



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-T  
31-10-2005  
(24519 - 24517)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

24519  
24517  
R

OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Adama Dieng

**Date:** 31 October 2005

**THE PROSECUTOR**

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA

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

*Edouard Karemera*

**DECISION ON DEFENCE MOTION FOR MODIFICATION OF PROTECTIVE  
ORDER: TIMING OF DISCLOSURE**

*Rules 69 and 75 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Don Webster  
Gregory Lombardi  
Iain Morley  
Gilles Lahaie  
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 and Patrick Nimy Mayidika Ngimbi

*by*

201518

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

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

**BEING SEIZED** of “Joseph Nzirorera’s Motion for Modification of Protective Measures: Timing of Disclosure”, filed by the Defence of the Accused (“Defence”) on 20 September 2005 (“Motion”);

**CONSIDERING** the Prosecution’s Response thereto filed on 27 September 2005;

**NOTING** the Chamber’s Order dated 12 October 2005, which requested DCDMS to file a submission to the Chamber in response to some facts alleged in Nzirorera’s Motion;

**CONSIDERING** the Registrar’s submission dated 19 October 2005 and Joseph Nzirorera’s Response to the Registrar’s submission dated 24 October 2005;

**DECIDES** as follows pursuant to Rule 73(A) of the Rules of Procedure and Evidence (“Rules”).

1. The present trial commenced on 19 September 2005. In a Decision dated 10 December 2004, the Chamber issued an Order on Protective Measures for Prosecution Witnesses. Number 12 of that Order states as follows:

“The identifying information withheld by the Prosecution in accordance with this order shall be disclosed by the Prosecution to the Defence no later than thirty (30) days before the commencement of the trial session during which the concerned witnesses are scheduled to testify.”<sup>1</sup>

2. The Defence is now requesting the Chamber to modify this order so that all identifying information for the protected witnesses be disclosed prior to the 30 days requirement, or in the alternative, on the final day of the previous session in which the witness is scheduled to testify.

3. The Chamber is of the view that this application is an issue of reconsideration. As previously stated, the Chamber notes its “inherent” power to reconsider its own decisions.<sup>2</sup> In order to apply the exceptional measure of reconsideration, the Chamber must have discovered a new fact of which it was not previously aware, new circumstances must have arisen to affect the premise of the impugned decision, or where a party shows an error in law and an injustice has occurred.<sup>3</sup>

4. After reviewing the reasons put forth by the Defence, including the length of time required by DCDMS to approve an investigative mission, and the response provided by the Registrar which noted its ability to accelerate such requests when unforeseen circumstances arise, the Chamber does not believe that any new fact exists that would justify reconsideration. In any case, the Chamber does not consider that an injustice will occur to warrant reconsideration at this time.

<sup>1</sup> *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-PT (“*Karemera et. al.*”), Order on Protective Measures for Prosecution Witnesses (TC), 10 December 2004, para 12.

<sup>2</sup> See for example, *Karemera et. al.*, Decision on Joseph Nzirorera’s Motion for Reconsideration or Certification to Appeal Decision on Motion for Order Allowing Meeting With Defence Witness (TC), 11 October 2005, para. 8.

<sup>3</sup> *Id.* (citations omitted)


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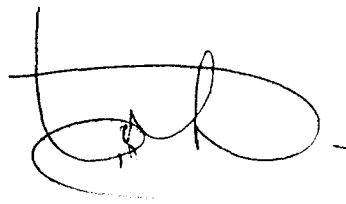
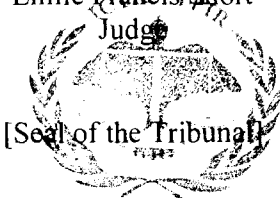
5. The Chamber, however, wishes to note that the impugned Order for Protective Measures instructs the Prosecution to disclose the identifying information of protective measures “no later than thirty (30) days” before the commencement of the relevant trial session. This means that the Prosecution can disclose the identifying information in advance of that time, which would likely result in the facilitation of a smooth trial session, something that is in the interests of all parties involved.

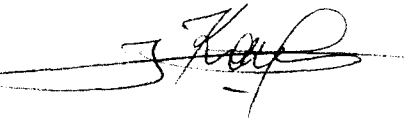
**FOR THE ABOVE MENTIONED REASONS, THE CHAMBER**

**DENIES** the Motion.

Arusha, 31 October 2005, done in English.

  
Dennis C.M. Byron  
Presiding

  
Emile Francis Short  
Judge  
  
[Seal of the Tribunal]

  
Gberdao Gustave Kam  
Judge