



UNITED NATIONS
NATIONS UNIES

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

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Aydin Sefa Akay

Registrar: Mr. Adama Dieng

Date: 23 November 2009

THE PROSECUTOR
v.
DOMINIQUE NTAWUKULILYAYO

Case No. ICTR-05-82-T

**ORAL DECISION ON DEFENCE REQUEST TO POSTPONE THE ACCUSED'S
TESTIMONY**

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Charles Adeogun-Phillips
Ibukunolu Alao Babajide
Thembile Segoete

Counsel for the Defence:
Maroufa Diabira
Dorothee Le Fraper du Hellen

Transcript Extract: 23 November 2009, pages 9-11

MADAM PRESIDENT:

Here is the oral ruling regarding Defence submissions on the Accused not taking the stand today.

Throughout these proceedings the Chamber has accommodated the Accused's fair trial rights, particularly, the right to adequate time to prepare his Defence, and has allowed ample time for preparation of his testimony. The Chamber's -- the Chamber allowed over three months between close of Prosecution case and the commencement of the Defence case, which was considered sufficient time for preparation of this single Accused case.

The Defence was well informed in advance that in case -- that its case would commence on 14th September 2009. During the status conference held on 10th September, the Defence informed the Chamber that it intended to file a motion for a second session as its experts would only be available in the course of November 2009.

On 11th September it became necessary for the Chamber to postpone commencement of the Defence case by one week, thereby necessitating a second session which was scheduled for 16th November. The Defence did not file a motion for any further postponement.

On 22nd October, the Defence filed a report of a proposed expert. They did not file a CV containing the proposed expert's qualifications. His CV was filed on 11th November, when the Defence also filed the report and the CV of another proposed expert. The Defence, therefore, failed to comply with the filing obligation under Rule 94 *bis*.

On 16th November, the Defence filed its order of appearance of the witnesses for this session, which included both expert witnesses and the Accused.

On 9th -- 19th November, the Prosecution filed motions to reject the expert -- the written Defence expert witnesses proposed. The Chamber also rendered an oral ruling stating that the Accused should be prepared to testify on 23rd November, that is, today, in the event the Defence experts are unable to testify.

Today the Defence has informed the Chamber that the Accused is not ready to testify, as there are still documents, including decisions and orders of the Chamber which have not been translated into a language the Accused understands, that is, French.

The Chamber recalls that the Accused is entitled to translation of all documents which enable him to understand the case against him, which includes decisions and orders of the Chamber. However, the Chamber knows that the Tribunal's tactics of assigning Defence teams composed of bilingual counsel or legal assistants in order to limit delays in the proceedings resulting from a lack of access to the translations. A trial document not available in the language understood by the Accused should not serve as a reason for delay, particularly when the Defence team -- legal team is able to assist the Accused.

However, considering that, one, the issue currently before the Chamber concerns the Accused's testimony; two, there are some decisions and orders which have yet to be translated; and three, in order to give full regard to the rights of the Accused, the Chamber will allow the Accused additional time in order to receive translation of the outstanding decisions and orders.

The Chamber orders the language section to expedite a translation of the documents identified by the Defence during today's proceedings and provide these translations to the Defence by 30th November 2009. The Chamber orders that the Accused testify on 8th December 2009.

With respect to Defence expert witnesses, considering that, pursuant to 94 *bis*, 21 days is required before filing -- between filing of full expert report and expert testimony, the Defence adjourn the case -- proceedings until further order -- yeah, the Chamber adjourns the

Defence case until further order.

Thank you.