



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: 3 October 2005

THE PROSECUTOR

v.

Edouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

**ORAL DECISION ON EXCLUSION OF TESTIMONY OF ALISON DES
FORGES AND GRANTING EXTENSION OF TIME FOR DISCLOSURE OF
THE EXPERT REPORT**

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. 16; l. 27 – p. 18; l. 6 (original language) – F: p. 20; l. 11 – p. 22; l. 4.

MR. PRESIDENT:

All right. Well, we are ready to do it. This is a decision on the Defence motion with regard to the Prosecutor expert witness, Alison Des Forges.

On the 22nd of September 2005, having noticed that the Prosecution did not disclose the expert report of Ms. Alison Des Forges nor request an extension of time to do so, the Defence for Accused Joseph Nzirorera orally moved the Chamber to exclude the testimony as a remedy for the violation of the scheduling order.

The Prosecution responded that it intended to file a motion for extension of time, and it had not done so as yet because further information was expected from the expert. It requested an extension of time to disclose the expert report and promised to file additional supporting materials. The two other Defence teams supported the motion. On 29th September 2005, the Prosecution filed additional information in relation to this matter. There was one e mail dated 2nd September 2005 from Ms. Des Forges to the Prosecution regarding her arrival in September 2005. There is an exchange dated 21st of September 2005 between Ms. Des Forges and the Prosecution, where the expert gave some explanations as to why she could not manage to work on her expert report in this case and stated that she would not that she would be able to complete her report by 1st November 2005.

There is, finally, an e mail dated 27th September 2005 sent by the Prosecution to Ms. Des Forges requesting further information regarding the projected completion date and informing her that the two messages, dated 2nd and 4th September 2005, will be filed as supporting material.

The Chamber notes that the Prosecution failed to file the 4th September message.

On 30th September 2005, the Prosecution filed additional information consisting of an e mail, dated the same date, in which the expert witness confirmed her inability to finalise her report before the 1st of November 2005.

The Chamber recalls that on 16th May 2005, it ordered the expert report to be disclosed no later than the 15th of August 2005, or in case of default of disclosure, the Prosecutor should provide the Chamber and the Defence with the reasons and indicate the date by which the disclosure will occur. On 9th September 2005, the Chamber granted an extension of time and on the basis of information provided by the Prosecution, ordered the disclosure of the expert report no later than 19th September 2005. But on that date, the expert report had not been disclosed and the Prosecution did not seek any further extension of time. It was only after the Defence motion that the Prosecution has orally requested such an extension.

The Chamber notes that the expert witness will not be called before the second semester of 2006 and considers that a further extension of time would not prejudice the Accused. The Chamber, therefore, finds that an exclusion of the expert's testimony is not an appropriate remedy for the violation of the scheduling order. The Accused has not suffered any prejudice, and the requested extension of time can be granted.

The Chamber further considers that the Prosecution has shown good cause for the extension requested, which shall be granted. The Chamber is, however, deeply concerned by the Prosecution's failure to comply with its prior order. It also strongly disapproved of the conduct of the Prosecution in failing to file its request for an extension of time before the expiration of the deadline stipulated in the scheduling order. The Chamber reminds the Prosecution of its obligation under the statute of the Tribunal and the Rules of Procedure and Evidence and, particularly, the provisions of Rule 46 of the Rules.

Consequently, the Chamber denies the Defence motion and orders the Prosecution to disclose to the Chamber and the Defence of all of the Accused in the instant case the

report of expert witness, Alison Des Forges, no later than 1st November 2005. That is the decision.