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UNITED NATIONS
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Original: English

TRIAL CHAMBER III

Before: Judge Lloyd G. Williams, Q.C., Presiding
Judge Andréia Vaz
Judge Khalida Rachid Khan

Registrar: Adama Dieng

Date: 20 October 2003

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THE PROSECUTOR

v.

ÉDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA
ANDRÉ RWAMAKUBA

Case No. ICTR-98-44-I

DECISION ON ISSUES TO BE ADDRESSED AHEAD OF TRIAL

Counsel for the Defence:
Didier Skornicki and John Traversi
Charles Roach and Frédéric Weyl
Peter Robinson and Dior Diagne
David Hooper and Andreas O'Shea

Office of the Prosecutor:
Don Webster
Dior Fall
Ifeoma Ojemeni
Simone Monasebian
Holo Makwaia
Tamara Cummings-John

[Signature]

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“Tribunal”),

SITTING as Judges Lloyd G. Williams, Q.C., Presiding, Andréia Vaz and Khalida Rachid Khan (“Chamber”);

NOTING that trial in the instant Case is scheduled to commence on 3 November 2003;¹

CONSIDERING the Chamber’s *facsimile* transmission to the Parties, through the Court Management Section of the Tribunal (“CMS”), entitled, “Commencement of Trial in the “Government I” case”, Ref. ICTR/JUD-11-6-3-03/064, dated 12 September 2003, in which the Chamber invited the Parties to bring to its attention any potentially contentious issues, to facilitate the commencement of trial;

CONSIDERING the Parties’ submissions in response, in:

(i) The “Request for further time to respond to the Prosecutor’s motion to file an amended indictment” filed on 17 September 2003 by the Defence for Accused Rwamakuba (“Rwamakuba’s Submissions”);

(ii) The “Motion for a Pre-Trial hearing concerning Trial date of 3 November 2003” filed on 19 September 2003 by the Defence for Accused Ngirumpatse (“Ngirumpatse’s Submissions”);

(iii) “Joseph Nzirorera’s Submission as to ‘Potential Contentious Issues’ and Suggestion for Status Conference”, filed on 22 September 2003 by the Defence for Accused Nzirorera (“Nzirorera’s Submissions”);

(iv) The “*Requête à fin de fixation d’une audience préalable de procédure relative à l’ouverture du procès au fond prévu le 3 Novembre 2003*” filed on 23 September 2003 and filed anew on 8 October 2003 by the Defence for Accused Karemera (“Karemera’s Submissions”);

(v) The Inter-Office Memorandum of 3 October 2003 from the Office of the Prosecutor to the Chamber’s Coordinator, entitled “Outstanding matters to be resolved prior to commencement of trial of *Prosecutor v. Ngirumpatse, Nzirorera, Karemera & Rwamakuba*, Case No. ICTR-98-44-I” (“Prosecutor’s Submissions”);

CONSIDERING the Statute of the Tribunal (“Statute”) and the Rules of Procedure and Evidence of the Tribunal (“Rules”);

Parties’ Submissions

Defence

1. The Defence lists the following issues as, to be addressed ahead of the trial:

(i) Issues pertaining to the Prosecutor’s Motion for Separate Trials and for Leave to File an Amended Indictment, filed on 29 August 2003:

(a) The proposed Amended Indictment amounts to an attempt at substituting the existing Indictment with a new Indictment at a late stage, and would result in a fundamental change in the Prosecutor’s case on the eve of trial, in contradiction with the

¹ See CMS *facsimile* Transmission of 4 August 2003, Ref. ICTR/JUD-11-6-3-03/051.

Accused's rights to be timely apprised of the nature of the charges against them and to adequately prepare a defence against these charges prior to trial;²

(b) The Amendments sought are based on new evidence undisclosed to the Defence, in contradiction with the Accused's right to be apprised of the nature of the charges against them;³

(c) The Defence needs more time to respond to the Prosecution's Motion for Leave to Amend the Indictment, in view of the fundamental nature of the changes proposed and the need to discuss them with the Accused;⁴

(d) If leave to amend the Indictment as proposed was granted by the Chamber, the filing of the Amended Indictment combined with the disclosure of the new supporting evidence would result in the opening of a deadline of thirty days under Rule 72(A) of the Rules for the Defence to file any preliminary motions, which the Chamber would then have to dispose of *in limine litis*;⁵

(e) If leave to amend the Indictment as proposed was granted by the Chamber, the Prosecutor would be under a duty to file a new Pre-Trial Brief superseding that filed in the present Case on 15 March 2002 and supporting his new case against the Accused;⁶

(f) If leave to amend the Indictment as proposed was granted by the Chamber, additional time for investigating the Prosecutor's new evidence would be required;⁷

(ii) The Prosecutor has not yet filed a definitive list of witnesses, nor has he indicated, as he is obliged to pursuant to Rule 73 *bis* of the Rules, the number of witnesses he intends to call;⁸

(iii) The Chamber has not rendered a decision in respect of several pending motions filed by the Defence for Accused Nzirorera;⁹

(iv) The Defence for Accused Nzirorera needs time to review approximately 30,000 pages of material which the Prosecutor has agreed to disclose but not yet provided and it will "simply be unable to review this material in time to cross-examine prosecution witnesses impacted by this material";

(v) The Defence for Accused Nzirorera needs time to investigate the witnesses' prior statements disclosed, to interview the prosecution witnesses and to seek and obtain material relevant to the witnesses' testimony prior to their appearance;

(vi) The Prosecutor has not yet fully discharged his obligation pursuant to Rule 66(A)(ii) to disclose all his witnesses' prior statements, according to the Defence for Accused Nzirorera;

² Rwamakuba, Ngirumpatse and Karemera's submissions.

³ Ngirumpatse and Karemera's submissions.

⁴ Rwamakuba and Karemera's submissions.

⁵ Ngirumpatse, Nzirorera and Karemera's submissions.

⁶ Ngirumpatse, Nzirorera and Karemera's submissions.

⁷ Rwamakuba and Ngirumpatse's submissions.

⁸ Ngirumpatse, Nzirorera and Karemera's submissions.

⁹ Referring to, (i) The "Motion for Inspection of Items 'Material to the Preparation of the Defence'" filed on 4 December 2002; (ii) The "Motion for Disclosure of Exculpatory Evidence," filed on 4 December 2002; (iii) The "Motion to Report Government of Benin to the United Nations Security Council", filed on 21 July 2003; (iv) The "Motion to Report Government of Rwanda to the United Nations Security Council", filed on 5 September 2003; (v) The "Motion for Issuance of Subpoena to Human Rights Watch", filed on 21 July 2003; (vi) The "Motion for Subpoena to Witness G" filed on 11 August 2003; (vi) The "Motion to Interview Jean Kambanda, Georges Ruggiu and Omar Serushago", filed on 22 September 2003.

(vii) The Prosecutor has not yet filed any expert witness reports;¹⁰

(viii) The Registry has not yet allowed Counsel for Accused Ngirumpatse to constitute his defence team.¹¹

2. The Defence for Accused Rwamakuba maintains that, in view of the right of the Accused to a fair trial without undue delay, the proposed trial date should not be vacated.¹²

Prosecution

3. The Prosecution essentially submits:

(i) That the Pre-Trial Brief filed in the present Case on 15 March 2002 did not include summaries of anticipated witness testimony or an exhibit list, and that he wishes to add witnesses to the list of 15 March 2002, and to file by Friday 10 October 2003 a superseding pre-trial brief which will list additional prosecution witnesses and include an expanded list of anticipated prosecution trial exhibits;

(ii) That he must disclose new witness statements to support the proposed amended indictment and the proposed superseding pre-trial brief;

(iii) That he intends to call four expert witnesses, whose written report will be served on the Defence by February 2004, well in advance of their anticipated testimony;

(iv) That he must make additional items and documents available to the Defence for inspection, pursuant to Rule 66(B) of the Rules;

(v) That, among the witnesses to be called during the first trial session, only one, Witness ZF, may raise certain challenges concerning pre-trial disclosure of his un-redacted witness statements or his previous testimony in the *Bagosora et al* trial¹³;

Deliberations

4. The issues summarized at paragraph 1(i) above have ceased to be contentious since the Chamber's *Décision relative à la Requête du Procureur en disjonction d'instances et en autorisation de modification de l'Acte d'accusation* rendered on 8 October 2003.

5. The issue summarized at paragraph 1(ii) above has ceased to be contentious since the Prosecutor filed a definitive list of witnesses on 10 October 2003.

6. The Chamber has rendered decisions on all the motions filed by the Parties in the present Case which were to be disposed of before the trial. Decisions on the remaining motions will be rendered as soon as possible. The issue summarised at paragraph 1(iii) above is therefore not an issue likely to affect the commencement of the Accused's trial.

7. The claim by the Defence for Accused Nzirorera that it needs time to review approximately 30,000 pages of unspecified material to be disclosed by the Prosecutor may be raised with more specificity at the proper time, either during the forthcoming status conference, or at trial.

¹⁰ Nzirorera's Submissions, para. 6.

¹¹ Ngirumpatse's Submissions, referring to the recruitment of two investigators and one assistant.

¹² Rwamakuba's Submissions, para. 4, sub-para. 4.

¹³ *Prosecutor v. Bagosora et al*, Case No. ICTR-98-41-T.

8. The Defence for Accused Nzirorera's claim summarized at paragraph 1(v) above is not an issue likely to affect the commencement of the Accused's trial on 3 November 2003. The Defence has had time to investigate and prepare for trial since the Accused, who declared that he was indigent, was assigned Counsel by the Registry. The Chamber further reiterates that there can be no justification for the Defence wanting to interview every single prosecution witness in the present Case prior to their testimony.¹⁴
9. The Defence for Accused Nzirorera does not specify in what respect the Prosecutor has not yet fully discharged his obligation pursuant to Rule 66(A)(ii) to disclose prosecution witnesses' prior statements. In any event, this matter has been dealt with in the Decision on the Defence Notification of Failure to Comply with Trial Chamber Order and Motion for Remedial Measures of 17 October 2003.
10. Rule 94*bis* of the Rules does not state that the full statements of expert witnesses should be disclosed to the opposing party prior to the trial, but as early as possible. The Chamber notes in this regard the Prosecutor's intention to serve on the Defence the written reports of his intended expert witnesses well in advance of their anticipated testimony. The Defence submission at paragraph 1(vii) above is therefore not an issue likely to affect the commencement of the Accused's trial on 3 November 2003.
11. The Chamber notes the Prosecutor's promise to make additional items and documents available to the Defence for inspection pursuant to Rule 66(B) of the Rules.
12. The remaining issues shall be dealt with during the forthcoming Status and Pre-trial Conferences to be held respectively on 20 and 27 October 2003.¹⁵
13. Karemera's Submissions were filed twice, on 23 September 2003 and on 8 October 2003. Pursuant to Rule 73(F), the Registrar is directed to deny to the Defence for Accused Karemera payment of any fees or costs associated with the preparation of the Submissions of 8 October 2003.

¹⁴ As stated in the Chamber's Decision on the Nzirorera Defence Motion for Modification of a Decision of 12 July 2000 on Protective Measures for Prosecution Witnesses, rendered on 7 October 2003.

¹⁵ See Chamber's *facsimile* Transmission through CMS of 8 October 2003, Ref. ICTR/JUD-11-6-3-03/071.

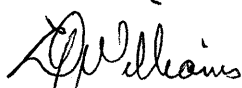


FOR THE ABOVE REASONS,

THE CHAMBER,

- I. DISMISSES PARTIALLY** the Parties' Requests, as indicated above;
- II. RESERVES** its position with respect to the other issues raised to be determined at the Status Conference of 20 October 2003;
- III. DIRECTS** the Registrar to deny to the Defence for Accused Karemera payment of any fees or costs associated with the preparation of the Motion of 8 October 2003.

Arusha, 20 October 2003



Lloyd G. Williams, Q.C.,
Judge
Presiding



Andréia Vaz
Judge



Khalida Rachid Khan
Judge

(Seal of the Tribunal)

