

ICTR-00-55C-T
19-08-2011

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opInternational Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

(7904-7899)

OR: ENG

TRIAL CHAMBER III

Before Judges: Lee Gacuiga Muthoga, *Presiding*
Seon Ki Park
Robert Fremr

Registrar: Adama Dieng

Date: 19 August 2011

THE PROSECUTOR

v.

Iddephonse NIZEYIMANA

CASE NO. ICTR-00-55C-T

2011 AUG 19 A 11:20
JUDICIAL RECORDS ARCHIVES
UNICTR

SCHEDULING ORDER

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecution:
Drew White
Kirsten Gray
Yasmine Chubin

Defence Counsel for Iddephonse Nizeyimana:
John Philpot
Cainnech Lussiaà-Berdou
Myriam Bouazdi
Sebastien Chartrand

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INTRODUCTION

1. The trial commenced on 17 January 2011 with the opening statements of both the Prosecution and the Defence. The Prosecution closed its case-in-chief on 25 February 2011, after having called 38 witnesses. The Defence closed its case on 16 June 2011, after having called 38 witnesses.
2. On 14 July 2011, the Chamber informally communicated the Chamber's guidelines regarding the anticipated scheduling of the proceedings to the parties via e-mail.¹
3. On 14 July 2011, the Defence team of the Accused, Ildéphonse Nizeyimana ("the Defence" and "the Accused" respectively) filed a letter outlining perceived problems with the Chamber's informal scheduling guidelines.² The Defence raised issues with respect to the (1) translation of the Prosecution's closing brief, (2) timing of the closing brief, (3) timing of its motion for leave to hear evidence in rejoinder, and (4) scheduling difficulties with respect to the site visit in early October 2011.³
4. On 5 August 2011, the Office of the Prosecutor ("Prosecution") filed a motion requesting the Chamber to issue a formal scheduling order to enable the parties to facilitate the planning of their cases and to "avoid further delays of the Trial."⁴ In furtherance of the planning of the case, the Prosecution proposes a schedule that differs to some extent from the guidelines informally communicated to the parties by the Chamber.⁵ The Prosecution requests the Chamber to order the Defence to apply for leave to present evidence in rejoinder prior to the hearing of the rebuttal evidence, preferably by 15 August 2011.⁶ The Prosecution further notes that it will attempt to file its closing brief simultaneously in English and in French, so as to avoid further delays.⁷
5. On 9 August 2011, the Defence filed its response.⁸ The Defence submits that the Prosecution's proposed schedule is unworkable and would violate the Accused's right to be

¹ E-mail entitled "Chamber's Informal Guidelines on Potential Scheduling Time-Line," by Daniella Ku, 14 July 2011.

² Letter entitled "Closing brief and scheduling, Prosecutor vs Ildéphonse Nizeyimana," ("Defence Letter") by John Philpot, 14 July 2011.

³ *Ibid.*

⁴ Prosecutor's Motion to Request a Scheduling Order and to Order the Defence to Request a Rejoinder Prior to Hearing the Rebuttal Witnesses ("Prosecution Motion"), 4 August 2011, para. 8.

⁵ Prosecution Motion, para. 10.

⁶ Prosecution Motion, paras. 12-14.

⁷ Prosecution Motion, para. 18.

⁸ Defence Response to Prosecutor's Motion to Request a Scheduling Order and an Order to the Defence ("Defence Response"), 9 August 2011.

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afforded adequate time and facilities in preparation for the preparation of his defence.⁹ The Defence further submits that it cannot be expected to file for leave to present evidence in rejoinder prior to the hearing of the rebuttal evidence, as (1) the Prosecution would otherwise be provided with an unfair advantage and (2) the Defence cannot determine the scope of its rejoinder case until it has heard the rebuttal evidence.¹⁰ The Defence further notes that it prefers to work in French, and needs time to consult with its client in preparation for the closing brief and closing arguments.¹¹

DELIBERATIONS

Application for Rejoinder

6. The Chamber notes the Prosecution's request to order the Defence to submit its application for leave to present evidence in rejoinder prior to the rebuttal case, preferably by 15 August 2011.¹² While the Chamber agrees that an early filing of such an application would greatly facilitate the uninterrupted continuance of the case, the Chamber declines to order the Defence to file submissions before the rebuttal case. The Chamber does note that it will not consider any postponement of the rejoinder case beyond 20 and 21 September 2011.

Timing of the Site Visit

7. The Chamber notes that the Prosecution requests that the site visit take place during the first week of October 2011.¹³ The Defence requests that the site visit take place during the third week of October 2011, due to "serious scheduling difficulties" during the first two weeks of October 2011.¹⁴ The Defence, however, did not provide further explanation as to the "difficulties" it has with regard to first two weeks. The Chamber accordingly schedules the site visit to take place the week of 3 October 2011, so as to avoid a delay in the filing of the closing brief and hearing of the closing arguments.

The Law on Translation

8. The Chamber notes the concerns raised by the parties regarding the timing of the closing arguments, particularly in relation to the translation of the prosecution closing brief.¹⁵ The Chamber recalls that Article 31 of the Statute of the Tribunal ("Statute") provides that

⁹ Defence Response, paras. 5-17.

¹⁰ Defence Response, paras. 18-24.

¹¹ Defence Motion, paras. 25-27.

¹² Prosecution Motion, para. 12.

¹³ Prosecution Motion, para. 10.

¹⁴ Defence letter.

¹⁵ Prosecution Motion, paras. 15-18; Defence Letter.

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the working languages of the Tribunal are English and French. Pursuant to Article 20 (4) of the Statute, the Accused is entitled to minimum fair trial guarantees, including the right to be informed promptly of the nature and cause of the charges against him in a language which he understands.¹⁶ The Rules of Procedure and Evidence ("Rules") also include provisions regarding language – Rules 3 (A) and 3 (B) mirror provisions in the Statute. Moreover, Rule 3 (E) makes clear that the responsibility for interpretation is that of the Registrar.¹⁷

9. According to the jurisprudence of the Tribunal and the International Criminal Tribunal for Yugoslavia, an accused is entitled to translation of all documents which are necessary to ensure a fair trial. More specifically, an accused is entitled to the translation of those documents which enable him to understand the case against him, and to defend himself by putting forward his own version of the events.¹⁸ Trial Chambers have consistently held that the Accused is entitled to the following documents in a language which he understands:

- a. all evidentiary material which relates to the determination of the charges against him, including prior witness statements disclosed by the Prosecution under Rule 66 (A) (ii); and
- b. decisions and orders of the Chambers.

Documents which are excluded from mandatory translation are:

- a. disclosed documents not presented at trial;
- b. motions, briefs and other pleadings;
- c. transcripts of proceedings; and
- d. memoranda, correspondence and similar documents.¹⁹

10. The Chamber notes the Tribunal's practice of assigning defence teams composed of bilingual counsel or legal assistants in order to limit delays in proceedings resulting from the

¹⁶ Article 20 (4) (a) of the Statute.

¹⁷ Rule 3 (E) states "[t]he Registrar shall make any necessary arrangements for interpretation and translation of the working languages".

¹⁸ *Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-T, Decision on the Defence Request for Kinyarwanda Translations of all Documents (TC), 8 November 2004, para. 4; *Prosecutor v. Muhimana*, Case No. ICTR-95-I-B-J, Decision on the Defence Motion for the Translation of Prosecution and Procedural Documents into Kinyarwanda, the Language of the Accused, and into French, the Language of his Counsel (TC), 6 November 2001, paras. 22, 23, 26 and 29; *Prosecutor v. Delalic et al.*, Case No. IT-96-21-T, 25 September 1996, Decision on Defence Application for Forwarding the Documents in the Language of the Accused (TC), para. 14.

¹⁹ *Ibid.*

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lack of access to translations.²⁰ A trial document that is not available in the language understood by the Accused should therefore not serve as a pretext for requesting an extension of time, particularly where Defence Counsel are capable of properly assisting the Accused.²¹

11. The Chamber notes that both the Defence Lead Counsel and the Defence Co-Counsel are perfectly bilingual, as well as the two legal assistants on the team. The Chamber further notes the practice by the Defence of filing their applications before this Chamber in English. Moreover, the Prosecution has indicated that it endeavours to file its closing brief simultaneously in both the English and the French language, so as to avoid any further delays.²² In the particular circumstances, the Chamber is satisfied that Lead Counsel and Co-Counsel have been duly able to address the issues raised throughout trial, and will be able to prepare for the closing arguments in a timely manner. The Chamber therefore does not consider it necessary to postpone the closing arguments.

12. Having further considered the submissions of the Parties, the Chamber hereby:

I. GRANTS the Prosecution Motion in part;

II. ORDERS that the testimony of Defence Witness BNN07 take place on 6 September 2011, at 9:00 a.m.;

III. ORDERS that the rebuttal case take place on 7 and 8 September 2011, at 9:00 a.m.;

IV. ORDERS that the rejoinder case, if any, take place on 20 and 21 September 2011, at 9:00 a.m.;

²⁰ See e.g., *Prosecutor v. Simba*, Case No. ICTR-01-76-I, Decision on Defence Request for Protection of Witnesses (TC), 25 August 2004, para. 1; *Prosecutor v. Karemera*, Case No. ICTR-98-44-T, Decision on Extension of Time to Respond to the Prosecutor's Two Motions (TC) ("Karamera Decision"), 27 September 2006, para. 4


²¹ *Karamera* Decision, para. 4; *Nsengiyumva v. Prosecutor*, Case No. ICTR-98-41-A, Decision on Anatole Nsengiyumva's Motion for Extension of Time for Filing Appeal Submissions (AC), 2 March 2009, pp. 5-6. The Appeals Chamber found in the context of the filing of appeal submissions that the "determination of potential grounds of appeal falls primarily within the purview of the Defence Counsel, and that "Nsengiyumva's Lead Counsel works in English and is therefore able to understand the Trial Judgement in its original language." See also *Muhimana v. Prosecutor*, Case No. ICTR-95-1B-A, Decision on Motion for Extension of Time for Filing of Notice of Appeal (AC), 2 June 2005, p. 3; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-A, Decision on Anatole Nsengiyumva's Motion for Extension of Time for Filing Appeal Submissions, 2 March 2009, p. 4; *Karera v. Prosecutor*, Case No. ICTR-01-74-A, Decision on François Karera's Motion for Extension of Time for Filing the Notice of Appeal, 21 December 2007, p. 2; *Nchamihigo v. Prosecutor*, Case No. ICTR-2001-63-A, Decision on Defence Motion for a French Translation of the Prosecutor's Respondent's Brief and for Extension of Time for the Filing of the Reply Brief, 8 July 2009, para. 6, fn. 19

²² Prosecution Motion, para. 18.

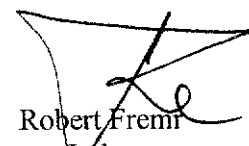
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- V. **ORDERS** the Defence to disclose to the Prosecution the statements of the potential rejoinder witnesses no later than 7 days before the testimony of the witness is given;
- VI. **ORDERS** that the site visit take place the week of 3 October 2011;
- VII. **ORDERS** that the parties file their closing briefs simultaneously by 8 November 2011; and
- VIII. **ORDERS** that the closing arguments take place on 8 December 2011.

Arusha, 19 August 2011, done in English.


Lee Gacigira Muthoga
Presiding Judge


Seon Ki Park
Judge


Robert Fremr
Judge

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