



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Emile Francis Short  
Gberdao Gustave Kam

**Registrar:** Adama Dieng

**Date:** 16 May 2005

**THE PROSECUTOR**

v.

**Edouard KAREMERA**  
**Mathieu NGIRUMPATSE**  
**Joseph NZIRORERA**

*Case No. ICTR-98-44-PT*

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**DECISION ON JOSEPH NZIRORERA'S MOTION FOR DEADLINE FOR  
FILING OF REPORTS OF EXPERTS**

*Rule 94bis(A) of the Rules of Procedure and Evidence*

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**Office of the Prosecutor:**

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**Defence Counsel for Mathieu Ngirumpatse**  
Frédéric Weyl

**Defence Counsel for Joseph Nzirorera**  
Peter Robinson

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

**SITTING** as Trial Chamber III, composed of Judge Dennis C. M. Byron, Presiding Judge, Judge Emile Francis Short and Judge Gberdao Gustave Kam (“Chamber”);

**BEING SEIZED** of “Joseph Nzirorera’s Motion for Deadline for Filing of Reports of Experts”, filed by the Defence of the Accused (“Defence”) on 29 March 2005;

**CONSIDERING** the Prosecutor’s Response thereto filed on 30 March 2005 and the Defence’s Reply thereto filed on 4 April 2005;

**HEREBY DECIDES** the Motion, pursuant to Rule 73 of the Rules of Procedure and Evidence (“Rules”).

## **INTRODUCTION**

1. The commencement of the trial in the instant proceedings is scheduled on 6 September 2005. The Prosecutor intends to call expert witnesses to testify during its case. None of the Defence Counsel has received disclosure of their reports from the Prosecutor.

2. The Chamber has now to determine whether a deadline for disclosure of such reports should be imposed on the Prosecutor.

## **ARGUMENTS OF THE PARTIES**

3. The Defence argues that the Prosecutor should disclose all reports of expert witnesses 60 days before trial to avoid delays during proceedings and allow the parties to prepare their case properly. Consequently, the Defence seeks an Order requiring the Prosecutor to disclose all reports of expert witnesses that he intends to call in its case no later than 5 July 2005.

4. The Prosecutor affirms that Rule 94 *bis* (A) of the Rules requires him to disclose the expert reports more than 21 days before their testimonies if he is able to do so. In the instant case, the expert witnesses would be expected not to testify before the end of 2006. The Prosecutor argues that reports prepared since 2002 are no longer suitable. He also intends to replace an expert who stated that he is no longer willing to testify. These reasons would explain why the requested reports have not yet been disclosed yet.

## **DELIBERATIONS**

5. The Chamber recalls that Rule 94 *bis* (A) states that the full statement of any expert witness called by a party shall be disclosed to the opposing party as early as possible and shall be filed with the Trial Chamber not less than twenty-one day prior to the date on which the expert is expected to testify. The Rule distinguishes *filing* with the

Trial Chamber from *disclosure* to the opposing party. The mandate to disclose the statements as early as possible has been applied in other cases<sup>[1]</sup> The Rule does not require the parties to wait until twenty-one days before testimony to disclose the witness' expert report nor does it prohibit disclosure before the trial commences<sup>[2]</sup>.

6. The Prosecutor's explanation for the current non-availability of the statements suggests that the requested deadline of 5<sup>th</sup> July 2005 may be premature. The trial is scheduled to commence on 6 September 2005. The Chamber considers Monday, 15 August 2005 is a date by which it could reasonably expected that the statements would have been obtained. If they have not been disclosed by that date, a further explanation should be provided to the Chamber and the parties on the causes for the default, with an indication of the date by which the disclosure will occur.

For the above mentioned reasons, the Chamber

I. **DENIES** the Motion;

II. **ORDERS** the Prosecutor to disclose to the Chamber and the Defence of all the Accused in the instant proceedings, by Monday, 15 August 2005, the statements of all the expert witnesses he intends to call to testify. In case of default of disclosure, the Prosecutor should provide the Chamber and the Defence of all the Accused with the reasons and indicate the date by which the disclosure will occur.

Arusha, 16 May 2005, done in English.

Dennis C. M. Byron  
Presiding Judge

Emile Francis Short  
Judge

Gberdao Gustave Kam  
Judge

[Seal of the Tribunal]

<sup>[1]</sup> *Bizimungu et al.*, Case No. ICTR-99-50-T Decision on Mugenzi's Confidential Motion for the Filing, Service or Disclosure of Expert Reports and/or Statements (Rule 94*bis*) (TC), 10 November 2004, par. 19; *Nyiramasuhuko et al.*, Case No. ICTR-97-21-T and ICTR-97-29-T, Decision on the Defense Motions for an Extension of Time Limit for Filing the Notice in respect of Expert Witness Statements (Rules 73 and 94 *bis* of the Rules) (TC), 25 May 2001, par. 12.

<sup>[2]</sup> *Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecution Motion for Addition of Witnesses pursuant to Rule 73*bis* (E) (TC), 26 June 2003, par.23