



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

ICTR-98-44-T
31-1-2006
(25786 - 25784)

25786
-Hm

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 31 January 2006

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

21 P 536
C.A.A.

ORDER ON FILING OF EXPERT REPORT OF CHARLES NTAMPAKA

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 Ndirumpatse
Chantal Hounkpatir and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson and
Patrick Niny Nayidika Ngimbi

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber III, composed of Judges Dennis C. M. Byron, Presiding, Emile Francis Short and Gberdao Gustave Kam (the "Chamber") pursuant to Rule 54 of the Rules of Procedure and Evidence (the "Rules");

NOTING the "Prosecutor's Notice of Delay in Filing Expert Report of Charles Ntampaka," filed on 19 December 2005 (the "Prosecutor's Notice") and Joseph Nzirorera's "Second Motion to Exclude Testimony of Charles Ntampaka," filed on 20 December 2005 ("Nzirorera's Motion");

NOTING the previous Decisions of this Chamber concerning the disclosure of the Report of Expert Witness Charles Ntampaka, dated 16 May 2005, 9 September 2005 and 12 December 2005, respectively, as well as this Chamber's "Order on Filing of Expert Report of André Guichaoua," dated 15 December 2005.

INTRODUCTION

1. On 16 May 2005, the Chamber ordered the Prosecution to disclose the statements of all expert witnesses the Prosecution intended to call to testify to the Chamber, and to the Defence of each of the Accused, by 15 August 2005.¹ In case of default of disclosure, the Prosecutor was ordered to provide the Chamber and the Defence with reasons and to 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 obligation 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. Charles Ntampaka.² The revised date - which date was proposed by the Prosecution - was 25 November 2005.

3. In its Decision of 12 December 2005, concerning a Motion by the Prosecution seeking a further extension of time for the disclosure of Mr. Ntampaka's Report, this Chamber extended the deadline for disclosure once more to 19 December 2005.³ In that Decision, the Chamber also rejected an application, brought by the Defence for Nzirorera, to exclude Mr. Ntampaka's testimony in its entirety as a result of the delay.

4. On 19 December 2005, the Prosecution filed a further Notice of Delay concerning the disclosure of the Expert Report of Charles Ntampaka, seeking an extension of time to 28 February 2006. In its Notice, the reasons given by the Prosecution for Mr. Ntampaka's inability to complete his report within the timeframe stipulated relate to the Witness' competing professional commitments, administrative delays relating to the Witness' negotiation of a contract with the Tribunal, as well as difficulties in communication between the trial team and the Witness. The Prosecutor submits that "a further extension of time is requested until the end of February by which time the Prosecutor has been assured the report

¹ *Prosecutor v. Edouard Karemera et. al.*, Decision on Joseph Nzirorera's Motion for Deadline for Filing of Reports of Experts (TC), 16 May 2005.

² *Prosecutor v. Edouard 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.

³ *Prosecutor v. Edouard Karemera et. al.*, Decision on Prosecution Request for Additional Time to File Expert Report and Joseph Nzirorera's Motion to Exclude Testimony of Charles Ntampaka, 12 December 2005.



will be ready.”⁴ The Notice does not exhibit any correspondence between the Prosecution and the Witness concerning this issue.

5. As a result of the Prosecution’s Notice of Delay, the Defence for Nziroera filed a Motion to exclude the testimony of Professor Ntampaka in its entirety.

DELIBERATIONS

6. The Chamber notes that a significant period of time has lapsed since the date of this Chamber’s first order for disclosure of the statement in question - 15 August 2005 - and the disclosure date now proposed by the Prosecutor - 28 February 2006. Further, this is the third request by the Prosecution for an extension of time in relation to the disclosure of the Expert Report of this Witness. Additionally, the Prosecution has made several requests for extensions of time in the deadlines for disclosure of expert witness reports set down by this Chamber. Notably, an application by the Prosecution for an extension of time in the deadline for the disclosure of the report of Expert Witness André Guichoua is currently pending before this Chamber.

7. The Chamber is not satisfied, in the absence of a statement from the Expert Witness himself, that an extension of time is warranted, or that, if granted, the Witness would be in a position to comply with the order made by the Chamber. The Chamber recalls its Order of 15 December 2005 concerning the Prosecution’s request for an extension of time in the deadline for the disclosure of the report of Expert Witness André Guichoua which required a statement to be provided by the Witness himself, proposing a new deadline. The Chamber considers that a similar course of action is appropriate with respect to the delay in the disclosure of the report of Expert Witness Charles Ntampaka, following which the Chamber will be in a better position to rule on both the Prosecution and Defence Motions.

FOR THOSE REASONS

THE CHAMBER

ORDERS the Prosecution to provide, by Monday 6 February 2006, the Chamber and the Defence of each of the Accused with a formal statement from Expert Witness Charles Ntampaka outlining the reasons for the further delay in the disclosure of his report and indicating the exact date by which he will be able to furnish the Prosecution with his report.

Arusha, 31 January 2006, done in English.

Dennis C. M. Byron
Presiding

Emile Francis Short
Judge

Gérard Gustave Kam
Judge

[Seal of the Tribunal]



⁴ At paragraph 11 of the Prosecutor’s Notice.