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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Case No. ICTR-98-44-T

ENGLISH
Original: FRENCH

Before: Judge Dennis C. M. Byron, presiding
Judge Emile Francis Short
Judge Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 28 October 2005

THE PROSECUTOR

v.

ÉDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA

[Handwritten signature]
3116
28-10-2005

DECISION ON ÉDOUARD KAREMERA'S MOTION TO BE GUARANTEED
A FAIR TRIAL

Articles 19, 20, 28 and 31 of the Statute of the Tribunal

Office of the Prosecutor:

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

Counsel for the Defence:

Dior Digne Mbaye and Félix Sow, for Édouard Karemera
Chantal Hounkpatin and Frédéric Weyl, for Mathieu
Ngirumpatse
Peter Robinson and Patrick Nimy Mayidika Ngimbi, for
Joseph Nzirorera

CH05-0131 (E)

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Translation certified by LSS, ICTR

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

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

BEING SEIZED of the “Motion to Guarantee the Accused Édouard Karemera a Fair Trial” (the “Motion”), filed by the Defence for the Accused Édouard Karemera (the “Defence”) on 29 September 2005;

CONSIDERING the “Prosecutor’s Response to the Motion to Guarantee the Accused Édouard Karemera a Fair Trial” (the “Response”), filed on 4 October 2005;

CONSIDERING that the Chamber has all the necessary material upon which to make a determination on the Defence submissions and that, consequently, it is not necessary to hear the Defence arguments in open court;

DECIDES the Motion as follows, based solely on the briefs filed by the parties pursuant to Rule 73 of the Rules of Procedure and Evidence (the “Rules”).

INTRODUCTION

1. The present trial commenced on 19 September 2005 with the hearing of the Prosecution evidence. The Chamber is presently seized of a motion by the Accused Édouard Karemera (the “Accused”) to be guaranteed a fair trial.
2. The Chamber will now consider the various submissions made by the Defence in support of its Motion.

DISCUSSION

Arrest and detention of the Accused

3. In its Motion, the Defence alleges that the conditions of arrest of Édouard Karemera in Togo and his detention at the United Nations Detention Facility in Arusha are unlawful. The Defence considers that a person presumed to be innocent cannot remain in detention for seven years without his right to be tried without undue delay being violated
4. The Chamber notes that the issues relating to the arrest and detention of Édouard Karemera have already been ruled on by this Trial Chamber on 10 December 1999.¹ The Chamber, therefore, finds that there is no need to revisit those issues, especially as the Defence does not give any reason for such a review.

¹ *The Prosecutor v. Édouard Karemera*, Case No. ICTR-98-44-I, Decision on the Defence Motion for Release of the Accused (TC), 10 December 1999. See also *The Prosecutor v. Mathieu Ngirumpatse*, Case No. ICTR-97-44-I, Decision on the Defence Motion Challenging the Lawfulness of the Arrest and Detention and Seeking Return or Inspection of Seized Items (TC), 10 December 1999.

Translation of documents

5. The Defence stresses that the major decisions rendered by the Chamber and the documents disclosed by the Office of the Prosecutor to Counsel for Joseph Nzirorera are in English, a language that the Accused does not understand. It contends that the French translations of these documents are received belatedly, and that motions filed by Édouard Karemera are translated into English only after the Chamber has rendered its decisions. The Defence considers that it should be able to receive the French translations of all documents filed in English by the parties before the Chamber as well as the decisions rendered by the same Chamber.

6. The Chamber has had occasion several times in this case, pursuant to the established case-law of this Tribunal, to recall the rules applicable to the provision of documents in the language of the Accused in accordance with the Accused's rights guaranteed under the Statute of the Tribunal (the "Statute").²

7. Article 20(4)(a) of the Statute enshrines the right of the accused to be informed in detail and in a language he or she understands of the nature and cause of the charge against him or her. Based on these provisions and in accordance with the jurisprudence of the two ad hoc Tribunals, the right of the Accused to obtain translations in a language he understands covers only a limited number of documents, including the Indictment, the supporting materials accompanying the Indictment, and the evidence upon which the Trial Chamber will base its determination of the charges laid against the Accused in the Indictment³. The Accused is not entitled to receive all documents in the Tribunal's two working languages.

8. The Chamber further recalls that Defence Counsel represent the Accused in the proceedings before the Tribunal. Filings must first be understood by the Defence, without infringing the rights of the Accused as enshrined in Article 20(4) of the Statute. To that end, the Tribunal has developed the practice whereby each Defence team has bilingual counsel or legal assistants so as to reduce delays in the proceedings caused by inability to obtain translations.

9. In the instant case, the Chamber has consistently safeguarded the right of the Accused to obtain documents in a language that he understands, both by the provision of written translations as well as by other means. When deemed appropriate, the Chamber has granted the Defence an extension of time in order to receive French translation or to have additional time to respond to documents.⁴

² *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T (*Karemera et al.*), Oral Decision on Karemera Motion for Extension of Time filed on 29 July 2005 (TC), 9 September 2005; *Karemera et al.*, Oral Decision on Karemera Motion filed on 7 September 2005 (TC), 9 September 2005.

³ *Prosecutor v. Delalić*, Case No. IT-96-21, Decision on Defence Application for Forwarding the Documents in the Language of the Accused (TC), 25 September 1996; *The Prosecutor v. Mika Muhimana*, Case No. ICTR-95-IB-1, Decision on the Defence Motion for the Translation of Prosecution and Procedural Documents into Kinyarwanda, the Language of the Accused, and into French, the Language of his Counsel (TC), 6 November 2001, para. 33; *The Prosecutor v. Vincent Rutaganira*, Case No. ICTR-95-1C-P, *Décision relative à la requête aux fins de transmission des documents en version française et Kinyarwanda* (TC), 6 December 2004, para. 2.

⁴ *Karemera et al.*, *Décision relative à la requête d'Édouard Karemera en prolongation de délai* (TC), 18 May 2005; *Karemera et al.*, Decision Granting Extension of Time to File Defence Pre-Trial Brief (TC.), 1 July 2005;

10. The Chamber has also, on many occasions, encouraged the Defence to appoint a bilingual legal assistant for its team.⁵ In light of the Defence's latest statements to the effect that it was sharing a legal assistant with the Defence for Joseph Nzirorera,⁶ the Chamber directed the Registry to report to it on the appointment of a bilingual legal assistant for Édouard Karemera's Defence team.⁷ It appears from the Registrar's report that Counsel, for Édouard Karemera has never applied to the Registry for the appointment of a bilingual legal assistant,⁸ whereas such an appointment is not made automatically by the Registry, but must be requested by Lead Counsel.

11. In light of the foregoing, the Chamber can only express regret at the Defence's attitude, which is contrary to the various directions issued by the Chamber in that regard. Therefore, the Chamber once again calls on the Defence to appoint at least one bilingual legal assistant to its team.

12. As regards the translation of motions filed by Édouard Karemera into English after decisions have been rendered thereon, the Chamber notes that it is capable of working in both of the Tribunal's working languages.

13. In light of the foregoing and pursuant to the established case-law of the Tribunal, the Chamber concludes that the Defence has in no way demonstrated a violation of the Accused's right under Article 20(4)(a) of the Statute. The Defence Motion seeking to obtain all documents filed in the instant case in French must be dismissed.

Pending motions

14. The Defence asserts that the Chamber has never rendered decisions on three motions filed on 14 and 17 May and on 28 June 2004 in relation to the disclosure of documents in French and English. The same applies to the Motion filed on 17 May 2005 on joint criminal enterprise. The Prosecution submits that the Defence has not shown that the Accused suffered any prejudice, or that the trial has been unfair because the Chamber has allegedly not rendered certain decisions. As regards the Motion filed by the Defence on 17 May 2005, the Prosecutor notes that the issue raised can only be resolved at the end of the trial.

Karemera et al., Decision Granting Extension of Time to Respond to the Prosecution Motion for Judicial Notice (TC), 12 July 2005; *Karemera et al.*, *Décision relative à la requête de la Défense en extension de délai* (TC), 5 October 2005.

⁵ *Karemera et al.*, Oral Decision on Karemera Motion for Extension of Time Filed on 29 July 2005 (TC), 9 September 2005, p. 2; *Karemera et al.*, *Décision relative à la requête de la Défense en extension de délai* (TC), 5 October 2005, para. 5.

⁶ Édouard Karemera's Motion for Extension of Time to Respond to the Prosecutor's Motion entitled "Prosecution *inter partes* motion under Rule 66(C) for material within the Belgian dossier to be reviewed in camera by the Trial Chamber and ruled not disclosable", filed on 3 October 2005.

⁷ *Karemera et al.*, Decision on Defence Motion for Extension of Time (TC), 5 October 2005, para. 5.

⁸ Registrar's Representation pursuant to Rule 33(B) of the Rules of Procedure and Evidence Regarding Édouard Karemera's Motion for an Extension of the Delay in Responding to the Prosecutor's Motion Entitled "Prosecution *inter partes* Motion under Rule 66(C) for Material within the Belgian Dossier to be Reviewed in Camera by the Trial Chamber and Ruled not Disclosable," 12 October 2005, para. 4.

15. On 26 November 2005, the Chamber rendered an oral decision following a meeting between the Presiding Judge and the parties, held on 23 November 2004, on the status of pending motions filed before the previous Chamber.⁹ It was clearly specified that the Defence

for Édouard Karemera had agreed to withdraw the Motions of 14 and 17 May 2004, as well as that of 28 June 2004.¹⁰ As for the Motion of 17 May 2005, the Chamber considered it twice. The merits of the Motion were discussed in the Decisions of 5 August 2005,¹¹ as supplemented by the Decision of 14 September 2005,¹² which explicitly refers to the said Motion given that the Defence had recalled the Motion in its oral arguments. The Chamber, therefore, considers that it is no longer seized of the said Motions.

Delay in the disclosure of materials by the Prosecutor and respect of the Accused's right to a fair trial

16. The Defence submits that the Prosecution never complies with the time-limits prescribed by the Rules or imposed by the Chamber for disclosure of materials. Such belated disclosures hamper adequate preparation of the case and violate the right of the Accused to a fair trial.

17. The Chamber notes that the Defence Motion does not specify the belated Prosecution disclosure at issue. The Chamber finds this contention inadmissible.

18. Nevertheless, the Chamber recalls that it has already ruled on motions relating to late disclosure of materials by the Prosecutor. In those Decisions, the Chamber either found that the Prosecution had not violated any disclosure obligations or that where the Prosecutor had violated disclosure obligations the Accused had suffered no prejudice, or that the relief requested by the Defence had been inappropriate.¹³

Violation by Management of the Detention Facility of the Accused's right to communicate with his Counsel

19. The Defence alleges that the Accused is a victim of arbitrary restriction of his right to communicate with his Counsel freely and without restraint as provided for under Rule 65 of the Rules Covering the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal ("Rules Covering Detention"). The Commanding Officer of the Detention Facility allegedly restricts, without any legal basis, the duration of telephone calls between the Accused and his Counsel.

⁹ T. 26 November 2005, p. 2.

¹⁰ *Ibidem*.

¹¹ *Karemera et al.*, Decision on Defence Motion Challenging the Jurisdiction of the Tribunal- Joint Criminal Enterprise (TC), 5 August 2005; *Karemera et al.*, Decision on Defects in the Form of the Indictment (TC), 5 August 2005.

¹² *Karemera et al.*, Decision on Motions Challenging the Indictment as Regards the Joint Criminal Enterprise Liability (TC), 14 September 2005.

¹³ *Karemera et al.*, Oral Decision on Ngirumpatse Motion to Exclude the 143 Prosecution Witness Statements filed on 4 July 2005 (TC), 14 September 2005; *Karemera et al.*, 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 (TC), 9 September 2005, para. 12; T. 10 October 2005, p. 18.

20. The Chamber notes that the President of the Tribunal has been informed of these facts. In a letter dated 8 October 2004, addressed to Édouard Karemera, the President explained that Rule 58 of the Rules Covering Detention entitles the Commanding Officer of the Detention Centre to limit the duration of telephone conversations. In view of the limited

resources of the Detention Facility and the number of detainees, the Commanding Officer addressed a "Note to all Security Officers and Detainees" restricting the duration of telephone calls.¹⁴ This measure was taken against all the detainees in the Detention Facility. Moreover, the additional restrictions on telephone calls to which the Accused was subjected, pursuant to Article 36(b) of the said Rules on Detention, were justified by the fact that he had breached the Commanding Officer's Note. The President concluded that Édouard Karemera was not being persecuted or discriminated against by the Commanding Officer of the Detention Facility.¹⁵

21. Considering the Defence's allegations and the President's arguments in support of his aforementioned Decision, the Chamber finds that the Defence has adduced no evidence to show that Édouard Karemera has suffered discrimination in detention. The Chamber also finds that the measures taken by the Commanding Officer of the Detention Facility do not violate the Accused's right to communicate with his Counsel.

Application of Article 28 of the Statute

22. The Defence contends that it is having difficulty conducting investigations in Rwanda and preparing its evidence. It requests the Chamber to order the Republic of Rwanda, pursuant to Article 28 of the Statute, to facilitate its investigations.

23. The Chamber recalls that one of the conditions for granting a request under Article 28 of the Statute is to show that the requesting party has made reasonable efforts to secure the assistance of a State, and that such efforts have been unsuccessful.¹⁶ In the instant case, the Defence has shown no proof of various initiatives taken to secure the assistance of the Requested State. Consequently, the Chamber finds that the Defence has not satisfied the requirement for the application of Article 28 of the Statute in such circumstances.

24. In light of the foregoing, the Chamber notes that the Defence has the tendency to submit to the Chamber legal issues on which decisions have already been rendered, and requests the Defence to show greater diligence.¹⁷

¹⁴ Note To all Security Officers and Detainees ("Commanding Officer's Note"), 3 June 2004.

¹⁵ Letter from the President of the Tribunal to Édouard Karemera dated 8 October 2004, pp. 1-2. Annex 1(b) of the Defence Motion.

¹⁶ The *Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T (*Bagosora et al.*), Request to the Government of Rwanda for Cooperation and Assistance Pursuant to Article 28 of the Statute (TC.), 10 March 2004, para. 4; *Bagosora et al.*, Decision on the Defence for Bagosora's Request to Obtain the Cooperation of the Republic of Ghana (TC), 25 May 2004, para. 6; *Bagosora et al.*, Decision on Request for Assistance Pursuant to Article 28 of the Statute (TC), 27 May 2005, para. 2.

¹⁷ Rules 46 and 73(F) of the Rules.

FOR THESE REASONS, THE CHAMBER

- I. **DISMISSES** the Defence Motion;
- II. **ORDERS** the Defence to request the Registry, as soon as possible, to appoint at least one bilingual legal assistant.

Arusha, 28 October 2005, done in French

Dennis C. M. Byron
Presiding Judge

Emile Francis Short
Judge

Gberdao Gustave Kam
Judge

[Seal of the Tribunal]

