



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-44-PT
9-9-2005
(23697-23694)
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OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 9 September 2005

2005 SEP - 9 A 11: 43
ICTR
SECRETARIAT

THE PROSECUTOR

v.

**Edouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-PT

**DECISION ON PROSECUTOR'S NOTICE OF DELAY IN FILING EXPERT REPORTS
AND REQUEST FOR ADDITIONAL TIME TO COMPLY WITH THE CHAMBER
DECISION OF 16 MAY 2005**

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

Office of the Prosecutor:

Don Webster
Gregory Lombardi
Iain Morley
Gilles Lahaye
Sunkarie Ballah-Conteh
Takeh Sendze

Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal"),

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

BEING SEIZED of "Prosecutor's Notice of Delay in Filing Expert Reports and Request for Additional Time to Comply with the Trial Chamber Decision of 16 May 2005" ("Motion"), filed on 11 August 2005;

CONSIDERING "Joseph Nzirorera's Response to Prosecutor's Notice of Delay in Filing Expert Reports and Request for Additional Time to Comply with the Trial Chamber Decision of 16 May 2005", filed on 15 August 2005;

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

INTRODUCTION

1. The trial of the Accused persons is scheduled to commence in the course of September 2005. The Prosecutor intends to call expert witnesses to testify as part of his case. However, the Prosecutor has not yet disclosed to the Defence the expert reports of those witnesses.

2. In its Decision of 16 May 2005,¹ the Chamber ordered that the Prosecutor disclose to the Defence the statements of all expert witnesses he intends to call to testify on or before 15 August 2005. The Chamber added that "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". In this motion, the Prosecution seeks a further extension of time to file the expert reports.

3. The Chamber now determines whether a new deadline for disclosure of such reports should be granted to the Prosecutor.

ARGUMENTS OF THE PARTIES

4. The Prosecutor argues that since Dr. Alison Des Forge did not complete her testimony in the *Rwamakuba* Trial by 15 July 2005, as initially expected, and the Chamber forbade her to have any discussions about the substance of her evidence with the Prosecution team, she was unable to finalise her expert report in mid-July 2005 as previously anticipated. Consequently, her expert report in this case is expected to be finalised by mid-September 2005.

5. In relation to Prosecution Witness André Guichaoua, the Prosecutor advises that he has negotiated a consultant's contract with the witness, as required by *Université Paris I*, to enable him to complete his expert report. For administrative reasons beyond the control of the Prosecutor, Witness André Guichaoua has academic responsibilities until mid-September 2005. This means that his report cannot be finalised until late November 2005.

6. With respect to Prosecution Witness Mr. Antipas Nyanjwa, the Prosecutor advises that he has prepared terms of reference and a work plan for the witness. The Prosecutor

¹ *The Prosecutor v. Edouard Karemera et al.*, Case No. ICTR-98-44-PT, Decision on Joseph Nzirorera's Motion for Deadline for Filing of Reports of Experts (TC), 16 May 2005.

submits that he will be in position to file Mr Antipas Nyanjwa's report by the beginning of October 2005.

7. In relation to Prosecution Witness Ms. Binaifer Nowrojee, the Prosecutor advises that the witness has been delayed in completing her report in the *Karemara et al.* trial due to a pending Decision before Trial Chamber II in the case of *Bizimungu et al.* The Decision, which has since been rendered, concerns a Defence Motion seeking the exclusion of the witness' report and testimony. The Prosecutor submits that the witness' expert report will be complete by mid-September 2005.

8. Regarding the expert report of Mr. Charles Ntampaka, the Prosecutor anticipates that the expert report prepared by the witness will be disclosed by late November 2005. The Prosecutor submits that the new deadline will not delay the commencement of the trial or cause prejudice to the Accused, nor will it provide him with a strategic advantage.

9. Joseph Nzirorera argues that the Prosecutor did not make all efforts to comply with the Chamber's Decision of 16 May 2005 and that he expects no consequences from his failure. Due to the fact that the Prosecutor's motion was filed a few days before the deadline of 15 August 2005, Joseph Nzirorera submits that the delay is a *fait accompli*.

DELIBERATIONS

10. The Chamber recalls its ruling of 16 May 2005:

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 days 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 cases². 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 commences³.

11. In the same Decision of 16 May 2005, while imposing the deadline of 15 August 2005 for the disclosure of the expert reports by the Prosecutor to the Defence, the Chamber provided the Prosecutor with an alternative in the event of non-disclosure as planned - to indicate the date by which the disclosure would occur. In his instant Motion, the Prosecutor has explained the reasons for the current unavailability of the expert reports. The Prosecutor has himself assessed the time by which each expert witness could reasonably finalise his or her report: by mid-September 2005 for Dr. Alison Des Forges; by the beginning of October 2005 for Mr. Antipas Nyanjwa; and by late November 2005 for Mr. André Guichaoua and Mr. Charles Ntampaka.

12. The Chamber is satisfied with the explanations provided by the Prosecutor in his request for more time to fulfil his disclosure obligations. In addition, the expert witnesses are scheduled to testify in the second quarter of 2006. While their reports should have been disclosed at the earliest possible time, the Chamber is of the view that the rights of the

² *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.

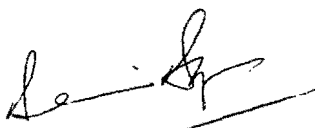
³ *Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecution Motion for Addition of Witnesses pursuant to Rule 73*bis* (E) (TC), 26 June 2003, par.23

Accused will not be prejudiced if the Prosecutor files them within the time-limits set out in his Motion.


FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

- I. **GRANTS** the Motion;
- II. **ORDERS** the Prosecutor to disclose to the Chamber and the Defence of all the Accused in the instant proceedings the statements of all the expert witnesses he intends to call to testify as follows:
 - the expert report of Alison Des Forges by 19 September 2005;
 - the expert report of Antipas Nyanjwa by 3 October 2005;
 - the expert reports of André Guichaoua and Charles Ntampaka by 25 November 2005.


Arusha, 9 September 2005, done in English.



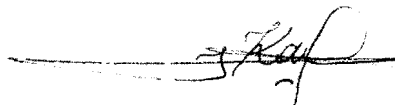
Dennis C. M. Byron
Presiding Judge



Emile Francis Short
Judge



[Seal of the Tribunal]



Gberdao Gustave Kam
Judge