



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:** 20 September 2005

**THE PROSECUTOR**

v.

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

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

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**ORAL DECISION ON JOSEPH NZIRORERA'S MOTION TO EXCLUDE THE  
TESTIMONY OF WITNESS GFJ**

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**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

See transcripts E: p. 1-3 (original language) – F: p. 2-4

MR. PRESIDENT:

[p. 1; l. 35-36]

Thank you very much. Again, one or two preliminary matters before we start the day's programme...

[p. 2; l. 18 – p. 3; l. 11]

Now, the second matter is this, and it deals with the application by Joseph Nzirorera to exclude the testimony of Witness GFJ. The Defence for Nzirorera requests the Chamber to exclude testimony of Witness GFJ. It argues that 193 pages of statements in his dossier to the Rwandan authorities were not disclosed within the time limits prescribed by Rule 66(A)2 of the Rules of Procedure and Evidence. It contends that the Defence has been prejudiced by the delay in the disclosure because the said documents were served in Kinyarwanda, which counsel responsible for cross examination cannot read. It claims that the only remedy is the exclusion of the testimony of the witness.

The Prosecution responds that it had endeavoured to comply with the rule, 66(A), in good faith. It claims that only a few pages, translated and provided to the Defence, could be characterised as a statement of the witness. The remaining part of the documents being mostly summaries and conclusions by the judge based on evidence from a variety of sources. It contends that the witness can be recalled for further cross examination later in the trial if subsequent review of his judicial records provides material for impeachment.

The Chamber is of the view that the documents disclosed to the Defence on 8 September 2005, pertaining to Witness GFJ, does not fall within the ambit of Rule 66(A)2 of the rules but merely under the practice which has developed, subject to considerations of the interest of justice, of requiring the intervention of the Prosecution to obtain and disclose certain records, specifically including Rwandan judicial records of Prosecution witnesses. The Prosecution, therefore, did not fail to comply with its disclosure obligations under Rule 66(A)2.

In addition, the Chamber notes that the documents were disclosed in Kinyarwanda, a language that the Accused understands. The Chamber, however, accepts the Defence concerns with respect to the fairness of the trial and the preparation of the Defence and is of the view that time and facilities should be granted to the Defence. The Chamber does not know whether the documents in their entirety are needed for the Defence. The language unit cannot be requested to translate each and every document due to the massive volume of the documents. So as a practical matter and to prevent the problem from arising again and again in the future, the Chamber invites the Accused to indicate which parts of the document in Kinyarwanda should be translated to allow the language unit to provide, in short time, oral interpretation, or written translation where appropriate. And in that context, I would like to inquire, first of all, of Mr. Robinson, counsel for Joseph Nzirorera, as this is your motion, to what extent you have had -- already had an informal translation of the document and whether you are in a position to indicate what sections of the documents are required to be translated for the purpose of your defence.