



UNITED NATIONS
NATIONS UNIES

ICTR-2001-73-T
24-2-2006
(4631 - 4629)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

4631
Shuf

OR: ENG

TRIAL CHAMBER III

Before Judges: Inés Mónica Weinberg de Roca, presiding
Khalida Rachid Khan
Lee Gacuiga Muthoga

Registrar: Adama Dieng

Date: 24 February 2006

THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-T

2006 FEB 24 P 1:32
ICTR

**DECISION ON THE PROSECUTION MOTION FOR DISMISSAL OF THE
DEFENCE NOTICE DUE TO FAILURE TO MEET THE TIME LIMIT
Rule 94 bis (B) of the Rules of Procedure and Evidence**

Office of the Prosecutor:
Wallace Kapaya
Charity Kagwi-Ndungu
Gina Butler
Iskandar Ismail
Jane Mukangira

Defence Counsel:
John Philpot
Peter Zaduk

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal").

SITTING as Trial Chamber III, composed of Judges Inés Mónica Weinberg de Roca, presiding, Khalida Rachid Khan, and Lee Gacuiga Muthoga (the "Chamber");

BEING SEIZED of the "Prosecutor's Reply to Defence Letter/Motion/Application on Dr. Alison Des Forges' Report and Qualifications (Under Rule 73 *bis* (E) of the Rules of Evidence and Procedure)" filed on 27 January 2006 (the "Motion");

CONSIDERING the "Avis Re Rapport d'Expert: Alison Des Forges" filed on 26 January 2006 (the "Defence Notice"), and the Defence Response to the Motion filed on 31 January 2006;

NOW DECIDES the matters solely based on the written briefs of the parties, pursuant to Rule 73 (A) of the Rules of Procedure and Evidence.

SUBMISSIONS

1. On 26 January 2006, the Defence filed a Notice before the Trial Chamber, pursuant to Rule 94 *bis* (B) of the Rules, stating that on 19 January 2006 it had received from the ICTR Court Management Section the French version of the report of Expert Witness Dr. Alison Des Forges and that:

- i) The Defence does not accept the qualification of the witness as an expert;
- ii) The Defence does not accept the contents of the report of the expert witness;
- iii) The Defence wishes to cross-examine the expert witness.

2. The Prosecution submits that the Defence Notice has been filed outside of the 14-day time limit prescribed by Rule 94 *bis* (B) of the Rules and, therefore, should be dismissed by the Chamber. According to the Prosecution, the French version of the Expert Report was disclosed on 11 October 2005, and not on 19 January 2006, as claimed by the Defence. Thus, the Defence Notice, filed on 26 January 2006, falls outside of the time limit. Furthermore, the Prosecution contends that disclosure in either of the two working languages of the Tribunal provides sufficient notification for the purposes of Rule 94 *bis* (A) of the Rules, and since the English version of the Expert Report was disclosed on 15 August 2005, the Defence Notice is out of time.

3. The Defence responds that the 14-day disclosure period runs from the date of filing of the Expert Report in the language of the Accused. The Defence further affirms that the report was filed in French on 19 January 2006 and that its Notice, dated 26 January 2006, was filed within the prescribed time limits. The Defence asserts that the Prosecution Motion is therefore ill-founded. Additionally, the Defence argues, should the Chamber find that the Defence did not meet the prescribed deadline, the Prosecution has not proved any prejudice for the late notice and such lateness cannot preclude the Accused from cross-examining the expert witness. The Defence also maintains that denial of cross-examination of the witness, challenging her expertise, will prejudice the rights of the Accused.

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DELIBERATIONS

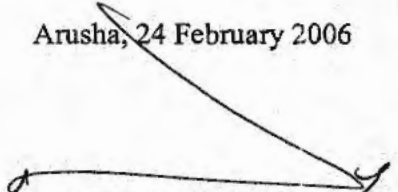
4. After verifying the official record, the Chamber observes that the Expert Report was disclosed to the Defence on 15 August 2005 in English and on 11 October 2005 in French. Considering either date of disclosure, the Chamber notes that the Defence Notice, filed on 26 January 2006, did not meet the time deadline under Rule 94 *bis* (B) of the Rules. As such, the basis of the Defence claim that disclosure was made in French on 19 January 2006 is not clear.

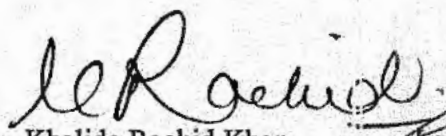
5. Nonetheless, in light of the vital importance of cross-examination to the fairness of the proceedings, the Chamber is not prepared to consider the Defence failure to file a timely Notice as a waiver of the Accused's rights to cross-examine the expert witness on her qualifications and report. Both parties have had sufficient time to prepare for the examination-in-chief and the cross-examination, respectively, of the expert witness, Dr. Des Forges, and no prejudice has been caused to either party by the late filing.

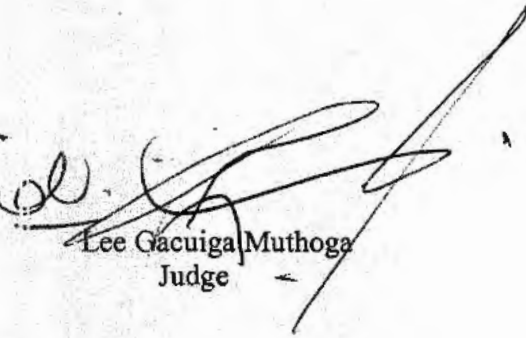
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Prosecution Motion in all respects.

Arusha, 24 February 2006


Inés Mónica Weinberg de Roca
Presiding Judge


Khalida Rachid Khan
Judge


Lee Gacuiiga Muthoga
Judge

[Seal of the Tribunal]

