



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-T  
24-10-2008  
(38091-38087)

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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:** 24 October 2008

JURISDICTION  
RESERVÉE

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**THE PROSECUTOR**

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA

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

**ORDER TO JOSEPH NZIRORERA TO REDUCE HIS WITNESS LIST**

*Articles 19 and 21 of the Statute and Rules 46, 73 (F), 73ter (B), (C) and (D), 90 (F) and 92bis of the Rules of Procedure and Evidence*

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## INTRODUCTION

1. On 25 January 2008, the Prosecutor closed his case. 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 73ter of the Rules of Procedure and Evidence and issued further related orders to each Defence team.<sup>1</sup>
2. By an Order dated 30 July 2008,<sup>2</sup> The Chamber addressed a warning to Joseph Nzirorera's Counsel, because none of the three Pre-Defence Briefs<sup>3</sup> submitted complied with its orders under Rule 73ter (B). The Chamber ordered Nzirorera to comply no later than 13 August 2008.
3. On 13 August 2008, Joseph Nzirorera filed his fourth Rule 73ter submission.<sup>4</sup> It included a list of 229 witnesses, designated by a pseudonym, in intended order of appearance. It referred to the specific paragraphs in the Indictment that the testimony of each witness would address. It provided time estimates for the examination-in-chief of each witness. The total duration of direct examination was estimated to be 449 hours, representing around 75 trial days (6 hours per trial day).
4. On 8 September 2008, following a Decision dated 27 August 2008,<sup>5</sup> Joseph Nzirorera filed his fifth Rule 73ter submission, which included an updated witness list and summaries of anticipated testimonies of his potential witnesses in a confidential Annex,<sup>6</sup> listing a total of 227 witnesses. In both filings he indicated that he would call 180 witnesses over 180 trial days and adduce the witness statements of the remaining witnesses under rule 92bis.

## DELIBERATIONS

### *Time allocation and Reduction of the witness list*

5. The Trial Chamber has a duty to manage the trial. Article 19 of the Statute specifically requires the Trial Chamber to ensure that the trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses. Rule

<sup>1</sup> *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse 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.

<sup>2</sup> *Karemera et al.*, Order to Joseph Nzirorera on the Presentation of his Defence Evidence, TC, 30 July 2008.

<sup>3</sup> Joseph Nzirorera's First Rule 73ter Filing, filed on 31 March 2008; Joseph Nzirorera's Second Rule 73ter Filing, filed on 24 April 2008 and Joseph Nzirorera's Third Rule 73ter Filing, filed on 2 June 2008.

<sup>4</sup> Joseph Nzirorera's Fourth Rule 73ter Filing, filed on 13 August 2008.

<sup>5</sup> *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Extension of Time, TC, 27 August 2008.

<sup>6</sup> Joseph Nzirorera's Fifth Rule 73ter Filing, filed on 8 September 2008; Confidential Annex to Joseph Nzirorera's Fifth Rule 73ter Filing, filed on 8 September 2008.

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73ter, describes some of these management powers and allows the Chamber to order the Defence to shorten the estimated length of the examination-in-chief for some witnesses and to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts. It also provides that after the commencement of the Defence case, the Defence, if it considers it to be in the interests of justice, may move the Trial Chamber for leave to reinstate witnesses or to vary its decision as to which witnesses to be called.

6. These rules have been applied in both *ad hoc* International Tribunals from time to time. It has already been decided that a principle of basic proportionality, rather than a strict principle of mathematical equality, generally governs the relationship between the time and witnesses allocated to the two sides.<sup>7</sup>

7. The Chamber recalls that the Prosecution called 29 witnesses over 170 trial days, and in addition adduced written statements pursuant to Rule 92bis from a number of witnesses as well as documentary and other exhibits to prove its case against all three defendants. The Chamber has already considered the time and number of witnesses for the other accused. The intended number of witnesses in Nzirorera's filings is not even remotely proportional, especially in light of the fact that the burden of proof is on the Prosecution and never shifts to the Defence.

8. A review of the witness summaries annexed to the submissions made by Joseph Nzirorera under Rule 73ter, reveals that an excessive number of witnesses are being called to prove the same facts. Some blatant examples include listing more than 15 proposed witnesses to testify that no meeting was ever held at Nzirorera's mother's house and related matters; and about 10 to testify about the convoy departing Kigali on 12 April 1994 and related matters. The Chamber has considered the complexity and variety of the issues to be addressed in the context of the witness summaries provided and concludes that a witness list of 55 witnesses including Nzirorera would be more than adequate to present his case.

9. In terms of the duration of witness testimony the Chamber notes that the average time allocated for examination-in-chief is just less than 2 hours per person.<sup>8</sup> This is in accord with the Chambers own assessment of an average time, recognizing that some will be longer and some shorter. In assessing the time for cross-examination the Chamber assesses equal time plus a 15% for reexamination and contingencies. In these circumstances the Chamber estimates that 55 witnesses could testify in 42 days and will round this up to 45 days. The

<sup>7</sup> *The Prosecutor v. Naser Oric*, Case No. IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, AC, 20 July 2005, para. 8.

<sup>8</sup> The method of calculation being 449 (estimation of the total duration of direct examination) divided by 229 (number of intended witnesses).

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Chamber is of the opinion that this allotted time is sufficient to allow Joseph Nzirorera a fair opportunity to present his case.

10. The Chamber recalls that Rule 73 (A) prescribes that a Trial Chamber may grant certification to appeal an interlocutory decision if it involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. The Chamber considers that the limitation of the length of time and of the number of witnesses allocated to the Defence case are indisputably issues that may affect the fairness and expeditiousness of the trial, and that an immediate resolution of those issues would advance the proceedings. In these circumstances in the interests of justice and expediting the process, the Chamber hereby *proprio motu* grants Joseph Nzirorera certification to appeal this Order, if he wishes to.<sup>9</sup>

***Evidence in the form of written statements***

11. The Chamber further notes that Joseph Nzirorera repeated, that he intends to submit more than 40 written statements *in lieu* of oral testimony, under Rule 92*bis*. Filings under rule 92*bis* require orders, and Nzirorera has already applied for 92*bis* orders on a statement by statement basis. The Chamber considers that this would unreasonably and unnecessarily increase the work of the Chamber and any party that may wish to respond. Consequently, it directs that applications for adducing statements under Rule 92*bis* be made in one application. The Chamber will direct the Registrar that fees for additional filings are denied unless cause is shown. It would also be consistent with the 73*ter* orders of the Chamber that such applications be made forthwith.

<sup>9</sup> The Chamber takes notice that on 25 September 2008, Joseph Nzirorera filed a Joinder in Ngirumpatse Application for Certification to Appeal the Decision issued on 17 September 2008, ordering limitation of his witness list.


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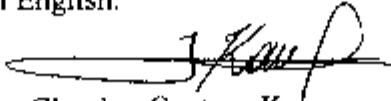
**FOR THESE REASONS, THE CHAMBER**

- I- **ORDERS** Joseph Nzirorera to file the final list of appearance of his witnesses, reduced to approximately 55 witnesses fitting within a 45 trial days' length of time as soon as possible and in any case no later than 7 November 2008.
- II- **ORDERS** Joseph Nzirorera to file his application for admission of all his intended written statements in lieu of oral testimony under Rule 92*bis* as soon as possible and in any case no later than 7 November 2008; and
- III- **DIRECTS** that the Registrar deny payment of fees associated with any additional filing for a specific written statement under Rule 92*bis*, unless cause is shown.
- IV- **GRANTS** Joseph Nzirorera the certification to appeal this Order to if he wishes to do so.

Arusha, 24 October 2008, done in English.

  
Dennis C. M. Byron

Presiding Judge

  
Gberdao Gustave Kam

Judge  
(absent during signature)  
[See ICJ Tribunal]



  
Vagn Joensen

Judge  
(absent during signature)