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UNITED NATIONS
NATIONS UNIES

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
Vagn Joensen

Registrar: Adama Dieng

Date: 2 April 2008

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THE PROSECUTOR
v.
Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA
Case No. ICTR-98-44-T

**DECISION ON PROSECUTOR'S SUBMISSIONS CONCERNING EDOUARD
KAREMERA'S COMPLIANCE WITH RULE 73TER AND CHAMBER'S ORDERS**

Rule 73 ter of the Rules of Procedure and Evidence

Office of the Prosecutor:
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Defence Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika
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Deo Mbutu

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INTRODUCTION

1. On 6 March 2008, the Chamber invited the parties to make submissions on various matters pertaining to the management of the defence case pursuant to Rule 73 *ter* of the Rules of Procedure and Evidence ("Rules").¹ The Prosecution consequently filed submissions concerning, *inter alia*, the Rule 73ter filings made by Edouard Karemera, contending that Edouard Karemera has failed to satisfy his obligations under Rule 73 *ter* and the Chamber's previous orders regarding that rule. The Prosecution submits that the witness summaries, identifying information of witnesses, and exhibit list and materials provided thus far by Karemera are insufficient. The Prosecution further contends that Edouard Karemera's Defence has failed to provide information on alibi witnesses or witness sequencing.² The Chamber will deal with each of the abovementioned issues raised by the Prosecution in turn.

DELIBERATIONS

2. Rule 73ter enables the Chamber to order the Defence, before the commencement of its case but after the close of the case for the Prosecution, to file its Pre-Trial Brief, list of witnesses it intends to call, and to list exhibits it intends to use at trial ("Rule 73 *ter* submissions").

Witness Summaries

3. The Prosecution submits that in many cases it is impossible for it to attach any value to the witness summaries already provided by Edouard Karemera, on the basis that they contain insufficient detail on the witnesses themselves and the events and persons they will testify about. It contends that Karemera's failure to include the material elements of the anticipated testimony of each witness makes it impossible for it to conduct meaningful investigations or prepare adequately for cross-examination of these witnesses. The Prosecution informs the Chamber that, should Karemera fail to provide adequate summaries sufficiently in advance of the witnesses' testimony, it will request the Chamber to order remedial measures, which are likely to delay the proceedings. Namely, that the witnesses'

¹ *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, ("Karemera *et al.*"), Reconsidération de la Décision du 27 février 2008 relative à la reprise du procès et au commencement de la présentation des moyens de preuve à décharge (TC), 6 March 2008.

² Prosecutor's Submission Pursuant to Trial Chamber II Order of 6 March 2008 re: Ndirumpatse and Nzirorera's Compliance and Enforcement of Rule 73 *ter*, filed on 14 March 2008 ("Prosecutor's Submission").

testimony should be confined to the summaries provided by the calling party or, alternatively, that the Chamber should postpone the Prosecution's cross-examination to provide for an opportunity to investigate the witness.³

4. The Chamber has previously denied the Prosecution's request for further information but invited Edouard Karemera to provide more information where possible.⁴ The Chamber maintains this position, and further notes that there is no general formulation which can determine whether the Defence summaries are adequately detailed. Witness summaries cannot be evaluated in the abstract: their sufficiency can only be known in relation to actual testimony.⁵ Moreover, the Chamber notes that, should the Prosecution show any prejudice caused by additional information elicited during the witnesses' testimony, which was not contained in the summary of the anticipated testimony, it will remain open to the Chamber to determine the appropriate remedy on a case-by-case basis. The Chamber therefore declines to make a general ruling on the issue at this stage.

Alibi witnesses

5. The Prosecution contends that the Defence for Edouard Karemera has not complied with its obligation to provide notice of alibi witnesses pursuant to Rule 67(a)(ii)(a). The Chamber recalls that it has previously ordered the Defence for Edouard Karemera to comply with Rule 67, considering that witness summaries provided thus far infer that it may intend to call certain alibi witnesses.⁶ The Chamber maintains this ruling, and further reminds the Defence for Edouard Karemera that its obligation to provide witness information pursuant to Rule 73 ter necessarily includes information pertaining to alibi witnesses.

Identifying information of witnesses

6. The Prosecution notes that it has received identifying information for 13 witnesses, and requests that complete identity of the remaining 54 witness be immediately provided in the same format as the information provided for Prosecution witnesses, including full

³ Prosecutor's Submission, paras. 22-23.

⁴ *Karemera et al.*, Décision sur la requête d'Edouard Karemera visant au report du commencement de la présentation de sa preuve et sur les requêtes du Procureur intitulées « Prosecutor's Cross-Motion for Enforcement of Rule 73 ter and Remedial and Punitive Measures » et « Prosecutor's Request for Temporary Transfer of Witness AXA Pursuant to Rule 90 bis » (TC), 27 February 2008 ("Decision on 73 ter Related Motions").

⁵ See *Prosecutor v. Bugosora, Kabiligi, Ntabakuze and Nsengiyumva*, Case No. ICTR-98-41-T, Decision on Sufficiency of Defence Witness Summaries (TC), 5 July 2005, para. 5.

⁶ Decision on 73 ter Related Motions, p. 12.

address, telephone contact numbers where possible or e-mail address, and details of where the witness resided in 1994, including his or her Cellule.⁷

7. The Chamber recalls its previous order that Edouard Karemera provide full identifying information for all witnesses he intends to call 30 days prior to the commencement of the presentation of his defence.⁸ Following the Chamber's Scheduling Order of 24 December 2007, Edouard Karemera filed its list of witnesses pursuant to Rule 73ter, including 69 pseudonyms.⁹ Thus far, the Accused has provided to the Prosecution identifying information for 13 witnesses only. He has not made any application to the Chamber for extension of time to comply with the Chamber's orders nor has he sought other relief from Chamber. In the Chamber's view, this may imply a failure to comply with its Orders. The Chamber reminds the Defence Counsel that it remains open to the Chamber to impose, after a warning, sanctions should the Counsel's conduct obstruct proceedings or be otherwise contrary to the interests of justice.

8. The Chamber further considers that such identifying information should include: the full name of the witness (family name, first name, nicknames where applicable, and the assigned pseudonym); his or her nationality, sex, date and place of birth (including Cellule, Secteur, Commune, and Préfecture); the full names of both parents; his or her residence in 1994 including Cellule, Secteur, Commune, and Préfecture; current country and city of residence and his or her occupation at present and in 1994 so that the other parties may properly conduct their investigations, and prepare their cross-examination of the witnesses in question. The Chamber notes that where the Accused is unable to provide certain aspects of this information immediately, it is expected that such deficiencies will be addressed and remedied quickly.

Witness Sequencing

9. The Prosecution submits that Edouard Karemera should provide information on the sequence in which witnesses will be called. It notes that Edouard Karemera's name is not on the current list of proposed witnesses, and requests that the Accused inform the Chamber and

⁷ Prosecutor's Submission, paras. 25, 27-28..

⁸ *Karemera et al.*, Décision relative à la requête d'Edouard Karemera en vue d'une ordonnance de protection des témoins à décharge (TC), 19 February 2008, p. 6.

⁹ Memoire Prealable a la Presentation de la Preuve a Decharge d'Edouard Karemera -Article 73 Ter RPP, filed on 31 January 2008 (CMS transmission date 1 February 2008).

the Prosecutor in a timely matter, should he wish to testify. The Chamber considers that the provision of a witness list containing the sequencing of all witnesses Edouard Karemera intends to call in this case is justified, on the basis that it will assist all parties to the proceedings in preparing their respective cases, and will facilitate the conduct of an expeditious trial and makes the order accordingly.

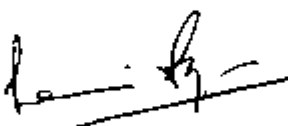
Exhibit List

10. The Prosecution further: (1) contends that the exhibit list filed thus far by Edouard Karemera lacks sufficient detail; (2) requests that the Accused file a comprehensive exhibit list and that it provide the Prosecution with hard and electronic copies of the exhibits; and (3) that the relevant portions are highlighted and translation made available where appropriate. The Prosecution submits that priority can be given to materials otherwise not available to the Prosecution via Zyfind.¹⁰ The Chamber notes that Rule 73 *ter* does not specify the requirements which an exhibit list must satisfy for the purposes of that rule. The Chamber considers that this issue can be addressed at the next Status Conference, after hearing the positions of all the parties on the issue.

FOR THESE REASONS, THE CHAMBER

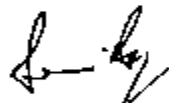
ORDERS Edouard Karemera to file: (i) a list of witnesses by order of appearance; and (ii) the identifying information as specified herein for each witness it intends to call, no later than 5 April 2008.

Arusha, 2 April 2008, done in English.



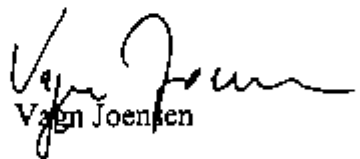
Dennis C. M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge
(Absent during signature)



Vagn Joensen

Judge

[Seal of the Tribunal]



¹⁰ Prosecutor's Submission, para. 34.