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UNITED NATIONS  
NATIONS UNIES

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

**TRIAL CHAMBER III**

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

**ENGLISH  
Original: FRENCH**

**Before:** Judge Dennis C. M. Byron, presiding  
Judge Gberdao Gustave Kam  
Judge Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 27 February 2008

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**THE PROSECUTOR**

v.

**ÉDOUARD KAREMERA  
MATHIEU NGIRUMPATSE  
JOSEPH NZIRORERA**

**DECISION ON ÉDOUARD KAREMERA'S MOTION FOR POSTPONEMENT OF  
THE COMMENCEMENT OF HIS CASE AS WELL AS ON THE PROSECUTOR'S CROSS-  
MOTION FOR ENFORCEMENT OF RULE 73TER AND REMEDIAL AND PUNITIVE  
MEASURES AND THE PROSECUTOR'S REQUEST FOR TEMPORARY TRANSFER  
OF WITNESS AXA PURSUANT TO RULE 90 BIS**

*Article 20 of the Statute and Rules 46, 54, 73ter and 90 bis of the Rules of Procedure and Evidence*

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CIII08-0035 (E)

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## INTRODUCTION

1. On 4 December 2007, the Prosecution rested its case in the instant proceedings. On 5 December 2007, the Chamber held a status conference to schedule the dates for the filing of motions by the Accused for judgement of acquittal under Rule 98 *bis*, as well as for the Prosecutor's response to those motions and the submissions on the commencement of the Defence case.<sup>1</sup>

2. Following those consultations with the parties and taking into account the rights of the Accused, the Chamber issued a scheduling order ("Order of 24 December 2007").<sup>2</sup> By that order, the Chamber scheduled the trial to resume on 3 March 2008, with Édouard Karemera being the first to present his evidence. The Chamber further ordered the Accused to file by 7 January 2008, the information and documents required under Rule 73 *ter*, including the list of his witnesses.

3. In that same order, the Chamber set out the schedule for the filing of all Rule 98 *bis* motions. Mindful of the particular circumstances of the case and the need to guarantee a fair trial, the Chamber granted the Prosecutor's application for a brief extension of time to file its response to the Accused's motions for judgement of acquittal.<sup>3</sup> The Chamber also granted a proportional extension of time to the Accused, to enable them to file their replies to the Prosecution's arguments.<sup>4</sup> Thereafter, the Chamber granted a second extension, at the request of Édouard Karemera and Mathieu Ngirumpatse, to enable them to obtain the French version of the Prosecutor's response.<sup>5</sup> ("Decision of 13 February 2008").<sup>6</sup> With these different extensions of time, the Chamber had to postpone the resumption of the trial to 10 March 2008.<sup>7</sup>

4. In that 13 February 2008 decision, the Chamber stayed a ruling on Édouard Karemera's Motion for a Postponement of the Commencement of his Case to April 2008.<sup>8</sup>

5. In a motion dated 11 February 2008, the Prosecutor requested the Chamber to impose punitive measures on Counsel for the Accused for failing to comply with the Chamber's

<sup>1</sup> *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Status conference, Transcript of 5 December 2007.

<sup>2</sup> *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Scheduling Order (Trial Chamber), 24 December 2007.

<sup>3</sup> *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Prosecutor's Application for Extension of Time to File Consolidated Response to Defence Motions for Judgment of Acquittal (Trial Chamber), 30 January 2008.

<sup>4</sup> *Idem.*

<sup>5</sup> Prosecutor's Consolidated Reponse to Defence Motions for Acquittal Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence, filed on 31 January 2008.

<sup>6</sup> *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, *Décision sur les requêtes d'Édouard Karemera et Mathieu Ngirumpatse en prorogation de délai* (Trial Chamber), 13 February 2007.

<sup>7</sup> *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, *Décision relative à la requête d'Édouard Karemera en prorogation de délai pour soumettre les informations et documents requis en vertu de l'article 73 ter du Règlement* (Trial Chamber), 18 January 2008.

<sup>8</sup> *Décision du 13 février 2008*, para. 12.

Orders, and also issue supplementary orders to ensure compliance with Rule 73 *ter*.<sup>9</sup> Furthermore, on 26 February 2008, the Prosecutor filed a motion, accompanied by a confidential annex, seeking the transfer of Defence Witnesses AXA and BDW pursuant to Rule 90 *bis* of the Rules.<sup>10</sup>

6. The Chamber hereby rules on these motions.

### DELIBERATION

7. Édouard Karemera contends that the successive hitches in the pre-defence filings and the procedures involved in transporting witnesses to Arusha justify the postponement of the start of his case to April 2008.<sup>11</sup>

8. In his motion, Édouard Karemera offers neither details nor explanation as to the hitches encountered by him in complying with the Chamber's Orders.

9. The Chamber recalls that it has already acceded twice to requests by the Accused for extension of time. In an initial decision, after having received an application a day after the time-limit had expired, the Chamber decided that although it was not convinced by the arguments advanced by the Accused, it was in the interests of justice to grant him an extension of time to enable him to comply with the Order of 24 December 2007.<sup>12</sup> The Chamber thus granted him an additional 18 days. Taking into consideration the particular circumstances of the case, the Chamber also decided to postpone the commencement of the Defence case by a week.<sup>13</sup>

10. In a second decision, rendered subsequent to a motion filed by the Defence on the day the time-limit expired, the Chamber denied the requested extension of time.<sup>14</sup> However, the Chamber *de facto* granted the Accused six additional days to disclose the information required under Rule 73 *ter*, without the resumption of the trial scheduled for 10 March 2008 being affected.

11. On 4 February 2008, that is four days after the expiration of the last extension granted by the Chamber, Édouard Karemera filed his Pre-Defence Brief, containing a list of

<sup>9</sup> Cross-Motion for Enforcement of Rule 73 *ter* and Remedial and Punitive Measures, filed on 11 February 2008.

<sup>10</sup> Prosecutor's Request for Temporary Transfer of Witness AXA Pursuant to Rule 90 *bis*, filed on 26 February 2008; Confidential Prosecutor's Supplementary Filing in Support of its Request for Temporary Transfer of Witness BDW and Witness AXA Pursuant to Rule 90 *bis*, filed on 26 February 2008.

<sup>11</sup> *Requête en extension de délai pour le dépôt de la seconde soumission d'Édouard Karemera en vertu de l'article 98 bis (« Requête d'Édouard Karemera »)*, filed on 6 February 2008, p. 2.

<sup>12</sup> *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, *Décision relative à la requête d'Édouard Karemera en prorogation de délai pour soumettre les informations et documents requis par l'article 73 ter du Règlement* (Trial Chamber), 18 January 2008. The Defence for Édouard Karemera had until 25 January 2008 to disclose the information required under Rule 73 *ter* of the Rules.

<sup>13</sup> *Idem*.

<sup>14</sup> *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, *Décision relative à la seconde requête d'Édouard Karemera en prorogation de délai supplémentaire pour soumettre les informations et documents requis par l'article 73 ter du Règlement* (Trial Chamber), 29 January 2008.

69 witnesses designated by their pseudonyms, with an indication of the estimated length of his examination of each witness and a summary of their anticipated testimony.<sup>15</sup>

12. Article 19 of the Statute provides that the Chamber shall ensure that a trial is fair and expeditious and that the rights of the accused are fully respected. Under Article 20 of the Statute, the accused have the right to adequate time and facilities for the preparation of their defence, but they also have the right to be tried within a reasonable period of time.<sup>16</sup> In the case of a joint trial, Rule 82 provides that the Chamber must guarantee the rights of all the accused.<sup>17</sup>

13. Considering the circumstances in the instant case, in particular the various extensions of time granted to the Defence for Édouard Karemera, totalling nearly one month, it is the Chamber's view that the Accused has been given adequate time and facilities for the preparation of his defence. The Chamber recalls that the presentation of evidence began in September 2005. Right from the start, the Accused was granted facilities for the preparation of his defence, including the services of investigators. It is inconceivable that the Defence's investigations to respond to the Prosecutor's allegations should only be starting at this stage of the proceedings.

14. In view of these circumstances and bearing in mind the rights of all the Accused in the instant case, in particular their right to be tried without undue delay, it is the Chamber's view that the arguments advanced by Édouard Karemera in his motion cannot support a further postponement of the resumption of the trial.

15. The Chamber notes that the Defence for Édouard Karemera only recently began communicating to the Witnesses and Victims Support Section the necessary information for transporting its witnesses to Arusha. It is vital that such information is communicated as quickly as possible to ensure that the witnesses arrive in Arusha in time for their hearing. The Chamber requests the Defence to show due diligence in the matter and to continue to collaborate with the Witnesses and Victims Support Section to ensure the appearance of the witnesses when the trial resumes on 10 March 2008 as scheduled. The Defence must also ensure that it has a sufficient number of witnesses in Arusha at the appropriate time in order, as much as possible, to guarantee that the hearings proceed without interruption. The Chamber also recalls that the Witnesses and Victims Support Section is an auxiliary organ of the Registry and thus helps the Chamber in the management of the trial.<sup>18</sup>

16. In a separate motion, the Prosecutor requested the Chamber to order Édouard Karemera to disclose all the information required under Rule 73 *ter*, including the list of

<sup>15</sup> Édouard Karemera's Pre-Defence Brief - Rule 73 *ter* of the Rules, filed on 4 February 2008.

<sup>16</sup> Articles 20(4)(b) and 20(4)(c) of the Statute of the Tribunal; see *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Continuation of the Proceedings (Trial Chamber), 6 March 2007, para. 16.

<sup>17</sup> *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A15 bis, Decision in the Matter of Proceedings Under Rule 15 bis (D) (Appeals Chamber), 24 September 2003; *The Prosecutor v. Nyiramasuhuko et al.*, Joinder No. ICTR-98-42-A15bis, Dissenting Opinion of Judge David Hunt, Appeals Chamber, 24 September 2003, para. 23.

<sup>18</sup> See Rules 33 and 34 of the Rules.

exhibits that it intends to offer in support of his case.<sup>19</sup> He also requested the Chamber to order the Accused to incorporate into the summaries of the anticipated testimonies of his witnesses a series of precise details including the context in which the witness knew the Accused, whether the witness is an eyewitness to certain events, whether he has any kinship with the Accused and whether the testimony will relate solely to certain facts to the exclusion of others.<sup>20</sup>

17. The Chamber notes that in his Pre-Defence Brief filed on 4 February 2008, Édouard Karemera requested the Chamber to grant him additional time to file the list of exhibits that he intended to offer in support of his defence arguments.<sup>21</sup> The Accused advanced no specific argument in support of his request. He further stated that he intended to use "documents adduced by the Prosecutor and those that have been admitted as exhibits in the trial", as well as those submitted by the other Accused in the instant case.<sup>22</sup> The Chamber is of the view that nothing stops Édouard Karemera from disclosing, at this stage, the list of exhibits that it intends to use in presenting his evidence. The Chamber considers, however, that in view of the preparation of the Defence case, it would be advisable to request the other Accused to also present the list of exhibits that they intend to use during the presentation of their evidence now.

18. As regards the summary of the Defence witness testimonies, it is the Chamber's view that it is not necessary to compel Édouard Karemera to provide as detailed information as requested by the Prosecutor in his motion.

19. Rule 73 *ter* provides that the Defence may be ordered to file "a summary of the facts on which each witness will testify" (emphasis added). Such a summary contributes to the smooth conduct of the trial and, *inter alia*, gives the Chamber and the parties a reasonable idea of the content of the expected testimonies, particularly with a view to the preparation of the cross-examination of witnesses.<sup>23</sup>

20. The detailed information required by the Prosecutor in his motion goes beyond a summary of the facts. Under the principle of presumption of innocence, the Prosecutor and the Accused do not have the same burden of proof. The testimony of Defence witnesses, contrary to those of Prosecution witnesses, may be interpreted as a response to evidence already produced.<sup>24</sup> It is common knowledge that the Prosecutor did not provide such information even for its own witnesses.<sup>25</sup>

<sup>19</sup> Cross-Motion for Enforcement of Rule 73 *ter* and Remedial and Punitive Measures, filed on 11 February 2008, para. 37.

<sup>20</sup> *Ibid.*, p. 35.

<sup>21</sup> Édouard Karemera's Pre-Defence Brief - Rule 73 *ter* of the Rules, filed on 4 February 2008, p. 45 (F).

<sup>22</sup> *Idem.*

<sup>23</sup> *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Sufficiency of Defence Witness Summaries (Trial Chamber), 5 July 2005, para. 6.

<sup>24</sup> *Idem.*

<sup>25</sup> Prosecutor's Pre-Trial Brief, filed on 27 June 2005, paras. 260-263; Annexes to the Prosecutor's Pre-Trial Brief.

21. The Chamber notes that the details required by the Prosecutor are not material to compliance with Rule 73 *ter*. That being the case, the Chamber does not deem it necessary to request Édouard Karemera to provide the parties with more detailed information on the facts on which his witnesses will be examined.

22. The Prosecutor notes in his motion that, according to the summaries of the anticipated testimonies, some witnesses will refute the Prosecution's allegations about the presence of Édouard Karemera at certain meetings.<sup>26</sup> It also notes that the summaries of the testimonies of Witnesses ROP and WNE indicate that they will testify about the timetable of the Accused between 6 April and 25 May 1994 and between 25 May and 14 July 1994. The Prosecutor therefore requests the Chamber to order Édouard Karemera to comply with Rule 67(A)(ii)(a) by giving notice of his intention to enter a defence of alibi.

23. According to Rule 67(A)(ii)(a), the Defence shall notify the Prosecutor of its intent to enter a defence of alibi, in which case the 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. In the Tribunal's jurisprudence, this does not entail an obligation on the Defence to enter a defence of alibi, since that would be inconsistent with the presumption of innocence and the right of the accused to remain silent.<sup>27</sup> It is also established that in the interests of a fair trial, the Defence has a professional obligation to give notice of the accused's intention to enter a defence of alibi.

24. In the instant case, the fact that the Accused denies having been present at certain events cannot be considered as a defence of alibi. On the contrary, the indication that some witnesses will be called to testify to the "timetable" of the Accused in relation to the allegations brought against him in the Indictment, may appear to be an indication of the Accused's intent to enter a defence of alibi. If this is the case, the Defence must comply forthwith with the requirements under Rule 67(A)(ii).

25. In his separate motion, the Prosecutor also requests that the Accused inquire from each of his witnesses whether they have made prior signed statements or have been called to testify before any jurisdiction on events related to their conduct during the genocide, and if they have done so, to disclose the reference numbers of the relevant case files as well as any available copies of those files.<sup>28</sup> The Prosecutor further requests the Chamber to order the Accused to disclose copies of any memoranda of its interviews with the witnesses.<sup>29</sup> The Prosecutor submits that such information should assist the Chamber in assessing the

<sup>26</sup> The Prosecutor refers to the summary of the testimonies of Witnesses XTL, ZCL, CZL and RWU.

<sup>27</sup> *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Prosecutor's Cross Motion for Enforcement of Reciprocal Disclosure (Trial Chamber), 21 September 2007, para. 16; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.11, Decision on the Prosecution's Interlocutory Appeal Concerning Disclosure Obligations (Appeals Chamber), 23 January 2008; *The Prosecutor v. Nchamihigo*, Case No. ICTR-2001-63-T, Decision on Defence Compliance with Rule 67 of the Rules (Trial Chamber), 5 April 2007, para. 8.

<sup>28</sup> *Ibid.*[sic]\*\* Reference is to Prosecutor's Pre-Trial Brief, para. 30.

<sup>29</sup> *Ibid.*, paras. 30, 31, 34, 35.

witnesses' credibility and the Prosecution in adequately preparing the cross-examination of the witnesses.<sup>30</sup>

26. Pursuant to Rules 66 and 68 and subject to Rule 67, only the Prosecutor has the duty to disclose the prior statements of the witnesses he intends to call to testify as well as any material that may affect the credibility of his witnesses. As held by the Appeals Chamber on several occasions, the Prosecution's obligation to disclose exculpatory material to the Defence is essential to a fair trial and a good administration of justice,<sup>31</sup> a duty which stems from the Prosecution's obligation to participate in the administration of justice.<sup>32</sup>

27. Rule 73 *ter*, on the other hand, provides that the Defence may be ordered to provide the Trial Chamber and the Prosecutor with copies of the written statements of each witness whom it intends to call to testify, a measure which is in the interests of justice and a fair trial. However, this is a measure that is only applicable to statements in the possession of the Defence.<sup>33</sup> The Chamber considers, therefore, that Édouard Karemera should disclose copies of the statements of its witnesses to the Chamber and to the parties, so long as those statements are in his possession.

28. By contrast and in accordance with Rule 70, reports, memoranda and other internal documents prepared by a party are not subject to disclosure. Consequently, the Prosecutor's request for disclosure of notes of Defence witness interviews should not be granted, as long as they are not prior witness statements in accordance with the jurisprudence of the Appeals Chamber.<sup>34</sup>

29. As regards the details about the judicial files of witnesses, the Chamber recalls its ruling that to promote the proper administration of justice, it is incumbent upon the

<sup>30</sup> *Ibid.*, para. 31.

<sup>31</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. 98-44-AR73.6, Decision on Joseph Nzirorera's Interlocutory Appeal (Appeals Chamber), 28 April 2006, para. 7. See also *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-AR73 and ICTR-98-41-AR73(B), Decision on Interlocutory Appeals of Decision on Witness Protection Orders, 6 October 2005, para. 44; *Prosecutor v. Dario Kordić and Mario Cerkez*, Case No. IT-95-14/2-A, Appeal Judgement, 17 December 2004, paras. 183 and 242; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Appeal Judgement, 20 July 2004, para. 264 (the "*Blaškić Appeal Judgement*"); *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Appeal Judgement, 19 April 2004, para. 180 (the "*Krstić Appeal Judgement*"); and *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, *Décision relative aux requêtes par lesquelles l'Appelant demande que l'Accusation s'acquitte de ses obligations de communication en application de l'article 68 du Règlement et qu'une ordonnance impose au Greffier de communiquer certains documents*, 7 December 2004, p. 3; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations (Appeals Chamber), 30 June 2006, para. 9.

<sup>32</sup> *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations (Appeals Chamber), 30 June 2006, para. 9.

<sup>33</sup> *The Prosecutor v. Rwamakuba*, Case No. ICTR-98-44C-T, Decision on Prosecution Motion for Disclosure of Witness List and Witness Statements (Trial Chamber), 4 October 2005, para. 6.

<sup>34</sup> *The Prosecutor v. Eliezer Niyitegeka*, Case No. ICTR-96-14-T, Judgement (Appeals Chamber), para. 34; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Motion for Disclosure of Witness Reconfirmation Statements (Trial Chamber), paras. 5-7.

Prosecution to obtain details about the judicial records of its witnesses and disclose them to the opposing party.<sup>35</sup> It is the Chamber's view that this principle may also apply to the Defence, to a certain extent, so long as it is in possession of such information, since the Chamber also has to assess the credibility of its witnesses. Furthermore, it can be expected that the Defence would, indeed, have already obtained information about the judicial records of its witnesses in the course of its investigations.

30. Moreover, in his motion, the Prosecutor called on the Chamber to sanction the repeated and flagrant violation of the Trial Chamber's orders by the Defence for Édouard Karemera, alleging that it had suffered prejudice therefrom.<sup>36</sup>

31. Pursuant to Rule 46, the Chamber may impose sanctions against a counsel if, in its opinion, his conduct obstructs the proceedings or is contrary to the interests of justice.

32. Notwithstanding the Chamber's lack of conviction about the arguments advanced by Édouard Karemera to justify an extension of time and his failure to comply with the previous orders issued by the Chamber, the Chamber cannot infer that the Defence acted in bad faith and that its conduct justifies sanctions under Rule 46. The Chamber further deplores the flippancy with which the Prosecution has requested sanctions against the opposing party. Such an attitude is unwarranted particularly bearing in mind the lack of diligence demonstrated by the Prosecutor in this case. The Chamber hopes that the Prosecution will not request the Chamber with impunity to resort to measures under Rule 46.

33. In view of the preparation of the trial, the Chamber is of the view that it is in the interests of a proper administration of justice to request Mathieu Ngirumpatse and Joseph Nzirorera to disclose their respective witness lists right away as well as the other documents required under Rule 73 *ter*.<sup>37</sup> Proceeding with diligence at this stage will make for better management of the witnesses, especially where the Accused have common witnesses, and also help to prevent and limit the recall of witnesses.

34. Lastly, the Chamber recalls that it has already ordered that Defence Witness BDW be recalled.<sup>38</sup> The Chamber has also decided in a separate decision, to recall Defence Witness

<sup>35</sup> *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Exclude the Testimony of Witness AXA (Trial Chamber), 11 July 2007, para. 6; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decisions on Joseph Nzirorera's Motions to Vacate the Decision on Defence Motion for Subpoenas to Prosecution Witnesses, to Exclude the Testimony of Witnesses AMB, ANU, AWD, AWE, FH, and KGV, and to Postpone the Testimony of Witness ANU (Trial Chamber), 14 June 2007, para. 17.

<sup>36</sup> Cross-Motion for Enforcement of Rule 73 *ter* and Remedial and Punitive Measures, filed on 11 February 2008 ("Prosecutor's Motion").

<sup>37</sup> See *The Prosecutor v. Augustin Ndindiliyimana, Augustin Bizimungu, François-Xavier Nzuwonomeye, Innocent Sagahutu* ("Ndindiliyimana et al."), Case No. ICTR-00-56-T, Scheduling Order Following the Pre-Defence Conference held on 15 February 2007 (Trial Chamber), 16 February 2007; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, T. 1 March 2005, p. 9; *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Scheduling Order (Trial Chamber), 15 December 2005.

<sup>38</sup> *The Prosecutor v. Édouard Karemera*, Case No. ICTR-98-44-T, Scheduling Order (Trial Chamber), 24 December 2007; *The Prosecutor v. Édouard Karemera*, Case No. ICTR-98-44-T, Order for Temporary Transfer of Prosecution Witness BDW from Rwanda (Trial Chamber), 30 January 2008.



AXA.<sup>39</sup> Since it appears that this witness is still in detention and given the need to ensure his presence for the commencement of the next trial session, the Chamber is of the view that a transfer order should be issued forthwith in respect of this witness, pursuant to Rule 90 *bis*, thereby acceding to the Prosecutor's request for temporary transfer of these two witnesses.<sup>40</sup>

35. Pursuant to Rule 90 *bis*, the transfer order shall be issued only after prior verification that: (i) the presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal; (ii) transfer of the witness does not extend the period of his detention as foreseen by the requested State. The Chamber is satisfied that these two conditions have been met for Witnesses AXA and BDW, in respect of whom the Prosecution has furnished the Chamber with a letter from the Rwandan Ministry of Justice confirming that the situation of these witnesses are consistent with the conditions laid down in Rule 90 *bis*.<sup>41</sup>

**For these reasons, the Trial Chamber,**

- I. **DENIES** Édouard Karemera's Motion for Postponement of the Commencement of his Defence Case;
- II. **GRANTS IN PART** the Prosecutor's Cross-Motion for Enforcement of Rule 73 *ter* and Remedial and Punitive Measures, and accordingly;
- III. **ORDERS** Édouard Karemera to comply with Rule 73 *ter* of the Rules, as well as with the Chamber's previous Orders in relation to the matter and **REQUESTS** Édouard Karemera to provide the Chamber and the parties with the list of exhibits that it intends to offer in support of his defence by 5 March 2008;
- IV. **ORDERS** Édouard Karemera to comply with Rule 67(A)(ii) and disclose as soon as possible and no later than 5 March, the place or places where the Accused claims to have been at the time of the alleged acts, the names and addresses of witnesses as well as any evidence the Accused intends to rely on to establish his alibi;
- V. **DIRECTS** Édouard Karemera to disclose to the Chamber and the parties all written statements of the witnesses he intends to call to testify, as well as the judicial files of the witnesses that it might have in its possession;
- VI. **DENIES** the Prosecution's motion in the remaining respects;

<sup>39</sup> The Chamber is preparing to deliver this decision.

<sup>40</sup> Prosecutor's Request for Temporary Transfer of Witness AXA Pursuant to Rule 90 *bis*, filed on 26 February 2008; Confidential Prosecutor's Supplementary Filing in Support of its Request for Temporary Transfer of Witness BDW and Witness AXA pursuant to Rule 90 *bis*, filed on 26 February 2008.

<sup>41</sup> See Confidential Prosecutor's Supplementary Filing in Support of its Request for Temporary Transfer of Witness BDW and Witness AXA Pursuant to Rule 90 *bis*, filed on 26 February 2008.

- VII. DECIDES** that the trial will resume on 10 March 2008 with a pre-defence conference;
- VIII. RECALLS** its Decisions ordering that Prosecution Witnesses BDW and AXA be recalled;<sup>42</sup>
- IX. ORDERS**, consequently, that Prosecution witnesses BDW and AXA be heard on 11 and 12 March 2008;
- X. GRANTS** the Motion entitled "Prosecutor's Request for Temporary Transfer of Witness AXA Pursuant to Rule 90 bis", and accordingly:
- XI. ORDERS** that the protected witnesses with the pseudonyms AXA and BDW be transferred to Tribunal's Detention Facility in Arusha for the purpose of their testimonies before the Chamber;
- XII. DIRECTS** the Registrar:
- (i) To transmit this Order to the Governments of the State concerned and Tanzania;
  - (ii) To ensure a smooth conduct of the transfer, including the supervision of the witnesses at the Tribunal's Detention Facility in Arusha;
  - (iii) To remain seized of all changes in the conditions of detention of the witnesses in the State concerned that could affect the duration of their detention and, if need be, to inform the Chamber as early as possible;
- XIII. REQUESTS** the Government of the Republic of the State concerned to comply with the present Order, to cooperate with the Registrar of the Tribunal and to take, in collaboration with the Government of the Republic of Tanzania, the Registrar of the Tribunal and the Witnesses and Victims Support Section of the Tribunal, the necessary measures to effect the transfer;
- XIV. AUTHORIZES** the Defence for each Accused, if it so desires, to make an opening statement pursuant to Rule 84 after the hearing of Witnesses BDW and AXA, within the maximum period of 30 minutes allocated to each Defence team;
- XV. ORDERS** Édouard Karemera to open his case on 17 March 2008;
- XVI. ORDERS** Édouard Karemera to contact the Witnesses and Victims Support Section and communicate to them all the information necessary for organizing the

<sup>42</sup> *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Scheduling Order (Trial Chamber), 24 December 2007; the decision in respect of Witness AXA will be delivered shortly.

transportation of the witnesses to Arusha in accordance with the schedule of the hearings;

**XVII. ORDERS** Mathieu Ndirumpatse and Joseph Nzirorera to disclose the information required under Rule 73 *ter* as soon as possible and, in any case, no later than 10 March 2008, including in the said information:

- (i) Admissions by the parties and a statement of other matters which are not in dispute;
- (ii) A statement of contested matters of fact and law;
- (iii) A list of witnesses the Defence intends to call, with:
  - (a) The name or pseudonym of each witness;
  - (b) A summary of the facts on which each witness will testify;
  - (c) The points in the Indictment as to which each witness will testify; and
  - (d) The estimated length of time required for each witness;
- (iv) A list of exhibits the Defence intends to offer in its case, stating where possible, whether or not the Prosecutor has any objection as to their authenticity.

Arusha, 27 February 2008, done in French

[Signed]

Dennis C. M. Byron  
Presiding Judge

[Signed]

Gberdao Gustave Kam  
Judge  
(Absent at the time of  
signature)

[Signed]

Vagn Joensen  
Judge

[Seal of the Tribunal]

