



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:** 30 March 2006

#### THE PROSECUTOR

v.

**Edouard KAREMERA**  
**Mathieu NGIRUMPATSE**  
**Joseph NZIRORERA**

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

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### SCHEDULING ORDER

*Rule 54 of the Rules of Procedure and Evidence*

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**Office of the Prosecutor:**

Don Webster  
Gregory Lombardi  
Iain Morley  
Gilles Lahaie  
Sunkarie Ballah-Conteh  
Takeh Sendze

**Defence Counsels 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

1. The trial in this case started on 19 September 2005. The second trial session was completed on 17 March 2006 after hearing the third Prosecution witness. At the Status Conference held the same day, the parties agreed that the next trial session will take place from 15 May until 14 July 2006. The order of witnesses to be heard, including disclosure

concerns, and the length of time for the examination of witnesses were discussed. Furthermore, the Chamber granted the parties leave to file further submissions and that the Prosecution did so on 22 March 2006.

*Order of Appearance of Witnesses for the Next Trial Session*

2. In its submissions,<sup>[1]</sup> the Prosecution provides a list of witnesses to be called for the next session. The Defence teams only discuss the date Witness T should start testifying and the scheduling of Witness ADE.

3. All parties agree that Witness T be called at the commencement of the next session. The Accused Mathieu Ngirumpatse however requests that Witness T should start his testimony on 22 May 2006 so that both his Counsel and Co-Counsel, who has other duties the week before, may be present to assist him. While the Prosecution expresses its preference to call this witness on 15 May 2006 for technical reasons, it does not actually object calling him a week later. After consultation with the Registry, the Chamber has been informed that video-link facilities will be available from 22 May until 9 June 2006. The authorities of the State where the witness will reside during his testimony also confirmed their availability to support the organization of the video-link during that period. In order to preserve the fairness of the trial and the rights of the Accused to examine the witness against him in accordance with Articles 19 and 20 of the Statute of the Tribunal, the Chamber is therefore of the view that Witness T should start testifying from 22 May 2006.

4. Each Accused submits disclosure issues regarding Witness ADE which would impair the preparation of his defence. The postponement of his testimony to the fourth session is therefore requested. The Prosecution acknowledges its possession of several witness statements concerning Witness ADE, which may be considered as exculpatory material to be disclosed in accordance with Rule 68 of the Rules of Procedure and Evidence, but maintains its intention to call ADE at the next trial session. The Prosecution had stated its intention to disclose the statements on the 14 of May 2006,<sup>[2]</sup> but finally refrained from doing so and moved, at the Status Conference, the Chamber to order, prior to any disclosure, the Defence not to reveal the identifying information contained in the statements. The Prosecution relied on its obligation under Rule 39 of the Rules to protect the security of informants and potential witnesses. The Defence Counsel considered that, in accordance with their ethical obligations as lawyers, they were already obliged not to disseminate protected information.

5. Whereas the Prosecution has the duty to present the best available evidence to prove its case, the Chamber must ensure a fair trial and conduct the proceedings with full respect for the rights of the Accused.<sup>[3]</sup> In the present case, Witness ADE is likely to be one of the most important prosecution witnesses. It is only recently that he has been added to the Prosecution witness list. Witness ADE statements have been disclosed.<sup>[4]</sup> It is not disputed that a redacted version of materials which may suggest the innocence or mitigate the guilt of the Accused or affect the credibility of Prosecution evidence have been disclosed only recently to the Defence although the next session is scheduled to

commence on 15 May 2006. In those particular circumstances, the Chamber is of the view that scheduling this Witness for the next session could impair the fairness of trial and the rights of the Accused to have time and facilities to prepare their defence. The Prosecution is therefore requested to postpone the testimony of this witness and make the necessary arrangements to ensure the attendance of Witnesses T, ALG, XBM, ZF, GHK, GFA, HH and AWB as proposed in its submissions.

6. Rule 39 of the Rules provides that the Prosecutor may take “all measures deemed necessary for the purpose of the investigation and to support the prosecution at trial, including the taking of special measures to provide for the safety of potential witnesses and informants”. This Rule must be read in conjunction with Articles 19 and 20 of the Statute and Rules 69 and 75 of the Rules which vest Chambers with exclusive authority to order protective measures. The application of Rule 39 of the Rules by the Prosecution could not constitute, as such, an impediment to disclosure of identifying information with respect to Prosecution witnesses.<sup>[5]</sup> Moreover, it has been found that redacted portions of the statement of a former witness, including identity of the witness, have to be disclosed under Rule 68 when it is inextricably connected with the substance of the statements.<sup>[6]</sup>

7. In the present case, the Chamber is of the view that the Prosecution should disclose forthwith an un-redacted version of any Rule 68 material in its possession regarding Witness ADE. Since the witness statements regarding ADE may contain sensitive information that could affect the security of these witnesses, the Defence and the Accused should be requested not to disseminate to the public and media any identifying information included in.

#### *Length of Examination*

8. The Prosecution submits that cross-examination should be limited and last no more than three times as long as the examination-in-chief. The Defence for Nzirorera objects to a strict mathematical application to the length of cross-examination since witnesses can be unpredictable. Both Defence for Ngirumpatse and Karemera express serious concerns about the duration of the examination until now and agree that time standards for both parties may facilitate and expedite the proceedings.

9. In the Chamber’s view, there is value in fixing time standards for the witness examination, including in-chief, cross and re-direct examination. This will not preclude the Chamber from adopting a flexible approach and grant extensions of time where appropriate. In addition, the experience in the present case has shown that both parties are willing and able to comply with time-standards when decided by the Chamber without jeopardizing the presentation of their case or the rights of the Accused.

10. The Prosecution has provided an estimated length of examination-in-chief for each witness to be called during the next session. The Chamber will address these estimates in details and discuss them as well as other practice directives before the beginning of the next session.

11. However, the duration of Witness T's testimony could be addressed now. The parties requests between three to four weeks for the examination of this witness. It must be noted that, in the *Bagosora* case, a complex case concerning four co-Accused, the same witness testified for only six days. The Chamber is of the view that the parties may be able to better focus their examination of this witness, so that the examination-in-chief could be done within two days (considering five hours in court per day), seven days being devoted to cross-examination and a half day for the re-direct.

**ACCORDINGLY**, the Chamber

I. **ORDERS** that the third trial session shall start on 15 May 2006 until 14 July 2006;

II. **ORDERS** that the testimony of Witness T take place by video-link from 22 May 2006 for a period of approximately ten days, which could be reviewed as the evidence unfolds;

III. **ORDERS** that Witness ADE testimony be not called during the third trial session;

IV. **ORDERS** the Prosecution to make the necessary arrangements to ensure the attendance of Witness T, ALG, XBM, ZF, GHK, GFA, HH and AWB as proposed in its submissions

V. **ORDERS** the Prosecution to disclose forthwith an un-redacted version of exculpatory material in its possession regarding Witness ADE;

VI. **ORDERS** that the Defence and the Accused persons shall not share, reveal or discuss, directly or indirectly, any documents or any information contained in any documents, or any other information which could reveal or lead to the identification of any witness whose statement shall be disclosed as ordered above, to any person or entity other than the Accused, assigned Counsel or other persons working on the Defence team.

Arusha, 30 March 2006, done in English.

Dennis C. M. Byron  
Presiding Judge

Emile Francis Short  
Judge

Gberdao Gustave Kam  
Judge

[Seal of the Tribunal]

[\[1\]](#) See T. (closed session), 17 March 2006, p. 34 and Prosecutor's Submission on Scheduling for Trial Session #3.

[2] See Statement made by Prosecution Lead Counsel, T., 15 March 2006.

[3] Art. 19 and 20 of the Statute; see also *Muvunyi* Decision, par. 21; *Prosecutor v. Bizimungu, Nindiliyamana, Nzuwonemeya, Saguhutu*, Case No. ICTR-2000-56-T, Decision on the Prosecution's Motion dated 9 August 2005 to Vary its List of Witnesses Pursuant to Rule 73bis(E)(TC), 21 September 2005, par. 32.

[4] See *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-94-44-T ("*Karemera et al.*"), Decision on Variance of the Prosecution Witness List (TC), 13 December 2005.

[5] *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Compel Inspection and Disclosure (TC), 5 July 2005, par. 18.

[6] *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Motion for Disclosure under Rule 68 (TC), 1 March 2004, par. 6.