



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-T  
13-2-2006  
(25286-25284)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

25286  
Zunf

OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Adama Dieng

**Date:** 13 February 2006

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ICTR  
REGISTRAR'S OFFICE

**THE PROSECUTOR**

v.

**Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA**

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

**DECISION ON DELAY IN FILING OF  
EXPERT REPORT OF CHARLES NTAMPAKA**

*Article 20 of the Statute of the Tribunal  
and Rule 94bis 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**  
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**Defence Counsel for Joseph Nzirorera**  
Peter Robinson and  
Patrick Nimy Nayidika Ngimbi

## INTRODUCTION

1. On 16 May 2005, this Chamber ordered the Prosecution to disclose the statement of Prosecution Witness Charles Ntampaka to the Defence of each of the Accused by 15 August 2005.<sup>1</sup> In response to requests for extensions of that deadline by the Prosecution on two occasions, the Chamber extended the deadline twice: the first extension being to 25 November 2005,<sup>2</sup> and the further extension being to 19 December 2005.<sup>3</sup>

2. On 19 December 2005, the Prosecution filed a Motion<sup>4</sup> seeking a further extension of time concerning the disclosure of Mr. Ntampaka's Report, as a result of which the Defence for Nzirorera filed a Motion<sup>5</sup> seeking the exclusion of the witness' evidence in its entirety. The Prosecution advanced reasons for the further request in its Motion, but the Chamber was not satisfied on the basis of the material before it that an extension of time should be granted or that the witness would be in a position to comply with any order made by the Chamber, if it was granted. Accordingly, it ordered Mr. Ntampaka himself to provide a statement, advancing reasons for the further delay and proposing a deadline by which he would be able to submit his Report.<sup>6</sup> The Chamber stated that it would rule on both the Prosecution and Defence Motions once its Order had been complied with.

3. On 7 February 2006, the Prosecutor filed a document in compliance with the Chamber's Order of 31 January 2006,<sup>7</sup> annexing correspondence between the Prosecutor and Mr. Ntampaka, which proposed a filing deadline of 20 March 2006 for the filing of the Report. The Prosecutor had also filed a document concerning Mr. Ntampaka's Report on 31 January 2006,<sup>8</sup> simultaneously with the filing of the Chamber's Order of that same date. As a result of these filings, the Defence for Ngirumpatse filed a *Mémoire*<sup>9</sup> agreeing to the ordering of a new deadline of 20 March 2006, but seeking certain other declarations from the Chamber.

## DISCUSSION

4. Pursuant to Rule 94*bis* of the Rules, "the full statement of any expert witness called by a party shall be disclosed to the opposing party *as early as possible*".<sup>10</sup> Previously, on the

<sup>1</sup> *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, ("Karemera et al") Decision on Joseph Nzirorera's Motion for Deadline for Filing of Reports of Experts (TC), 16 May 2005.

<sup>2</sup> *Prosecutor v. Édouard 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.

<sup>3</sup> *Prosecutor v. Édouard 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 (TC), 12 December 2005.

<sup>4</sup> "Prosecutor's Notice of Delay in Filing Expert Report of Charles Ntampaka," ("Prosecution's Motion") filed on 19 December 2005.

<sup>5</sup> "Second Motion to Exclude Testimony of Charles Ntampaka," ("Defence Motion") filed by the Defence for Joseph Nzirorera, on 20 December 2005.

<sup>6</sup> *Karemera et. al*, Order on Filing of Expert Report of Charles Ntampaka, 31 January 2006.

<sup>7</sup> "Prosecutor's Filing Pursuant to Trial Chamber III Decision of 31 January 2006 Concerning Expert Report of Prof. Charles Ntampaka," filed on 7 February 2006.

<sup>8</sup> "Prosecutor's Notice of Delay in Filing Expert Report of Prof. Charles Ntampaka and Request for Additional Time to Comply with the Trial Chamber Scheduling Order," filed on 31 January 2006.

<sup>9</sup> "Mémoire en Réponse à la Demande de Prorogation de Délai au Dépôt du Rapport de Monsieur Ntampaka," filed by the Defence for Mathieu Ngirumpatse on 8 February 2006.

<sup>10</sup> Emphasis added.

*SBY*

basis of material placed before it, this Chamber has made determinations as to what was the earliest possible date by which the Prosecution could disclose Mr. Ntampaka's Report, and has then ordered accordingly. The Prosecution has not been able to comply with the previous Orders made by the Chamber. The Chamber now considers whether, on the basis of the new material before it, a new deadline should be ordered as to the earliest date possible by which Mr. Ntampaka's Report can now be disclosed.

5. The Chamber has carefully reviewed the correspondence from the expert witness submitted by the Prosecutor. In general, the filings disclose the fact that the witness must consult the Prosecution's archives in Arusha prior to being able to finalise his report. To that end, travel dates on which Mr. Ntampaka will come to Arusha have been proposed, as have been the dates on which the witness and the Prosecutor will meet to discuss the final form the Report should take. Most importantly, the witness himself proposes the dates during which he will be able to consult the Prosecution's archives -- between 28 February 2006 and 12 March 2006 -- following which, he advises, he will be able to file the Report on 20 March 2006.

6. The Chamber is now satisfied, on the basis of the constraints communicated by the witness and the Prosecution and the deadline self-imposed by Mr. Ntampaka, that a further extension of time - to 20 March 2006 -- is warranted.

7. In the light of the Chamber granting the application for a further extension of time, the Chamber considers that Nzirorera's application to exclude Mr. Ntampaka's testimony in its entirety should be rejected. Ngirumpatse did not join Nzirorera in making such an application. The Chamber notes that, at this stage in the proceedings, it cannot be said that granting this further extension of time will infringe the rights of the Accused guaranteed under Article 20 of the Statute. Furthermore, the Chamber has the ongoing ability to manage the trial to ensure that a delay in disclosure will not manifest in unfairness to the Accused. If, when the witness is called to testify, the Chamber is of the view that the Accused has still not had enough time to prepare for the cross-examination of Mr. Ntampaka, or to investigate in order to challenge the matters contained in his Report, and that this has resulted in unfairness to the Accused, it will then be open to the Chamber to consider exclusion of the witness' evidence. It is clear that the exclusion of evidence is at the extreme end of a scale of measures available to the Chamber in addressing delay in disclosure.

8. Finally, the Chamber wishes to make clear to both the Prosecution and the witness that any further request for extension of time will be met with the Chamber's utmost disapproval. It also directs the Prosecution to take concrete steps to ensure that Mr. Ntampaka complies with his own undertaking to submit his Report by 20 March 2006. To this end, the Chamber is of the view that a copy of this Decision should be served upon the witness.

#### **FOR THOSE REASONS**

#### **THE CHAMBER**

- I. GRANTS** the Prosecution's Motion for an extension of time for the disclosure of the statement of Expert Witness Charles Ntampaka on the basis outlined by Mr. Ntampaka; and


**II. ORDERS:**

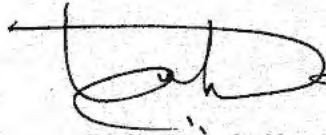
- (a) That the said statement be disclosed to the Defence of each of the Accused and to the Chamber by 20 March 2006; and
- (b) That the Registry serve a copy of this Decision upon Expert Witness Charles Ntampaka as soon as practicable; and


**III. GRANTS** that part of Mathieu Ngirumpatse’s “Mémoire en Réponse à la Demande de Prorogation de Délai au Dépôt du Rapport de Monsieur Ntampaka,” which seeks an Order from the Chamber that the report of Ntampaka be disclosed by 20 March 2006 and **DENIES** the remainder of the said Mémoire; and

**IV. DENIES** Joseph Nzirorera’s “Second Motion to Exclude Testimony of Charles Ntampaka” in its entirety.

Arusha, 13 February 2006, done in English.

  
 Dennis C. M. Byron  
 Presiding

  
 Emile Francis Short  
 Judge

  
 Gberdeo Gustave Kam  
 Judge

[Seal of the Tribunal]

