



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-T  
22-4-2004  
(11928-11925)

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

English  
Original: French

**TRIAL CHAMBER III**

Before: Judge Andréia Vaz, presiding  
Judge Flavia Lattanzi  
Judge Florence Rita Arrey

Registrar: Adama Dieng

Decision of: 19 March 2004

JUDICIAL RECORDS ARCHIVES  
101H  
2004 APR 22 P 3: 30  
[Signature]

**THE PROSECUTOR**

v.

**ÉDOUARD KAREMERA,  
MATHIEU NGIRUMPATSE,  
JOSEPH NZIRORERA AND  
ANDRÉ RWAMAKUBA**

Case No. ICTR-98-44-T

**DECISION ON THE NZIRORERA DEFENCE MOTION TO  
REPORT GOVERNMENT OF BENIN TO UNITED NATIONS  
SECURITY COUNCIL**

*(Article 28 of the Statute and Rule 7 bis of the Rules of Procedure and Evidence)*

Counsel for the Defence:  
Peter Robinson

Counsel for the co-Accused:  
Dior Diagne and Félix Sow  
Charles Roach and Frédéric Weyl  
David Hooper and Andreas O'Shea

Office of the Prosecutor:  
Don Webster  
Dior Sow Fall  
Holo Makwaia  
Gregory Lombardi  
Sunkarie Ballah-Conteh  
Tamara Cummings-John  
Ayo Fadugba

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

**SITTING** as Trial Chamber III (the "Chamber"), composed of Judge Andréia Vaz, presiding, Judge Flavia Lattanzi and Judge Florence Rita Arrey.

**BEING SEIZED** of a *Motion to Report Government of Benin to United Nations Security Council*, filed on 21 July 2003 by the Defence of Joseph Nzirorera.

**CONSIDERING** that the Prosecution has not filed a response to this Motion, and that it has not requested for an extension of time under Rule 73(E) to file such response.

**CONSIDERING** the *Statute of the Tribunal* (the "Statute") and the *Rules of Procedure and Evidence* (the "Rules") and, in particular, Article 28(1) of the Statute and Rule 7 bis (A) of the Rules.

**NOW DECIDES** solely on the basis of the written submissions filed by the Defence, in accordance with Rule 73(A) of the Rules.

**Introduction**

1. The Accused, Nzirorera, was arrested on 5 June 1998 in Cotonou by the Benin authorities.
2. The Defence requested the said authorities to disclose the reports, receipts, inventories and photographs in relation to the search conducted at the residence of the Accused by the authorities in question during his arrest. Not having received any response to its request, the Defence brought the case before Trial Chamber I, which was at the time seized of the matter.
3. In its ruling on the Motion on 31 January 2003, Trial Chamber I requested the timely cooperation of the Government of Benin, pursuant to Article 28 of the Statute, with a view to providing the Defence with the documents in question. Trial Chamber I further requested the Registrar to transmit the decision forthwith to the Government of Benin and to report back to the Trial Chamber on the implementation of the request.<sup>1</sup>

**The Motion**

4. The Defence submits that it has not obtained the documents in question, notwithstanding the Order of 31 January 2003. It submits further that, on 3 June 2003, the Registrar reported that he had contacted the Government of Benin with regard to the implementation of the Order of 31 January 2003, but did not receive any response. The Defence asserts that for its part, it brought the Order of 31 January 2003 to the attention of the Benin authorities on two occasions, but received no response. It submits that it is incumbent upon Judge Møse, as the one who issued the Order of 31 January 2003 in the

<sup>1</sup> See the *Request for Cooperation and Assistance by the Government of Benin Pursuant to Article 28 of the Statute of the Tribunal*, p. 2. Article 28 of the Statute provides, *inter alia*, that "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."

name of Trial Chamber I, to make a pronouncement on the present Motion. Furthermore, the Defence states that, since Judge Møse has become the President of the Tribunal, he can make a direct pronouncement in his capacity as President of the Tribunal, recording the fact that the Benin authorities have failed to cooperate, and reporting the matter to the United Nations Security Council, pursuant to Rule 7 *bis* of the Rules.<sup>2</sup>

5. The Defence recalls that the Chambers of the Tribunal have a general obligation, namely that “the Chamber shall provide every practicable facility it is capable of granting under the Rules and Statute when faced with a request by a party for assistance in presenting its case.”<sup>3</sup>

### Deliberations

6. The Defence submission that Judge Møse, in his capacity as President of the Tribunal, should report the matter is not founded. Rule 7 *bis* makes no provision for the President of the Tribunal reporting *proprio motu*, nor for the Defence making a direct request to the President.

7. A Trial Chamber has discretionary power under Rule 7 *bis* of the Rules to request the President of the Tribunal to report to the Security Council any failure by a State to cooperate. In view of the facts of the matter, the Chamber is not convinced that the circumstances of the case warrant the President being seized. Accordingly, the Motion should be dismissed in this regard. Nevertheless, the Chamber is convinced that a response from Benin to the Request for Cooperation and Assistance issued by Trial Chamber I on 31 January 2003 is necessary. It is therefore proper in the circumstances to reiterate the said request, and to urge the Government of Benin to react forthwith, and, if possible, before 29 March 2004. The Chamber requests the Registrar to contact the Government of Benin on this matter as soon as possible, to continue dealing with the matter until a response to the said request is obtained, and to report thereon to the Chamber.

### FOR THESE REASONS,

#### THE CHAMBER

I. **REMINDS** the Government of Benin of its obligation to cooperate with the Tribunal, pursuant to Article 28 of the Statute;

II. **REQUESTS** the Government of Benin to provide a response to the Request for Cooperation and Assistance of 31 January 2003 as soon as possible and, if possible, before 29 March 2004;

<sup>2</sup> Rule 7 *bis* of the Rules provides, *inter alia*, that: “(...) 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 that Judge, the Chamber or Judge may request the President to report the matter to the Security Council.” (para. (A))

<sup>3</sup> In this respect, the Defence relies on the jurisprudence of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) in *Prosecutor v. Tadic*, Case No. IT-94-I-A, Appeal Judgement, 15 July 1999, para. 52.

**III. REQUESTS** the Registrar to contact the Government of Benin forthwith, to continue dealing with the matter until a response to the Request for Cooperation and Assistance of 31 January 2003 is received, and to report thereon to the Chamber;

**IV. DENIES** the Motion in all other respects.

Arusha, 19 March 2004

[Signed] Andréia Vaz  
Presiding Judge

[Signed] Florence Rita Arrey  
Judge

[Signed] Flavia Lattanzi  
Judge

[Seal of the Tribunal]

