



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICR-98-44-I
4-09-2003
(6106-6104)

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OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 4 September 2003

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

Joseph NZIRORERA et al.

Case No. ICTR-98-44-I

**DECISION ON THE DEFENCE MOTION TO ORDER THE
GOVERNMENT OF RWANDA TO SHOW CAUSE**

Defence Counsel:
Peter Robinson

Office of the Prosecutor:
Don Webster

Defence Counsel for Co-Accused:
Didier Shornicki,
David Hooper,
Charles Roach, and Frédéric Weyl

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal"),

SITTING as Judge Lloyd G. Williams, Q.C., presiding, designated by Trial Chamber III pursuant to Rule 73(A) of the Rules of Procedure and Evidence ("Rules");

BEING SEISED of the Motion of the Defence of Joseph Nzirorera for an order to the government of Rwanda to appear before the Chamber to show cause, filed on 24 February 2003;

CONSIDERING the Prosecutor's response to the Defence Motion, filed on 28 May 2003; and the Defence Reply, filed on 2 June 2003;

CONSIDERING that the Defence bases its motion on Article 28 of the Statute and Rule 7bis, which provide that:

Article 28: Cooperation and Judicial Assistance

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.
2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including but not limited to:
 - (a) The identification and location of persons;
 - (b) The taking of testimony and the production of evidence;
 - (c) The service of documents;
 - (d) The arrest or detention of persons;
 - (e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

Rule 7 bis: Non Compliance with Obligations

- (A) Except in cases to which Rules 11, 13, 59 or 61 applies, where a Trial Chamber or a Judge is satisfied that a State has failed to comply with an obligation under Article 28 of the Statute relating to any proceedings before that Chamber or Judge, the Chamber or Judge may request the President to report the matter to the Security Council.
- (B) If the Prosecutor satisfies the President that a State has failed to comply with an obligation under Article 28 of the Statute in respect of a request by the Prosecutor under Rules 8 or 40, the President shall notify the Security Council thereof.

CONSIDERING that the provisions are not relevant to the Defence request, and that there is no legal basis in the Statute nor in the Rules, for such an order;

CONSIDERING that although Article 28 is not limited to the matters set out therein, under the provision of Article 28(2)(a-e), the Chamber is of the view that this provision does not contemplate that sovereign States should be ordered to appear before a Trial Chamber, hence the provisions of Rule 7bis;

CONSIDERING that this motion is an abuse of process because there are no provisions in the Rules to support of it, the motion shall be dismissed and the costs regarding this motion denied;



THE TRIBUNAL,

DENIES the Motion of Defence for Joseph Nzirorera for an order to the government of Rwanda to appear before the Chamber to show cause;

DIRECTS the Registrar, pursuant to Rule 73(E), not to pay the Defence any fees or costs in regard to this motion.

Arusha, 4 September 2003



Lloyd G. Williams, Q.C.

Judge
Presiding

[Seal of the Tribunal]

