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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Case No. TPIR-98-44-T

ENGLISH
Original: FRENCH

Before: Judge Dennis C. M. Byron, presiding
Judge Gberdao Gustave Kam
Judge Vagn Joensen
Registrar: Adama Dieng
Date: 25 June 2008

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THE PROSECUTOR

v.

**ÉDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA**

**ORDER ON MATHIEU NGIRUMPATSE'S BRIEF FOLLOWING THE 17 APRIL
2008 DECISION ON THE PRESENTATION OF THE DEFENCE EVIDENCE**

Rule 73 ter of the Rules of Procedure and Evidence

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INTRODUCTION

1. The Prosecution formally closed its case on 25 January 2008. By an Order issued on 17 April 2008 on the presentation of the Defence evidence, the Chamber reiterated its order to the Defence respectively for Mathieu Ngirumpatse and for Joseph Nzirorera to communicate to it all the information required under Rule 73 *ter* (B) of the Rules of Procedure and Evidence.¹
2. On 24 April 2008, Mathieu Ngirumpatse provided a detailed explanation of why he misunderstood the Chamber's earlier decision, which resulted in the discrepancies in his previous Brief, and then filed another Brief, with a list of 514 witnesses, each bearing a pseudonym. In another document filed *ex parte* the same day, the Defence disclosed the identifying particulars of the said 514 witnesses.
3. On 28 April 2008, the Prosecutor submitted his observations on the Brief and on 1 May 2008, the Defence filed its reply thereto.
4. At this juncture, the Chamber is of the view that two issues need to be addressed, namely: the obligation to disclose to the Prosecutor, as some of such information appears in the document filed *ex parte*, and the time allotted for Mathieu Ngirumpatse to present his case.

Confidential information contained in the list of witnesses filed *ex parte*

5. In the present case, protective measures are yet to be ordered for Mathieu Ngirumpatse's witnesses. However, the Chamber has already issued orders in that regard for both Prosecution and Édouard Karemera's witnesses. In those orders, the practice has been for the party to disclose all the identification particulars of its witnesses 30 days before the commencement of the Defence case.
6. On 17 April 2008, the Chamber again drew Mathieu Ngirumpatse's attention to its order requiring disclosure of all materials as prescribed under Rule 73 *ter* (B) of the Rules. The Chamber then asked the Defence to file such information *ex parte* if the protection of its

¹ *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Édouard Karemera's Motion for Orders for the Protection of Defence Witnesses (TC), 19 February 2008; Decision on Édouard Karemera's Motion for Postponement of the Commencement of his Case as well as the Prosecutor's Motions entitled "Prosecutor's Cross-Motion for Enforcement of Rule 73 *ter* and Remedial and Punitive Measures" and "Prosecutor's Request for Temporary Transfer of Witness AXA Pursuant to Rule 70 *bis*" (TC), 27 February 2008; Reconsideration of the Decision of 27 February 2008 on the Resumption of Trial and Commencement of the Defence Case (TC3), 6 March 2008; Decision on Mathieu Ngirumpatse's Request for Extension of Time to File Rule 73 *ter* Materials (TC), 2 April 2008; and Decision on Prosecutor's Submissions Concerning Édouard Karemera's Compliance with Rule 73 *ter* and Chamber's Orders (TC), 2 April 2008; Decision on the Commencement of the Defence Case, 17 April 2008, as well as the Decision on Édouard Karemera's Motions to Vary his Witness List and for Extension of Protective Measures, dated 2 June 2008.

witnesses was in issue. Now, having perused the information in the document filed *ex parte* and having taken into account the present stage of the proceedings and the interests of justice, the Chamber is of the opinion that disclosure to the other parties, in particular to the Prosecutor, would not harm the Defence for Mathieu Ngirumpatse. However, *proprio motu* and pursuant to Rules 69 and 75 of the Rules, the Chamber considers that, as matters stand, the said information should not become public knowledge, so much so that only the parties to the case would have access thereto.

7. The Chamber recalls that it had denied Ngirumpatse's request for protective measures for his witnesses on the grounds that he had not provided any information that would allow for a case-by-case consideration nor of any real threat to the security of a witness or to that of his or her family, nor any objective basis to the alleged fear.² In its Brief, the Defence again raised its request for the protection of its witnesses without however providing any such information. Hence, the said request cannot be granted in its entirety as matters stand and the provisional protective measure allowed hereinafter under Rules 69 and 75 of the Rules would be withdrawn in the event said information is not provided within a reasonable time limit.

8. In his submissions, the Prosecutor contended that failure by the Defence to comply with the Chamber's orders created an imbalance between the parties. In the Chamber's opinion, the disclosure decided above brought to a close the matter over which the Prosecutor was complaining, and for the time-being, further consideration of the Prosecutor's submissions in that regard is deemed unnecessary.

Time allotted for the presentation of Mathieu Ngirumpatse's evidence

9. Under the Statute and the Rules of the Tribunal, the Chamber is obligated to guarantee a fair trial. Hence, it must ensure *inter alia* that the proceedings are without undue delay, while not undermining the rights of the Accused and guaranteeing the protection of the victims and witnesses each time it is deemed necessary. The Chamber may *inter alia* exercise control over the manner in which witnesses are examined, the presentation of evidence and the order in which they are tendered. To that end, the summaries of the anticipated testimonies of the witnesses are important insofar as they allow the Chamber to assess the substance of the testimony and consequently, its estimated duration. The Chamber moreover recalls that these same summaries are of assistance to the other parties in preparing themselves for each witness, and that it is incumbent on a party to submit summaries which would indeed assist the other parties, same as the Chamber, in preparing the case.

10. The Chamber notes that at this stage, Mathieu Ngirumpatse is yet to submit a summary of the anticipated testimonies of his witnesses, alleging in essence that his investigations were still underway. The Chamber is of the view that such a situation does not allow the other parties,

² Decision on Mathieu Ngirumpatse's Motion for Protection of his Witnesses, dated 17 April 2008.

especially the Prosecution, to prepare effectively and reminds the Defence of its previous orders requiring disclosure of the said summaries.

11. In the Chamber's opinion, the 514 witnesses that the Defence for Mathieu Ndirumpatse intends to call is too huge a number, bearing in mind the entire evidence on record against the Accused. Pursuant to Rule 73 *ter* (D) of the Rules and in the interests of justice, the Chamber considers it necessary to urge the Defence to reduce this number given the repetitive nature of some testimonies. The Chamber further considers that such a measure is necessary from the standpoint of each Accused's right to be tried without undue delay, which requires that the number of witnesses be curtailed. Moreover, in light of the Defence position as canvassed in its Brief, the Chamber deems that about 40 days of hearings, six hours a day, would be consistent with and proportionate to what Mathieu Ndirumpatse needs for his case. Although such an estimate seems reasonable at this stage, the Chamber of course is prepared to extend the time allotted in light of new circumstances and in the interests of justice.

12. To allow all parties in the instant case to prepare, Mathieu Ndirumpatse's amended list of witnesses as well as the order of appearance of witnesses and an estimated duration of their evidence, within the approximate period of 40 days, should be communicated, as soon as possible, to the Chamber and to the other parties and in any case, on 7 July 2008 at the latest.

FOR THESE REASONS, THE CHAMBER

I. **REITERATES** its previous orders for Mathieu Ndirumpatse to disclose all the requisite information under Rule 73 *ter* (B) and especially the amended list of witnesses whom he intends to call, within 40 days, and **ORDERS** that the Defence comply on 14 July 2008 at the latest, in that regard;

II. **ORDERS** the Registry to file as confidential the document submitted *ex parte* by Mathieu Ndirumpatse on 24 April 2008; and

III. **DISMISSES** in part the Motion for the protection of witnesses as it stands, and **URGES** Ndirumpatse to file the information justifying the protective measures for his witnesses within a reasonable time limit.

Done in French at Arusha, on 25 June 2008.

[Signed]

Dennis C. M. Byron
Presiding Judge

[Signed]

Gberdao Gustave Kam
Judge

[Signed]

Vagn Joensen
Judge

[Seal of the Tribunal]

