

ICTR-98-44-T
15-12-2005
(24763-24760)

24763
Mump
4



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: 15 December 2005

THE PROSECUTOR

v.

**Edouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

2005 DEC 15 A 10:59
ICTR
15-12-2005
Mump

ORDER ON FILING OF EXPERT REPORT OF ANDRE GUICHAOUA

Rule 54 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

Mump

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”) pursuant to Rule
54 of the Rules of Procedure and Evidence (“Rules”);

NOTING the “Prosecutor’s Notice of Delay in Filing Expert Report of Professor André
Guichaoua and Request for Additional Time to Comply with the Trial Chamber Decision of 8
November 2005”, filed on 8 December 2005 (“Prosecution Motion”), and of the “Motion to
Exclude Testimony of André Guichaoua”, filed by the Defence for Joseph Nzirorera on 13
December 2005 (“Defence Motion”).

INTRODUCTION

1. On 16 May 2005, the Chamber ordered the Prosecution to disclose the statements of all the expert witnesses the Prosecution intends to call to testify to the Chamber and the Defence of all of the Accused by 15 August 2005.¹ In case of default of disclosure, the Prosecutor was requested to provide the Chamber and the Defence with reasons and indicate the revised date by which the disclosure would occur.

2. On 9 September 2005, being satisfied with the explanations provided by the Prosecution in its request for more time to fulfill its disclosure obligations under Rule 94*bis* (A) of the Rules, the Chamber granted the Prosecution’s application for an extension of time to disclose the Expert Report of Mr. André Guichaoua by 25 November 2005.² This deadline was determined on the basis of the information provided by and the date proposed by the Prosecution. The Chamber also considered that whilst this report should have been disclosed at the earliest possible time, the rights of the Accused would not be prejudiced if the Prosecution filed it within the time-limits set out.³

3. The trial in this case started on 19 September 2005, with the Prosecution calling its first witnesses. On 8 November 2005, due to the health situation of the Expert Witness as shown in the medical certificate produced by the Prosecution at that time, the Chamber granted a second extension of time to disclose his statement pursuant to Rule 94 *bis* (A) of the Rules, no later than Friday 12 December 2005.⁴

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

² *Karemera et al. case*, 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.

³ *Id.*, par. 12.

⁴ *Karemera et al. case*, Decision Granting Extension of Time to File Expert Report (TC), 8 November 2005.

4. The Prosecution seeks now an additional extension of time to disclose the report of Expert Witness André Guichaoua. It contends that the Prosecutor's Office acted diligently by taking various steps to obtain the Expert Report with due diligence but now the Expert has advanced serious reasons of which the Prosecution was previously unaware. As a result of them, it is submitted that the Expert will not be able to complete his report before mid February 2006.

DELIBERATIONS

5. The Chamber is very concerned about the Prosecution's repetitive requests for extension of time for filing Prosecution expert witness statements under Rule 94*bis* of the Rules. The deadlines for disclosure of expert reports were determined on the basis of information provided by the Prosecution and extensions of time have already been granted several times, including for two other experts to be called.⁵

6. In fact, the Prosecution does not seem to be in possession of all the relevant and accurate information in this matter. The Chamber is of the view that further information should be directly provided by the Expert Witness in order to rule on both the Prosecution and Defence Motions.

7. Further, in a prior oral Decision, the Chamber recalled the Prosecution's obligations under the Rules, referring notably to Rule 46.⁶ In light of the Prosecution repetitive failures to comply with the deadlines set out for the filing of expert witness statements, the Chamber considers that the Prosecution should explain why a warning under Rule 46 of the Rules is not warranted.

FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

I. **ORDERS** the Prosecution to provide, by 2 January 2006, the Chamber and the Defence of all of the Accused in the instant proceedings with a statement from the Expert Witness André Guichaoua indicating by which exact and definitive date he will be able to provide his report;

⁵ See Oral Decision, T. 3 October 2005, p. 16-18 (for Expert Witness Des Forges) and *Karemera et al.*, Decision Granting Extension of Time to File Prosecution Expert Report (TC), 8 November 2005 (for Expert Witness Guichaoua); *Karemera et al.*, Decision on Prosecution Request for Additional Time To File Expert Report and Defence Motion for Exclusion of Expert Ntampaka Testimony (TC), 12 December 2005;

⁶ Oral Decision, T. 3 October 2005, p. 16-18


24760


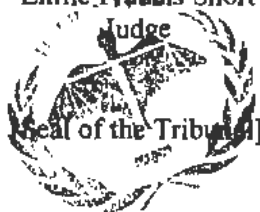
Order on Filing of Expert Report of André Guichaoua

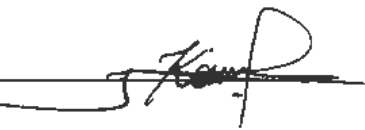
15 December 2005

II. **ORDERS** the Prosecution to show cause, by 9 January 2006, explaining why its conduct does not warrant a warning under Rule 46 of the Rules.

Arusha, 15 December 2005, done in English.


Dennis C. M. Byron
Presiding Judge


Emile François Short
Judge



Gberdao Gustave Kam
Judge