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UNITED NATIONS  
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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:** 25 October 2007

**THE PROSECUTOR**

v.

**Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA**

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

JUDICIAL FILES ARCHIVES  
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**DECISION ON PROSECUTION PROSPECTIVE EXPERTS WITNESSES ALISON  
DES FORGES, ANDRE GUICHAOUA AND BINAIFER NOWROJEE**

*Rules 89 and 94bis of the Rules of Procedure and Evidence*

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## INTRODUCTION

1. The Prosecution enlisted four prospective expert witnesses, Alison Des Forges, André Guichaoua, Binaifer Nowrojee and Charles Ntampaka, whose reports were filed under Rule 94 *bis* of the Rules of Procedure and Evidence (“Rules”) following numerous Trial Chamber decisions.<sup>1</sup>

2. On 21 August 2007, the Chamber granted Joseph Nzirorera’s Motion to limit the scope of the evidence of André Guichaoua and Alison Des Forges.<sup>2</sup> On 26 September 2007, addressing another application of Joseph Nzirorera, the Chamber found that Charles Ntampaka was not qualified to provide an expert opinion on issues addressed in the report filed.<sup>3</sup> In this later Decision, the Chamber recalled the applicable law and jurisprudence on the admission of expert evidence.<sup>4</sup> In the 21 August 2007 Decision, the Chamber only dealt with the legal arguments raised by the Parties concerning Guichaoua and Des Forges. However, as the Chamber noted that the Accused had filed a notice that they do not accept the qualification of the prospective experts, it further found it necessary to hear the Parties on that issue.<sup>5</sup>

3. The Accused and the Prosecution filed their submissions accordingly on 8 October 2007. The Accused dispute the qualifications and admissibility of the expert evidence.<sup>6</sup> The

<sup>1</sup> *Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-T (“*Karemera et al.*”), Decision on Joseph Nzirorera’s Motion For Deadline For Filing of Reports of Experts (TC), 16 May 2005; Decision on Prosecutor’s Notice of Delay in Filing Expert Reports and Request for Additional Time to Comply with the Chamber Decision of 16 May 2005 (TC), 9 September 2005; Decision on Motion to Set Deadlines For Filing Expert Reports of Nowrojee and Reyntjens (TC), 20 September 2005; Oral Decision on Exclusion of Testimony of Alison Des Forges and Granting Extension of Time for Disclosure of the Expert Report (TC), 3 October 2005; Decision Granting Extension of Time to File Prosecution Expert Report (TC), 8 November 2005; Decision on Prosecution Request for Additional Time to file Expert Report and Joseph Nzirorera’s Motion to Exclude Testimony of Charles Ntampaka (TC), 12 December 2005; Order On Filing of Expert Report of Charles Ntampaka (TC), 31 January 2006; Decision on Prosecutor’s Notice of Delay In Filing Expert Report Of Professor André Guichaoua; Defence Motion To Exclude The Witness’ Testimony; And Trial Chamber’s Order To Show Cause (TC), 1 February 2006; Decision on Delay in Filing of Expert Report of Charles Ntampaka (TC), 13 February 2006. The report of Alison Des Forges was filed on 1 November 2005; the report of André Guichaoua was filed on 7 March 2006; the report of Binaifer Nowrojee was filed on 30 September 2005 and the report of Charles Ntampaka was filed on 21 March 2006.

<sup>2</sup> *Karemera et al.*, Decision on Joseph Nzirorera’s Motion to Limit the Scope of Testimony of Expert Witnesses Alison des Forges and André Guichaoua (TC), 21 August 2007.

<sup>3</sup> *Karemera et al.*, Decision on Joseph Nzirorera’s Motion to Preclude Testimony by Charles Ntampaka (TC), 26 September 2007.

<sup>4</sup> *Ibid.*, paras. 7-8.

<sup>5</sup> *Karemera et al.*, Order for Submissions on the Prosecution Prospective Experts Witnesses (TC), 1 October 2007.

<sup>6</sup> Soumission de Edouard Karemera suite a la “Order for Submissions on the Prosecution Prospective Experts Witnesses” du 01 Octobre 2007 (“*Karemera’s Submissions*”); Observations pour M. Ndirumpatse suite à l’ “Order for Submissions on the Prosecution Prospective Experts Witnesses” du 01/10/07 (“*Ndirumpatse’s Submissions*”); Joseph Nzirorera’s Submission on the Qualifications of Expert Witnesses (“*Nzirorera’s Submissions*”).

Prosecution submits that the three witnesses are qualified as experts and moves the Chamber to admit in evidence the reports of each of the three proposed expert witnesses, to assign appropriate exhibit numbers to them and to schedule their testimony in this trial.<sup>7</sup>

### DISCUSSIONS

4. Rule 94*bis* of the Rules of Procedure and Evidence reads as follows:

(A) Notwithstanding the provisions of Rule 66(A)(ii), Rule 73*bis*(B)(iv)(b) and Rule 73*ter*(B)(iii)(b) of the present Rules, the full statement of any expert witness called by a party shall be disclosed to the opposing party as early as possible and shall be filed with the Trial Chamber not less than twenty-one days prior to the date on which the expert is expected to testify.

(B) Within fourteen days of filing of the statement of the expert witness, the opposing party shall file a notice to the Trial Chamber indicating whether:

- (i) It accepts or does not accept the witness's qualification as an expert;
- (ii) It accepts the expert witness statement; or
- (iii) It wishes to cross-examine the expert witness.

(C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

### Preliminary Matters

*Admissibility of the observations of Edouard Karemera and Mathieu Ngirumpatse concerning the admission of Binaifer Nowrojee's evidence*

5. The Prosecution notes that only Joseph Nzirorera has filed a notice in accordance with Rule 94*bis* objecting to the qualification of Binaifer Nowrojee as expert witness and to the admission of her report.<sup>8</sup>

6. As held by the Appeals Chamber, nothing in Rule 94 *bis* of the Rules implies that, absent a timely motion from the party opposing an expert, a Trial Chamber is obligated to

<sup>7</sup> Prosecutor's Submissions: Qualifications of Prosecution Expert Witnesses ("Prosecutor's Submissions"), para. 4.

<sup>8</sup> Prosecutor's Submissions, para. 1.

admit expert testimony or to accept a witness's qualification as an expert.<sup>9</sup> Failure to file a notice under Rule 94 *bis* cannot be construed as a waiver of the rights of the Accused. The Chamber will therefore consider Edouard Karemera and Mathieu Ndirumpatse's submissions concerning Binaifer Nowrojee.

#### *Scope of the Decision*

7. In his submissions, Edouard Karemera suggests that the Chamber's Order of 21 August 2007 was determinative on the question being addressed in the present Decision.<sup>10</sup>

8. In the 21 August 2007 Decision, the Chamber considered the application of Joseph Nzirorera as to whether expert witnesses Alison Des Forges and André Guichaoua should be precluded from offering opinions advertent to the acts, conduct, mental state or criminal responsibility of the Accused on the basis that they go to the ultimate issues in the trial or, alternatively, on the basis that it would be unfair to admit them.<sup>11</sup> The Chamber concluded that such opinions, although not unfair to the Accused, should be excluded on the basis that they usurp the function of the Chamber as they go to the ultimate questions of guilt or innocence of the Accused.<sup>12</sup>

9. The issue here is whether the testimony should be admitted as expert testimony. This is irrespective of the fact that portions of it could not be admitted on the basis that those portions would be determinative of the guilt or innocence of the Accused. Although the testimony, if given, would not be unfair to the Accused it is still within the competence of the Chamber to consider whether it should be admitted as expert testimony in accordance with settled jurisprudence.

#### *Voir Dire*

10. The Prosecution submits that, whilst resolving the issue of qualifications by written motion in advance of scheduled testimony may be a welcome departure from the lengthy *voir dire* procedures that have absorbed countless hours in previous trials before the Tribunal, should this Chamber query the qualifications of the proposed experts, or the scope and definition of their expertise, genuine dispute on such matters may be more appropriately addressed by extending the inquiry by additional oral examination of the expert witnesses in a

<sup>9</sup> *Prosecutor v. Sylvestre Gacumbitsi*, Case No: ICTR-2001-64-A, Judgement (AC), 7 July 2006, para. 31 ("Gacumbitsi Appeals Chamber Judgement").

<sup>10</sup> Karemera's Submissions, para. 3.

<sup>11</sup> *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Limit the Scope of Testimony of Expert Witnesses Alison des Forges and André Guichaoua (TC), 21 August 2007.

<sup>12</sup> *Ibid.*, para. 3.

*voir dire* hearing.<sup>13</sup> In its submissions, the Prosecution recognises that this is a *voir dire* procedure and argues that this could be appropriate. However, it seems to suggest that a non-oral *voir dire* procedure is only appropriate when the Chamber does not have queries, and that any queries should be resolved by an oral hearing

11. As the Appeals Chamber pointed out, “whereas the Rules lay down a specific procedure for admitting an expert witness’s report without hearing the witness, subject to its acceptance by the opposing party, they do not require a “*voir dire*” examination of the person called as an expert.”<sup>14</sup> Pursuant to Rule 89(A) of the Rules, the Chamber is not bound by national rules of evidence.

12. Even assuming that there is merit in the argument that certain types of decision-making could be better informed by additional evidence or oral hearing, it would be for the Chamber to conclude that it requires additional material on which to reach its decision. However, in this case the information filed is comprehensive; there are no factual issues that have been raised on the evidence. The argumentation is all about the legal conclusions that should be drawn from the facts that are before the Chamber. The Parties have advanced the legal arguments on which they rely, and oral recitation should not add weight or persuasiveness. In these circumstances, the Chamber is sufficiently informed to draw conclusions and decide without any further hearings of the Parties.

### On the Merits

13. Rule 94 *bis* only sets forth a procedure by which an expert’s report can be accepted into evidence without that expert testifying.<sup>15</sup> In other respects, the admission of expert testimony is governed only by the general provision of Rule 89, which entrusts the Trial Chamber with broad discretion to employ rules of evidence that “best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.”<sup>16</sup>

<sup>13</sup> Prosecutor’s Submissions, paras. 5-6.

<sup>14</sup> *Prosecutor v. Georges Anderson Rutaganda*, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003, para.164; *Prosecutor v. Niyaramasuhuko et al.*, Case No. ICTR-97-21-AR73, Decision on “Appeal Of Accused Arsène Shalom Ntahobali Against the Decision on Kanyabashi’s Oral Motion to Cross-Examine Ntahobali Using Ntahobali’s Statements to Prosecution Investigators In July 1997” (AC), 27 October 2006, paras. 12-13.

<sup>15</sup> *Gacumbitsi Appeals Chamber Judgement*, para. 31.

<sup>16</sup> *Ibidem*.

14. An expert's testimony is testimony intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a specific field.<sup>17</sup>

15. This Chamber has already reminded the Parties of settled jurisprudence that expert evidence must meet the following additional requirements in order to be admitted: (i) the Chamber discretionarily deems it necessary to hear an expert on a determined issue; (ii) the prospective witness is an expert on that determined issue; (iii) the statement or report is reliable; (iv) the statement or report is relevant and of probative value; and (v) the substance of the statement or report falls within the expertise of the witness.<sup>18</sup>

16. The Prosecution acknowledges that the qualification of a person as an expert is dependent on two additional factors.<sup>19</sup> Firstly, the witness called as an expert must "possess a relevant specialized knowledge acquired through education, expertise or training in his proposed field of expertise". Secondly, the Chamber must be convinced that the expert evidence could assist it in understanding the evidence presented or in determining a fact in issue.<sup>20</sup> The fact that a person may have been recognized as an expert in other trials does not automatically qualify him or her as an expert witness.<sup>21</sup> As held by the Appeals Chamber, "a witness's qualification as an expert turns on the contribution he or she can make to a Trial Chamber's analysis of a particular case."<sup>22</sup>

17. It is the Prosecution's submission that all three expert witnesses have the requisite specialised experience, knowledge, and skills to be qualified as experts under the criteria established by the jurisprudence of this Tribunal.

#### *Alison des Forges*

18. The Prosecution submits that Alison Des Forges is an internationally recognised scholar and human rights advocate with extensive publications in her primary field of

<sup>17</sup> *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005 ("Semanza Appeals Chamber Judgement"), paras. 303-304.

<sup>18</sup> *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Decision on Defence Motion for Appearance of an Accused as an Expert Witness (TC), 9 March 1998 ("[T]he Tribunal is of the view that there is a fundamental difference between, on the one hand, a witness called to testify about the crimes with which the accused is directly charged and, on the other hand, an expert witness, whose testimony is intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a specific field"). In another more recent case, the Appeals Chamber has confirmed that there was no error in a Trial Chamber's denial to hear an expert witness on international criminal law. See: *Prosecutor v. Milomir Stakic*, Case No.: IT-97-24-A, Judgement (AC), 22 March 2006, par. 164.

<sup>19</sup> Prosecutor's Submissions, para. 14.

<sup>20</sup> *Semanza Appeals Chamber Judgement*, paras. 302-303; *Gacumbitsi Appeals Chamber Judgement*, para. 32.

<sup>21</sup> *Gacumbitsi Appeals Chamber Judgement*, para. 32.

<sup>22</sup> *Gacumbitsi Appeals Chamber Judgement*, para. 32.

expertise: African history, particularly focused on state structures in the region of the African Great Lakes, including the recent history of human rights abuses, ethnic violence, political instability and genocide in Rwanda. It stresses that she has drawn upon such expertise in offering expert opinion evidence before numerous courts, tribunals and administrative hearings in Europe, North America and in international agencies. Alison Des Forges has already been qualified as an expert in 10 trials before this Tribunal.

19. None of the Accused disputes, as such, the general qualifications of Alison Des Forges as expert in African history and in particular, the Great Lake Region and Rwanda.<sup>23</sup> The Chamber agrees that her expert status to that scope is beyond reasonable dispute and has been recognised in many instances over the years. However, the question still remains whether the Chamber will be assisted by her testimony.

20. In the Pre-Trial Brief, as recalled in its submissions, the Prosecution provided substantial notice of the scope of the evidence of Alison des Forges as related to (i) “[t]he notion of race and ethnicity in Rwandan history and culture and the manner and circumstances under which debates over ethnicity were resurrected by the elites during periods of social strife; the notion of the ‘Revolution of 1959’; [the] regionalism as a factor in the perception and manipulation of ethnicity; the treatment of sexual violence in Rwandan culture and society, etc.”; (ii) “[t]he mechanisms of social control and mobilization, as manipulated by the state and the elites in Rwandan society, particularly the role of the MRND political party and the territorial administration, but also discussing the role of the church and the legacies of colonialism”; (iii) “[a]n explanation of the social and historical character of Butare and Gitarama in relation to the rest of the country; the character of Kibuye and the northern prefectures of Gisenyi and Ruhengeri, including a discussion of the ethnic composition of Rwandan society in relation to regional patterns of ethnic distribution”; (iv) “[t]he notion of parallel and *de facto* systems of authority and control in Rwandan society”; and (v) the historical context of certain key events “with expanded discussion of their significance, including a review of the history of human rights abuses and ethnic tensions in Rwanda from 1959 onwards”.<sup>24</sup>

21. It is the Prosecution’s theory that the 1994 genocide was organised by high level government, military and political party authorities, while the Defence’s theory is that the

<sup>23</sup> Karemera’s Submissions, paras. 4-7; Ngirumpaste’s Submissions, para. 2; Nzirorera’s Submissions, para. 3.

<sup>24</sup> Annex B to the Prosecution’s Submissions; see: Prosecution Pre-Trial Brief, paras. 20 to 56; and summary of the anticipated testimony attached to the Pre-Trial Brief.

violence was not mobilised and the massive killings were a spontaneous outburst of an enraged population that the Accused were powerless to control.<sup>25</sup> According to the Prosecution, Des Forges's testimony will be of assistance in placing the artifacts of the period 1990-1994 in their social and historical context and to delineate patterns in history and social organisation in Rwanda that will assist the Chamber in its appreciation of the evidence.<sup>26</sup>

22. In the Chamber's view, the factual questions to be decided in the case do not require expert assistance. Review of the proposed testimony of Alison Des Forges indicates that her opinions address issues on which the Chamber has taken judicial notice or heard testimony.

23. The discussions on race and ethnicity are no longer issues on which expert testimony is required. Insofar as they are relevant to the proof of elements of the crimes charged in the Indictment, they are matters of common knowledge. The Chamber recalls its Decisions of 9 November 2005, where it took judicial notice of "the fact that Hutu, Tutsi and Twa were protected groups falling within [sic] the scope of the Genocide Convention of 1948", and 11 December 2006, following the Appeals Chamber's directives,<sup>27</sup> where it took judicial notice of the commission of a genocide against the Tutsi between 6 April and 17 July 1994.<sup>28</sup> In addition the Chamber has taken judicial notice of numerous adjudicated facts in which issues of ethnicity were addressed.<sup>29</sup> The Chamber therefore considers that it is not necessary to hear expert evidence on the issues of race and ethnicity.

24. The role of the MRND political party and the territorial administration has been the subject of evidence in the trial. Evidence has been heard from officials in the government and the territorial administration, from leaders of the *Interahamwe* and from members of the public. There has been testimony from persons who were actively involved in the events between the period of 1990-1994. The Chamber does not need expert testimony to assist in its evaluation of those testimonies. Whether the Prosecution has proven the elements of the crimes charged will depend on the Chamber's assessment of the credibility of the testimonies that have been adduced; the assistance of expert testimony is not required.

<sup>25</sup> Prosecutor's Submissions, para.41.

<sup>26</sup> *Ibidem*.

<sup>27</sup> *Karempera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006.

<sup>28</sup> *Karempera et al.*, Decision on Prosecution Motion for Judicial Notice (TC), 9 November 2005; Decision on Appeals Chamber Remand of Judicial Notice (TC), 11 December 2006.

<sup>29</sup> *Ibidem*.

25. In those circumstances, although the historical dissertations are interesting and informative, the Chamber does not require assistance of the expertise to understand the evidence adduced and come to its conclusions on the guilt or innocence of the Accused.

*André Guichaoua*

26. According to the Prosecution, André Guichaoua is a highly esteemed scholar with a well-established career as an academic in the fiercely competitive French university system: he has completed studies in Development Economics and in Sociology to postgraduate level, including a doctoral degree from the University of Paris in the area of Social Sciences, by which he became specialised particularly in the Great Lakes region of Africa. The Prosecution submits that Guichaoua has relevant practical experience in these areas as well, including “socio-political research in Rwanda”, and that he was on mission in Rwanda from 4 to 11 April 1994, and is, therefore, an eye-witness to events that occurred during that time. He has several relevant publications to his name, which are listed in his *curriculum vitae*. The Prosecution also recalls that Guichaoua has testified before the Tribunal in the capacity of an expert witness in six previous trials.

27. Based on André Guichaoua’s qualifications, practical experience and relevant publications, the Prosecution asserts that he is qualified to offer the expert opinion in the field of socio-political science, as noted in the Prosecution’s summary annexed to the Pre-Trial Brief.<sup>30</sup> The Prosecution submits that Guichaoua will assist the Chamber to appreciate the evidence in relation to the MRND’s power to mobilise the territorial administration and militias.<sup>31</sup> It stresses that this contribution is even more important given the Chamber’s preclusion of the evidence of Ntampaka.<sup>32</sup>

28. Although the Chamber acknowledges the fact that André Guichaoua has earned his reputation as an expert in sociology, it is the Chamber’s view that the opinions of an expert,

<sup>30</sup> According to the Prosecution’s Submissions (Annex B) and the Prosecution Pre-Trial Brief, the expert opinion of André Guichaoua will cover: (i) “[t]he biographies of Karemera, Ndirumpatse and Nzirorera, their family backgrounds, regional affiliations, history of political appointments and allegiances, etc.” and the way in which after the dismantling of the MRND as a party-state, the accused maintained their power and influence through the so-called Hutu Power; (ii) “[t]he struggles within the MRND prior to 1994; how regionalism and patronage impacted upon rivalries within the MRND; the forces that led to multipartyism and how the MRND renovated itself to deal with multipartyism”; (iii) the control of the regional territorial administration by the MRND before 1992; (iv) the “mobiliz[ation] [of] the territorial administration, the military, the militias, etc.” by the MRND; and (v) “the role of the accused [...] in formulating [the] policies [of the Interim Government] and perpetrating the genocide.”

<sup>31</sup> Prosecutor’s Submissions, para. 42.

<sup>32</sup> *Ibidem*.

which are to a large extent based on material similar to that led in evidence in the trial, are not necessary for it to appreciate and evaluate the factual issues in the trial.

29. A lot of evidence related to the Accused, their alleged power and influence upon the Hutu Power, their control of MRND and the Interim Government has already been adduced in evidence.<sup>33</sup> The MRND is not on trial. The Chamber will have to assess the individual criminal responsibility of the Accused. The Chamber has been hearing and evaluating the testimony and is satisfied that it can reach its decision without the assistance of an expert.

30. Furthermore, according to the introduction to André Guichaoua's report, his aim is to show the role played by the Accused in the political system and leading up to the 1994 events, notably through the Interim Government, while addressing the professional and political career of each Accused.<sup>34</sup> Many of the opinions he has expressed are determinative of the guilt of the Accused and could therefore not be admitted by the Chamber.

*Binaifer Nowrojee*

31. The Prosecution describes Binafeir Nowrojee as "a human rights lawyer and scholar with expertise on gender-related crimes in situations of armed conflict". According to her *curriculum vitae*, she has several publications to her name, including a thesis on "Joining Forces: United Nations and Regional Peacekeeping Lessons for Liberia" and has been a lecturer at Harvard University since 1992 where she co-teaches Human Rights Advocacy and supervises students engaged in human rights clinical projects. The Prosecution asserts that she has practical experience in investigating human rights violations, notably gender issues: she conducted human right research and investigative missions on women's rights violations in Kenya, South Africa and Rwanda from 1993 until 1996. She also has testified before the Tribunal in the capacity of an expert witness in two previous cases.

32. According to the Prosecution, Binaifer Nowrojee will offer expert opinion evidence on the foreseeability of gender-based crimes in situations of armed conflict and the gendered

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<sup>34</sup> See for instance at page 7: "An analysis of the role of MRND leaders during that period presupposes understanding of the entire power system that had still been under the stringent control of President Juvénal Habyarimana. [...] it would be proper for me to regularly mention the effective decision-making bodies, their linkage and hierarchy, and especially proceed to the historical relationship between the civilians and soldiers. [...] I have so far base my analysis on a similar approach to the legal one that relies on the victims and the established crimes and then works backwards to the accused and then specifying their possible relationship or responsibility in the instigation or commission of those crimes. I believe that this deductive approach is material to understanding the behavior of subordinates, whose functions, areas of jurisdiction and intervention can be very clearly determined and delimited." See also the conclusions of the author at pages 203-208.

nature of genocide, crimes against humanity, and war crimes.<sup>35</sup> This matter is connected to the Prosecution's allegations that the Accused are responsible for rapes as such crimes were the natural and foreseeable consequence of the object of the joint criminal to kill the Tutsi.<sup>36</sup>

33. Even though Mrs Nowrojee seems to be qualified in relation with sexual violence, as with the previous experts, the subject-area of her report has been addressed by testimony in the trial, which the Chamber is quite capable of evaluating without the assistance of experts. The issue of whether the Accused foresaw rapes as the natural consequence of killing the Tutsi is a question of fact. This has been the subject of testimony of witnesses as well as admitted written statements of rape witnesses and victims, and judicial notice.<sup>37</sup> The assessment of factual evidence in connection with the crimes alleged in the Indictment is not a class of subject on which the Chamber requires any assistance from an expert.

34. Furthermore, the Chamber notes that the material on which the expert's opinion is based is much the same as the material on which the Chamber is being asked to make its findings of fact. The fact that the expert may have accessed a larger material base is not a reason for preferring that opinion to the findings made on the evidence adduced in the trial.

35. In view of the circumstances of the case, bearing in mind the evidence adduced thus far and considering the Prosecution's submissions as to the anticipated scope of the proposed expert witnesses, the Chamber is not satisfied that expert evidence is required to analyse and understand the evidence before it.

36. In its submissions, the Prosecution reminds the Chamber that "on several occasions when the prosecution sought to explore certain lines of inquiry with factual witnesses, the defense objected that such questions should be reserved for expert witnesses that were expected to testify in the trial."<sup>38</sup> It recalls that documents from the period 1990 to 1994 have entered the trial record as defense exhibits, often over objection from the Prosecution, "with the understanding that expert witnesses would later be requested to comment on the exhibit to provide context and to explain its significance."<sup>39</sup> The Prosecution also submits that given

<sup>35</sup> Prosecutor's Submissions, para. 43.

<sup>36</sup> Count Five of the Indictment. See also paragraphs 4, 5, 6, 7, 8, 14, 15 and 16 of the Indictment which outline the general allegations of the joint criminal enterprise and relate to Count Five.

<sup>37</sup> *Karemera et al.*, Decision on Appeals Chamber Remand of Judicial Notice (TC), 11 December 2006; Decision on Reconsideration of Admission of Written Statements and Admission of the Testimony of Witness GAY (TC), 28 September 2007.

<sup>38</sup> Prosecutor's Submissions, par. 24 at footnote 32.

<sup>39</sup> *Ibidem*.


the Chamber's inability to fully anticipate the defence case and its arguments, it is highly advisable that the expert opinion evidence from these witnesses be heard and fully considered. It further suggests that the expert reports be admitted in evidence, the witnesses be examined orally before the Chamber, and the reliance to be placed on their opinion evidence be decided subsequently, in light of all of the evidence in the case.

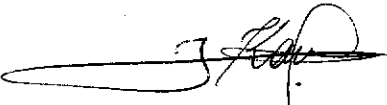
37. The Chamber is not persuaded by the Prosecution's arguments on the necessity of admitting the expert evidence at this stage. As Joseph Nzirorera has submitted, it will be open to the Chamber to call upon expert testimony if at any future time issues arise which require such assistance.<sup>40</sup> However at this point such a need is not foreseen by the Chamber. The argument that the evidence that the Defence may adduce may require expert analysis is also a matter that can be addressed if the need arises, including by calling for the testimony of experts if in the Chamber's opinion it is required.

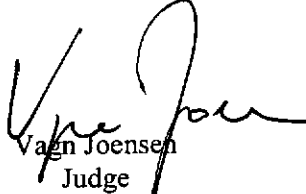
#### FOR THESE REASONS, THE CHAMBER

- I. FINDS that the evidence of Mrs Alison des Forges, André Guichaoua and Binaifer Nowrojee cannot be admitted as expert evidence under Rule 94 *bis* of the Rules and therefore preclude their testimony as expert witnesses.

Arusha, 25 October 2007, done in English.

  
Dennis C. M. Byron  
Presiding Judge

  
Gberdao Gustave Kam  
Judge

  
Vagn Joensen  
Judge

[Seal of the Tribunal]

<sup>40</sup> Rules of Procedure and Evidence, Rule 98: "A Trial Chamber may *proprio motu* order either party to produce additional evidence. It may itself summon witnesses and order their attendance."



## TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

**COURT MANAGEMENT SECTION**  
(Art. 27 of the Directive for the Registry)

### I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

<b>To:</b>	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
<b>From:</b>	<input checked="" type="checkbox"/> Chamber <b>Catherine Denis</b> (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
<b>Case Name:</b>	The Prosecutor vs. <b>Edouard KAREMERA, Mathieu NGIRUMPATSE and Joseph NZIRORERA</b>			<b>Case Number:</b> ICTR- 98-44
<b>Dates:</b>	Transmitted: <b>25 October 2007</b>		Document's date: <b>25 October 2007</b>	
<b>No. of Pages:</b>	<b>12</b>	<b>Original Language:</b>	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
<b>Title of Document:</b>	<b>DECISION ON PROSECUTION PROSPECTIVE EXPERTS WITNESSES ALISON DES FORGES, ANDRE GUICHAOUA AND BINAIFER NOWROJEE</b>			
<b>Classification Level:</b>	<input type="checkbox"/> Strictly Confidential / Under Seal <input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Public			
	<b>TRIM Document Type:</b> <input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties <input checked="" type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Submission from parties <input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars <input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities			

### II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

**CMS SHALL** take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

**Target Language(s):**

English  French  Kinyarwanda

**CMS SHALL NOT** take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

**CMS SHALL NOT** take any action regarding translation.

Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

English  French  Kinyarwanda

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### III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	<b>COMMENTS</b>	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input checked="" type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: