



UNITED NATIONS
NATIONS UNIES

ICTR-00-61-1
11-09-2009
(2595-2592)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Aydin Sefa Akay

Registrar: Mr. Adama Dieng

Date: 11 September 2009

THE PROSECUTOR

v.

Jean-Baptiste GATETE

Case No. ICTR-2000-61-PT

JUDICIAL RECORDS/ARCHIVES
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**DECISION ON DEFENCE MOTION FOR THE DISCLOSURE OF IDENTIFYING
INFORMATION IN RELATION TO WITNESSES TO BE CALLED BY THE
PROSECUTION AT TRIAL**

Office of the Prosecutor:

Richard Karegyesa
David Akerson
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Dennis Mabura

For the Accused:

Marie-Pierre Poulain
Kate Gibson

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INTRODUCTION

1. On 11 February 2004, Trial Chamber I issued a decision granting the Prosecution's motion for protective measures. It authorized the Prosecution to withhold the disclosure of identifying information of any of its witnesses and to redact their names, addresses, locations and other identifying information. It ordered further that such information shall be disclosed to the Defence no later than 21 days before the commencement of the trial.¹
2. On 26 March 2009, a Status Conference was held during which the Prosecution undertook to disclose un-redacted statements of its witnesses no later than 30 days prior to the commencement of the trial.² The Defence made no objections.³
3. Pursuant to the Chamber's Scheduling Order dated 11 August 2009, the commencement of the trial in this case is set for 19 October 2009.⁴
4. On 1 September 2009, the Defence filed a motion before this Chamber requesting the Chamber to order the immediate disclosure of the identifying information of each witness to be called by the Prosecution.⁵
5. On 7 September 2009, the Prosecution filed its Response to the Defence Motion. The Prosecution submits that the orders issued by the Trial Chamber on 11 February 2004 are still in effect and that the Defence has not provided the Chamber with cogent legal reasons to vary, review or reconsider them.⁶
6. The Defence filed its Reply on 8 September 2009.⁷

DISCUSSION

Applicable Law

7. Rule 69(C) provides that, subject to Rule 75, the identity of a witness shall be disclosed within such time as determined by a Trial Chamber to allow adequate time for preparation of the Prosecution and the Defence case.
8. Rule 75 provides that measures may be taken "to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the

¹ *Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-I, Decision on Prosecution Request for Protection of Witnesses, 11 February 2004 ("Decision of 11 February 2004").

² *Gatete*, T. 26 March 2009, Closed Session, p. 4.

³ *Ibid.*

⁴ *Gatete*, Scheduling Order, para. II, 11 August 2009.

⁵ *Gatete*, Defence Motion for the Disclosure of Identifying Information relating to Witnesses to be called by the Prosecution at Trial, 1 September 2009 ("Defence Motion").

⁶ *Gatete*, Prosecutor's Reply to Defence Motion for the Disclosure of Identifying Information relating to Witnesses to be called by the Prosecution at Trial, 7 September 2009 ("Prosecutor's Reply to Defence Motion").

⁷ *Gatete*, Defence Reply to the Prosecution's Response to the Defence Motion for the Disclosure of Identifying Information relating to Witnesses to be called by the Prosecution at Trial, 8 September 2009 ("Defence Reply to the Prosecution's Response").



accused.” According to the consistent jurisprudence of the Tribunal, the adoption of protective measures requires a careful balancing between the need to secure the safety and security of victims and witnesses, and the rights of the Accused to a fair and public hearing as enshrined in Article 20 of the Statute.⁸ Once protective measures have been ordered in respect of a witness, such measures remain in force until they are rescinded, varied or augmented by a Chamber, as provided for in Rule 75(F).

Should the Chamber order the immediate disclosure of identifying information relating to Prosecution witnesses to be called at trial?

9. The Defence submits that the original order issued by the Chamber on 11 February 2004 does not provide it with adequate time to prepare a detailed cross-examination of the Prosecution witnesses. The Defence explains that it is in possession of voluminous material provided by the *Gacaca* jurisdictions and that the review of such material for purposes of cross-examination requires an earlier disclosure of the identity of the witnesses.⁹ The Defence submits that these are new circumstances which the former Defence Counsel was not aware of at the time of the Status Conference on 26 March 2009, when he agreed to Prosecution disclosure of identifying information 30 days prior to trial.¹⁰

10. The Defence contends that the current timing of the disclosure is likely to lead to a delay in the proceedings.¹¹ Given these circumstances, the Defence submits that the immediate disclosure of the witnesses’ identities would enable it to determine what investigations needed to be undertaken.

11. The Prosecution submits that, as a result of its undertaking during the Status Conference on 26 March 2009, the effective date for disclosure of all un-redacted statements is 19 September 2009, which is 30 days prior to commencement of trial.¹² Further, this includes all witness statements, as well as Rwandan judicial records and other relevant material to be disclosed on or before 19 September 2009.¹³

12. The Chamber recalls the Decision of 11 February 2004 in which protective measures were granted pursuant to Rules 75 and 69(C). In that Decision, after having evaluated the security situation affecting the concerned witnesses, Trial Chamber I found that exceptional circumstances had been established to warrant the issuance of protective measures, which included a delayed disclosure of the identity of the witnesses 21 days before the commencement of the trial.¹⁴

13. The Chamber further recalls the oral ruling issued by Judge Møse during the Status Conference on 26 March 2009 varying the initial measure to allow disclosure earlier. Judge

⁸ See *Prosecutor v. Léonidas Nshogoza*, Case No. ICTR-07-91-PT, Decision on Defence Motion for Protective Measures for Victims and Witnesses, 22 January 2009, para. 8; *Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-PT, Decision on Protective Measures for Prosecution Witnesses, 4 September 2006, para. 7; *Prosecutor v. Juvenal Rugambarara*, Case No. ICTR-00-59-I, Decision on the Prosecutor’s Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 31 January 2006, para. 10.

⁹ Defence Motion, paras. 8-11.

¹⁰ Defence Reply to the Prosecution’s Response, paras. 4-6.

¹¹ *Ibid.*, para. 12.

¹² Prosecutor’s Reply to Defence Motion, 7 September 2009, para. 6.

¹³ Prosecutor’s Reply to Defence Motion, 7 September 2009, para. 8.

¹⁴ Decision on Prosecution Request for Protection of Witnesses, 11 February 2004, paras. 5-7.



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Møse ordered that identifying information of witnesses to be called at trial by the Prosecution be disclosed to the Defence 30 days prior to the commencement of the trial “in conformity to the practice in the most recent years”.¹⁵

14. In addition, the Chamber observes that while the Defence submits that in order to commence an analysis of the voluminous *Gacaca* materials it has collected, it is essential that it be provided with the identifying material for Prosecution witnesses, the Prosecution has undertaken to disclose all un-redacted *Gacaca* and other judicial records in respect of its witnesses 30 days prior to trial.¹⁶ As a result, the Defence will know, 30 days prior to trial, which *Gacaca* materials it needs to analyse.

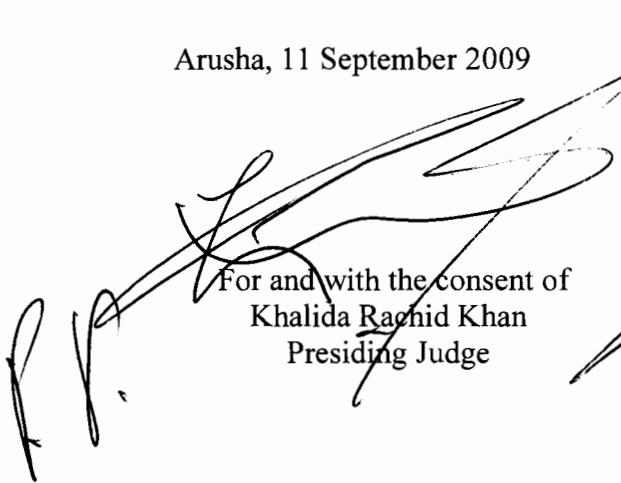
15. In view of the above, and taking into consideration that (i) this is a single-accused case, and (ii) there are only 26 Prosecution witnesses whose time estimate is 79 hours, the Chamber considers that disclosure of identifying information 30 days prior to commencement of trial, as determined by Trial Chamber I during the Status Conference of 26 March 2009, is adequate to enable the Defence to prepare its cross-examination of the Prosecution witnesses.¹⁷ It is further consistent with both the rights of the Accused and the interests of victims and witnesses, as required by Articles 19 and 20 of the Statute.¹⁸

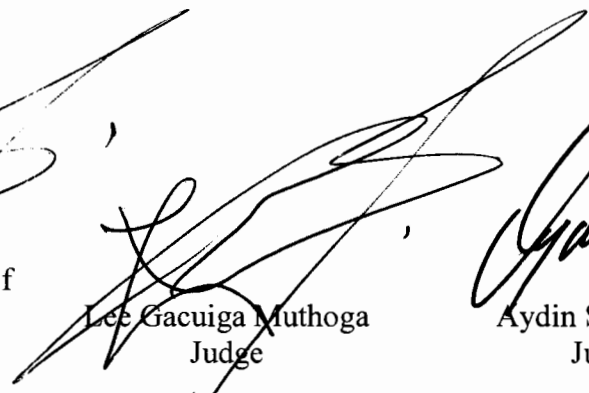
16. Accordingly, the Chamber does not consider it necessary to vary the protective measures by ordering immediate disclosure by the Prosecution of identifying information relating to its witnesses. The Chamber however reminds the Prosecution of its obligation to disclose to the Defence on or before 19 September 2009 the un-redacted statements of witnesses on whom it intends to rely at trial, as well as the names, addresses and other such identifying information in relation to each witness.


FOR THESE REASONS, the Chamber

DENIES the Motion.

Arusha, 11 September 2009


For and with the consent of
Khalida Raahid Khan
Presiding Judge


Lee Gacuiga Muthoga
Judge


Aydin Sefa Akay
Judge

[Seal of the Tribunal]

¹⁵ *Gatete*, T. 26 March 2009, Closed Session, p. 4.

¹⁶ *Gatete*, T. 26 March 2009, Closed Session, pp. 4-5.

¹⁷ See *Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-01-63-PT, Decision on Motions for Protective Measures for Prosecution Witnesses, 26 July 2006, para. 8; *Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-I, Decision on Defence Request for Protection of Witnesses, 25 August 2004, para. 7.

¹⁸ Pursuant to Article 19, the Chamber has an obligation to ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protective of victims of witnesses. Article 20 sets out the rights of the accused.