rita Arrey  
Robert Fremr  
**Registrar:** Adama Dieng  
**Date:** 06 September 2007

2007.09.06 P. 10:03  
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**THE PROSECUTOR**

v.

**Simon BIKINDI**

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

**ORDER FOR COMPLETE DISCLOSURE OF IDENTIFYING INFORMATION**

*Rule 54 of the Rules of Procedure and Evidence*

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

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

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### INTRODUCTION

1. The Defence is scheduled to commence its case on 24 September 2007.<sup>1</sup> Following an order of the Chamber<sup>2</sup>, the Defence filed on 3 September 2007 the unredacted summary of the intended testimony of its witnesses along with their personal information.<sup>3</sup> On 4 September 2007, the Prosecution requested the Chamber to order the Defence to provide it with full and adequate identifying information of all the witnesses it intends to call in order to allow the Prosecution to conduct its investigations and prepare the cross-examination of the witnesses.<sup>4</sup> The Defence filed a reply.<sup>5</sup> The Prosecution filed a response to the Defence Reply.<sup>6</sup>

### DELIBERATION

2. The Prosecution is arguing that witness identification material should normally include: name, occupation, residence in 1994 and current residence, date and place of birth, parents' names and employer's name. The Prosecution further submits that this information is necessary for it to do proper background checks on the witnesses that the Defence intends to call.<sup>7</sup>
3. The Defence position is that it complied with the Order of the Chamber concerning the disclosure to the Prosecution of identifying information of its witnesses.<sup>8</sup> The Defence submits that, although the information it has provided so far is sufficient to determine who the witnesses are,<sup>9</sup> it is willing to provide the Prosecution with any additional information it has in its possession which may assist in avoiding any confusion between its witnesses and third parties.<sup>10</sup> However the Defence submits that it is not prepared to provide the Prosecution with a witness's current occupation and name of employer as this information is not strictly necessary for the identification of a person and unnecessarily infringes upon the rights of the witness.<sup>11</sup> Finally the Defence states that it "is under no duty to assist the Prosecution in their investigations and is certainly not prepared to

<sup>1</sup> "Scheduling Order", 26 June 2007.

<sup>2</sup> "Decision on the Defence Motion to File Proposed List of Witnesses and Statement of Agreed and Contested Matters of Facts and Law", 2 August 2007.

<sup>3</sup> "Confidential Amended and Un-Redacted Witness List", filed 3 September 2007.

<sup>4</sup> "The Prosecutor's Response to the Defence Confidential and Unredacted Witness List", filed on 4 September 2007 (the "First Response").

<sup>5</sup> "Reply to Prosecution Response to Amended and Unredacted Witness List", filed on 4 September 2007 (the "Reply").

<sup>6</sup> "The Prosecutor's Response to the Defence's 5 September 2007 Reply to Prosecution Response to Amended and Unredacted Witness List", filed on 5 September 2007 (the "Second Response").

<sup>7</sup> First Response, paras. 7-8.

<sup>8</sup> Reply, para. 15.

<sup>9</sup> Reply, para 3.

<sup>10</sup> Reply, paras. 2, 4, 13 and 15.

<sup>11</sup> Reply, para. 5.

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engage its valuable time in the preparation of this trial in the pursuit of information not already in its possession, especially where this requires engaging in personal contact with the witness, possibly thereby interfering with the expeditiousness of defence preparations".<sup>12</sup>

4. It is also the Defence position that in this case the Prosecution has been provided with a reasonable time and sufficient basis for identifying the Defence witnesses<sup>13</sup> and that disclosing the current occupation and the name of employer are not matters essential to identification nor it is usually required to be disclosed in criminal trials nationally or internationally. According to the Defence, requiring the disclosure of such information is tantamount to requiring the Defence to assist the Prosecution in its investigations and could lead to the loss of fearful witnesses.<sup>14</sup>
5. The Prosecution submits that the reasons advanced by the Defence to limit the content of identifying information it is bound to disclose to the Prosecution regarding Defence witnesses are not justified in law and that it is not seeking help but the same information that was provided to the Defence regarding Prosecution witnesses.<sup>15</sup>
6. The issue put to the Chamber in this case is whether the principle of equality between the Parties requires the Defence to disclose the same level of identifying information concerning its witnesses than the Prosecution disclosed to the Defence concerning the Prosecution witnesses.
7. The Chamber notes that, in most cases, the disclosure by the BIKINDI Defence of personal information concerning its witnesses is limited to their first name, their last name, their location in 1994 and their current location, and their ethnicity.<sup>16</sup> For some of the Defence witnesses, the information provided by the Defence does not cover all those areas.
8. The Chamber further notes that the Defence was granted protective measures for its witnesses<sup>17</sup> and that it never applied for extra protective measures if it was convinced that those measures already granted were not sufficient. The Chamber does not find any good reasons why the Defence should limit its disclosure obligations towards the Prosecution.
9. In order to allow the Prosecution to prepare for cross-examination of Defence witnesses and considering the equality of arms between the Parties, the right to a fair trial and the right of the accused to be tried without undue delay, the Chamber is of the view that the Defence must provide the Prosecution with an equivalent level of information that it was provided with for the Prosecution witnesses. The Chamber also finds that the information requested by the Prosecution is not unreasonable. Though the Chamber notes that the Prosecution did not disclose the employer's name of its witnesses to the Defence. Consequently, the Chamber finds that the Defence must provide to the Prosecution with the following information concerning its witnesses: first name and last name; date and place of birth; sex; nationality; ethnicity; name of both parents; marital status; name of spouse; occupation in 1994; current occupation; residence in 1994; current residence.

<sup>12</sup> Reply, para. 5.

<sup>13</sup> Reply, para. 14.

<sup>14</sup> Reply, par. 14.

<sup>15</sup> Second Response, paras. 3-5.

<sup>16</sup> See "Confidential Amended and Un-Redacted Witness List", filed 3 September 2007.

<sup>17</sup> "Decision on Protective Measures for Defence Witnesses", 14 February 2007 and "Decision on the Defence Motion to File Proposed List of Witnesses and Statement of Agreed and Contested Matters of Facts and Law", 2 August 2007.

**FOR THE ABOVE REASONS, THE CHAMBER**

**ORDER** the Defence to disclose the following information about each witness it is calling by close of business Friday 7 September 2007:

- (i) The name (including family name, first name, and nicknames when applicable);
- (ii) The date and place of birth (including *cellule*, *secteur*, *commune*, and *préfecture* when applicable);
- (iii) Sex;
- (iv) Nationality and ethnicity (when applicable);
- (v) Full name of both parents;
- (vi) Marital status and name of spouse;
- (vii) Residence in 1994 (including *cellule*, *secteur*, *commune*, and *préfecture* when applicable);
- (viii) Current residence (including *cellule*, *secteur*, *commune*, and *préfecture* when applicable);
- (ix) Occupation in 1994;
- (x) Current occupation.

Arusha, 6 September 2007, in English.

With the consent and on behalf  
of  
Inés Mónica Weinberg de Roca  
Residing Judge  
(Absent during signature)

Florence Rita Arrey  
Judge

Robert Fremr  
Judge

