

ICTR-98-44-T  
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UNITED NATIONS  
PAILINDI 1945

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
*sitting pursuant to Rule 15 bis (F) of the Rules of Procedure and Evidence*

**Registrar:** Adama Dieng

**Date:** 22 March 2007

**THE PROSECUTOR**

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIROKERA  
Case No. ICTR-98-44-T

JUDICIAL RECORDS ARCHIVES  
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**DECISION ON PROSECUTOR'S MOTION FOR AN ORDER TO FILE NOTICE OF ALIBI**

*Rule 67 of the Rules of Procedure and Evidence*

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## INTRODUCTION

1. The trial started on 19 September 2005 before the Trial Chamber composed of Judges Dennis C. M. Byron, presiding, Emile Francis Short and Gberdao Gustave Kam. The Defence for Nzirorera filed a notice of alibi on 18 June 2004 pursuant to Rule 67(A)(ii)(a) of the Rules of Procedure and Evidence ("Rules"). Neither the Defence for Karemera, nor the Defence for Ngirumpatse have filed such notices.
2. On 20 December 2006, the Prosecution filed a motion requesting that the Chamber order the latter two Accused to provide notice of alibi in respect of certain allegations set forth in the Indictment,<sup>1</sup> prior to the commencement of the next trial session, or thereafter be enjoined from offering the defence of alibi to these allegations.<sup>2</sup> On 27 December 2006 and on 29 December 2006 respectively, the Defence for Ngirumpatse<sup>3</sup> and the Defence for Nzirorera<sup>4</sup> filed responses opposing the Prosecution's motion. On 10 January 2007, the Prosecution filed a reply to the responses of the Defence.<sup>5</sup> On 23 January 2007, the Defence for Karemera filed a response to the Prosecution motion.<sup>6</sup>
3. On 19 January 2007, Judge Short decided to withdraw from the case. In accordance with Rule 15 bis (D) of the Rules, the remaining Judges decided on the continuation of the proceedings with a substitute judge.<sup>7</sup> The President also authorized the Trial Chamber, composed of Judges Byron and Kam, to conduct routine matters, such as the delivery of decisions, in the absence of the substitute judge.<sup>8</sup>

## DISCUSSION

4. Before ruling on the merits of this decision, the Chamber will firstly consider preliminary issues relating to the timeliness of the Defence submissions, the references to

<sup>1</sup> Paragraphs 25.2, 33.2, 40, 47 and 55 of the Indictment and paragraph 101 of the Prosecution's Pre-Trial Brief.

<sup>2</sup> Prosecutor, Prosecutor's Motion for an Order to File Notice of Alibi Pursuant to Rule 67(A)(ii), 20 December 2006, at 4 ("Prosecutor's Motion").

<sup>3</sup> Defence for Ngirumpatse, Mémoire pour M. Ngirumpatse sur la Prosecutor's Motion for an Order to File Notice of Alibi, 27 December 2006 ("Ngirumpatse's Response").

<sup>4</sup> Defence for Nzirorera, Nzirorera's Response to Prosecutor's Motion for an Order to File Notice of Alibi, 29 December 2007 ("Nzirorera's Response").

<sup>5</sup> Prosecutor, Prosecutor's Consolidated Reply to Nzirorera's and Ngirumpatse's Opposition to Request for Notice of Alibi, 10 January 2007 ("Prosecutor's Reply").

<sup>6</sup> Defence for Karemera, Réponse de Edouard Karemera à la requête du Procureur intitulée « Prosecutor's Motion for an Order to File Notice of Alibi Pursuant to Rule 67(A)(ii) », 23 January 2007 ("Karemera's Response").

<sup>7</sup> *Karemera et al.*, Decision on Continuation of the Proceedings (TC), 6 March 2007 ("Decision on Continuation of the Proceedings").

<sup>8</sup> See Rules of Procedure and Evidence, Rule 15 bis (F); and Interoffice Memorandum from the President to Judge Byron, filed on 13 March 2007.

informal meetings in the Prosecutor's Motion and the Defence's request for an order directing the Prosecution to provide bilingual versions of its motions.

## I. Preliminary Issues

### *Timeliness of Defence Submissions*

5. Both the Defence for Nzirorera and the Defence for Karemera filed their respective responses to the Prosecution Motion late.<sup>9</sup> The Defence for Karemera explained that it filed its submission within five days of having received a French translation of the Prosecutor's Motion on 18 January 2007.<sup>10</sup> The Chamber considers that, in light of the importance of the matter at stake and since no delay in the proceedings has resulted from these late filings, it is in the interests of justice to consider them.

6. The Defence for Ngirumpatse requests that the Chamber accord it a delay of five days to file an additional submission on this issue from the notification in French of relevant documents as it contends that the Prosecution's Motion was filed in a late and impetuous manner and was communicated in English only.<sup>11</sup>

7. As the Chamber has already stated in this case, any request for extension of time must be appreciated on a case-by-case basis, upon showing by the moving party of good cause to do so.<sup>12</sup> In the present case, the Chamber finds, in light of the response filed by Ngirumpatse, that he was able, with the assistance of his Counsel, to understand the content of the Prosecutor's Motion and to express his views thereto. The Chamber further notes that on 18 January 2007, the French version of the Prosecutor's Motion was available to the Defence for Ngirumpatse, which, however, did not find it necessary to file any additional submission as a result. In view of these circumstances, the Chamber does not find that it is in the interests of justice that this further extension be granted.

<sup>9</sup> The Prosecution filed its Motion on 20 December 2006. According to Rules 7 *ter* (B) and 73(F) of the Rules, the deadline for responses expired on 27 December 2006, as the 25 December and 26 December were public holidays, while the Defence for Nzirorera filed its response on 29 December 2006 and the Defence for Karemera filed its response on 23 January 2007.

<sup>10</sup> Karemera's Response, at 1.

<sup>11</sup> Ngirumpatse's Response, at paras. 1-6.

<sup>12</sup> See *Karemera et al.*, Décision accordant une prorogation de délai de réponse à deux requêtes du Procureur et ordonnant la communication de documents certifiés conformes (TC), 13 September 2006; *Karemera et al.*, Décision accordant prorogation de délai de réponse à deux requêtes du Procureur (TC), 27 September 2006; *Karemera et al.*, Decision on Request for Extension of Time (AC), 27 January 2006; *Karemera et al.*, Decision on Request for Extension of Time (AC), 24 March 2006; *Karemera et al.*, Decision on Edouard Karemera's Request for Extension of Time to Respond to the Prosecution's Interlocutory Appeal (AC), 4 April 2006.

*References to Informal Meetings in the Prosecutor's Motion*

8. In its Motion, the Prosecution refers to a number of informal meetings between the parties, during which it claims to have requested the Defence to provide notice of its intention to enter a defence of alibi.<sup>13</sup> The Defence for Karemera objects to the Prosecution referring to the content of informal meetings which were not officially transcribed.<sup>14</sup> As well, the Defence for Ngirumpatse requests that the Chamber strike out any references to informal meetings between the parties in the Prosecutor's Motion for the same reason.<sup>15</sup>

9. In order for the benefits of informal meetings to be retained, the parties should refrain from referring to the content of these meetings in the course of formal pleadings or proceedings. In the instant case, the Chamber will not refer to these informal meetings in its Decision. Accordingly, the Chamber does not find that any prejudice has resulted or will result from these references and does not therefore consider it necessary to strike out the references to the informal meetings in the Prosecution's Motion.

*Request for an Order directing the Prosecution to Provide Bilingual Versions of its Motions*

10. The Defence for Karemera requests an order directing the Prosecution to use its best efforts to provide its motions in the two languages of the Tribunal.<sup>16</sup>

11. The Chamber does not consider the aforementioned order to be either appropriate or necessary. First of all, under the Tribunal's Rules of Evidence and Procedure, the Registrar is responsible for making "any necessary arrangements for interpretation and translation of the working languages."<sup>17</sup> In this respect, the Chamber and the Registrar work closely together to ensure that the parties receive translation of relevant documents within appropriate delays. Second of all, the Tribunal's practice of having defence teams employ bilingual counsel or legal assistants so as to diminish delays due to translation.<sup>18</sup> This has already been recalled by the Chamber to the Defence teams in this case.<sup>19</sup> Finally, the Chamber has ordered or facilitated the translation of specific documents and has granted extensions of time to the

<sup>13</sup> Prosecutor's Motion, at para. 1.

<sup>14</sup> Karemera's Response, at 1.

<sup>15</sup> Ngirumpatse's Response, at para. 7.

<sup>16</sup> Karemera's Response, at 4.

<sup>17</sup> Rule 3(E) of the Rules.

<sup>18</sup> *Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-1, Decision on Defence Request for Protection of Witnesses (TC), 25 August 2004, at para. 1.

<sup>19</sup> See *Karemera et al.*, Décision accordant une prorogation de délai de réponse à deux requêtes du Procureur et ordonnant la communication de documents certifiés conformes (TC), 13 September 2006; *Karemera et al.*, Décision accordant prorogation de délai de réponse à deux requêtes du Procureur (TC), 27 September 2006.

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parties so as to make their submissions within a reasonable delay following communication of relevant translated documents.<sup>20</sup>

## II. On the Merits

12. The Chamber recalls that the Rules prescribe the disclosure obligations of the Prosecution in broad and general terms while the Defence is required to provide the Prosecution with notice of only certain types of evidence. Rule 67 provides for the reciprocal disclosure of evidence and prescribes that as early as reasonably practicable and in any event prior to the commencement of the trial, the Prosecution shall notify the Defence of the names of the witnesses that it intends to call to establish the guilt of the accused and in rebuttal of any defence plea of which the Prosecution has received notice in accordance with the Rules and the Defence shall notify the Prosecutor of its intent to enter the defence of alibi and any special defence. While the defence of alibi is not specifically defined, the Rule requires that its notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi. The rule goes on to specify that the failure of the Defence to provide such notice under this Rule shall not limit the right of the accused to rely on this defence.

13. In the Chamber's opinion, Rule 67 implies that the obligation is triggered as soon as practicable after the accused becomes aware of the nature and cause of the charges against him or her and intends to show that by reason of his presence at a particular place or places at a particular time or times he or she was unlikely to have been at a place where the offence is alleged to have been committed at the time of its alleged commission and that after notice of the alibi the Prosecution is entitled to find and call witnesses to rebut the alibi.

14. This provision does not imply that there is an obligation to enter a defence of alibi. Such an obligation would prove inconsistent with the presumption of innocence and the right of the accused to remain silent. Therefore, an application to compel the Defence to give notice of a defence of alibi ought to show that the accused intends to enter such a defence.<sup>21</sup>

15. The Prosecution has not shown – and the Defence does not claim – that Édouard Karemera or Mathieu Ndirumpatse intend to enter a defence of alibi. What is more, the

<sup>20</sup> *Ibid*

<sup>21</sup> See, *a contrario*, *Prosecutor v. Ndayambaje et al*, Case No. ICTR-96-8-T, Decision on the Confidential Prosecutor's Motion to be served with Particulars of Alibi pursuant to Rule 67(A)(ii)(a) (TC), 1 March 2005; *Prosecutor v. Rwamakuba*, Case No. ICTR-98-44C-PT, Decision on Prosecution Motion for Notice of Alibi and Reciprocal Inspection (TC), 14 June 2005 ("Rwamakuba Notice of Alibi Decision").


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Defence for Karemera submits that it will provide notice of any information that could constitute a defence of alibi as soon as possible and following the results of its ongoing investigations. In these circumstances, the Chamber is of the view that an order directing the Defence either for Karemera or for Ngirumpatse to file a notice of alibi is not warranted.

16. The Chamber is of the view that the need for an order regarding the Defence's potential non-compliance with Rule 67 also does not arise at this stage. In this respect, the Chamber recalls however that this provision specifically directs that failure to give notice does not exclude testimony on an alibi. The Chamber will be obliged to give such, as any other, testimony the weight it deserves during its deliberations on the judgement to be rendered in this case. Moreover, if Defence Counsel receive information that their clients intends to rely on the defence of alibi, then it is their professional obligation to accordingly file a notice of alibi as soon as possible. Indeed, disclosure of complete notice of alibi at the earliest stage of the proceedings ensures the fairness of the trial and proper administration of justice.<sup>22</sup>

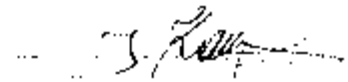
**FOR THOSE REASONS, THE CHAMBER DENIES** the Prosecutor's Motion in its entirety.

Arusha, 21 March 2007, done in English.



Dennis C. M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge

[Seal of the Tribunal]



<sup>22</sup> See *Prosecutor v Rutaganda*, Case No. ICTR-93-A, Judgment (AC), 12 May 2003, para. 241; *Rwamakuba Notice of Alibi Decision*, para. 7.



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<b>Dates:</b>	Transmitted: 22 March 2007		Document's date: 22 March 2007	
<b>No. of Pages:</b>	6	<b>Original Language:</b>	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
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Case Name / *Affaire*: **The Prosecutor vs.**

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

Case No / *Affaire No.*: **ICTR-98-44-T**

To:  
A:

- TC1** received by / *reçu par*:
- Judge E. Mese, President
  - Judge J. R. Reddy
  - Judge S. A. Egorov
  - Judge F. R. Arrey (*Karera*)
  - SLO
  - C. Gosnell, Co-ordinator

- ALO: received by / *reçu par*
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- TC2**
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  - Judge A. Ramaroso
  - Judge K. R. Khan (*Bizimungu et al.*)
  - Judge A. J. N. de Silva
  - Judge S. B. Bossa (*Nyiramasuhuku et al.*)
  - Judge L. G. Muthoga (*Bizimungu et al.*)
  - Judge F. R. Arrey (*Muvunyi*)
  - Judge E. F. Short (*Bizimungu et al.*)
  - Judge T. Hikmet (*Ndinshyimana et al.*)
  - Judge S. K. Park (*Ndinshyimana et al.*)
  - SLO
  - A. Leroy, Co-ordinator
  - A. Marong (*Ndinshyimana et al.*)

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- TC3**
- Judge A. Vaz (*Seromba*)
  - Judge I. M. Weinberg de Roca (*Ziganyiraza*)
  - Judge K. R. Khan
  - Judge D. C. M. Byron
  - Judge L. G. Muthoga (*Ziganyiraza*)
  - Judge F. R. Arrey (*Rukundo*)
  - Judge E. F. Short (*Karemira et al.*)
  - Judge K. Hökberg (*Seromba & Rwamakuba*)
  - Judge G. G. Kam (*Seromba, Karemira et al. & Rwamakuba*)
  - E. O'Donnell, SLO
  - C. Denis, Co-ordinator (*Karemira et al. & Rwamakuba*)
  - H. Gogo, Co-ordinator (*Seromba*)

- P. Mathiam
- C. Rassi
- M. Knowlan
- J. Greenspoon
- P. Mathiam
- S. Unnikrishnan
- K. Ardault
- C. Duffy
- N. Ferraro
- M. Mbozinga

**OTP / BUREAU DU PROCUREUR**

Senior Trial Attorney in charge of case: **D. Webster** received by .....

**DEFENSE**

Accused / *Accusé*: **J. Nzirorera, M. Ngirumpatse & E. Karemera** complete / *complète* : remplir "CMSE4 FORM"

Lead Counsel / *Conseil Principal*: **P. Robinson, C. Hounkpatin & D. Diagne**

In / à Arusha Arusha ..... (signature):  by fax complete / *complète* : remplir "CMS3b s FORM"

Co-Counsel / *Conseil Adjoint*: **P. N. M. Ngimbi, F. Weyl & F. Sow**

In / à Arusha Arusha ..... (signature):  by fax complete / *complète* : remplir "CMS3b s FORM"

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De:  A. Dieng  A. Miller, OLA, NY  D. Registrar  S. Menon  M. Niang  S. van Dreesche

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