

ICTR-98-44-T
8-11-2005
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UNITED NATIONS
NATIONS UNIES

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: 8 November 2005

THE PROSECUTOR

v.

Edouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

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08-11-2005

DECISION GRANTING EXTENSION OF TIME TO FILE PROSECUTION EXPERT
REPORT

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

Office of the Prosecutor:
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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

Handwritten signature or initials.

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

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

BEING SEIZED of the “Prosecutor’s Notice of Delay in Filing Expert Report of Prof. André Guichaoua and Request for Additional Time to Comply with the Trial Chamber Decision of 9 September 2005”, filed on 6 October 2005;

CONSIDERING “Joseph Nzirorera’s Response to Prosecutor’s Request for Additional Time: Report of André Guichaoua”, filed on 10 September 2005;

CONSIDERING that the Accused Édouard Karemera and Mathieu Ngirumpatse have not filed any reply to the Motion;

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

INTRODUCTION

1. The trial in the current proceedings started on 19 September 2005 with the presentation of the Prosecution’s case.
2. The Chamber rendered a Decision on Joseph Nzirorera’s Motion for Deadline for Filing of Reports of experts on 16 May 2005, and ordered the Prosecutor to disclose to the Chamber and to the Defence of all the Accused, by 15 August 2005, the reports of all the expert witnesses he intended to call to testify during trial.¹
3. On 11 August 2005, the Prosecutor filed a Notice of Delay to inform the Chamber that André Guichaoua was unable to complete his expert report due to administrative difficulties in finalizing his consultancy contract. The Chamber granted the request and ordered the filing of André Guichaoua’s report by 25 November 2005.²
4. The Prosecutor now seeks a new extension of time, until 6 January 2006, to disclose the report of Expert Witness André Guichaoua due to medical reasons.

¹ *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-PT (“*Karemera et al.* »), Decision on Joseph Nzirorera’s Motion for Deadline for Filing of reports of Experts (TC), 16 May 2005.

² *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.

DELIBERATIONS

5. The Chamber recalls that 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 day prior to the date on which the expert is expected to testify.

6. In its Motion, the Prosecutor indicates that André Guichaoua informed him on 5 October 2005 that he will not be able to submit his expert report by 25 November 2005 due to actual health reasons. He submits that most of the elements of his report are included in previous publications and expert reports already filed in other proceedings. Moreover, the Prosecution team will be consulting with him in Arusha in early November 2005 to facilitate a revision of the report before 15 December 2005. According to the Prosecutor, this delay will not cause any prejudice to the Accused insofar as André Guichaoua is not expected to testify at trial until the second half of 2006.

7. Joseph Nzirorera opposes the Motion. He states that if André Guichaoua already has most of the elements to complete his report, the latter can use the time in early November for its finalization. Joseph Nzirorera further argues that if the expert report is disclosed only in January 2006, his Defence team will not have enough time to review and study the said report before the beginning of the second trial session as it intends to use the said report to cross-examine the Prosecutor's witnesses. Consequently, if the Prosecutor's Motion is granted, Joseph Nzirorera seeks the Chamber to postpone the resumption of the second trial session in early February 2006.

8. The Chamber notes that in the medical certificate annexed to the Motion, the Expert is advised to rest only until 22 October 2005. It is also mentioned that the Expert will travel to Arusha to work on his report during November 2005, and the work involves primarily merging what he had already done in previous publications and expert reports.

9. Even if the Chamber is sympathetic to the Prosecution's Expert witness actual health situation, it is deeply concerned that the rights of the Accused are not impaired by a late disclosure of the Expert's statement. The Chamber acknowledges that the medical situation of Mr. André Guichaoua is an unforeseen and exceptional circumstance that could justify a later disclosure of his statement. However, the fact that the Expert could work in November and that he has already extensively worked on his report for this instant case could not justify an extension of time until January 2006.

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10. Consequently, the Chamber considers Friday, 12 December 2005 as a date by which it could reasonably expect the expert report to be disclosed to the Chamber and to the Defence. Under these circumstances, the Chamber is of the view that the Accused will not be prejudiced since this expert witness will not be called to testify before the second half of 2006.

FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

- I. **GRANTS** in part the Motion;
- II. **ORDERS** the Prosecutor to disclose to the Chamber and the Defence of all the Accused in the instant proceedings, no later than Friday 12 December 2005, the statement of André Guichaoua pursuant to Rule 94 *bis* (A) of the Rules;
- III. **DENIES** Joseph Nzirorera's request to resume the second trial session in early February 2006.

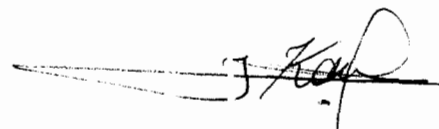
Arusha, 8 November 2005, done in English.



Dennis C. M. Byron
Presiding Judge



Emile Francis Short
Judge



Gberdac Gustave Kam
Judge

[Seal of the Tribunal]