

ICTR-98-44-PT  
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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

**TRIAL CHAMBER III**

Case N° ICTR-98-44-PT

ENGLISH

Original: FRENCH

Before: Judge Dennis C.M. Byron, presiding  
Judge Emile Francis Short  
Judge Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 23 February 2005

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COMMUNIQUEE

**THE PROSECUTOR**  
v.  
**ÉDOUARD KAREMERA**  
**MATHIEU NGIRUMPATSE**  
**JOSEPH NZIRORERA**

**DECISION ON JOSEPH NZIRORERA'S MOTION TO REQUEST THE  
COOPERATION OF THE GOVERNMENT OF A STATE**

*Article 28 of the Statute*

Office of the Prosecutor  
Don Webster  
Holo Makwaia  
Dior Fall  
Geogory Lombardi  
Bongani Dyani  
Sunkarie Ballah-Conteh  
Tamara Cummings-John  
Takeh Sendze

Counsel for Édouard Karemera  
Dior Diagne Mbaye and Félix Sow

Counsel for Mathieu Ngirumpatse  
Charles Roach and Frédéric Weyl

Counsel for Joseph Nzirorera  
Peter Robinson

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

**SITTING** as Trial Chamber III (the “Chamber”) composed of Judges Dennis C.M. Byron, president, Emile Francis Short and Gberdao Gustave Kam,

**BEING SEIZED** of a Motion to Request Cooperation from the Government of a State<sup>1</sup> filed by Counsel for Joseph Nzirorera (the “Defence”) on 6 September 2004,

**CONSIDERING** the Prosecutor’s Response to the Motion filed on 13 September 2004,

**CONSIDERING** the Statute of the Tribunal (the “Statute”), in particular its article 28, and the Rules of Procedure and Evidence (the “Rules”),

**HEREBY DECIDES** as follows solely on the basis of briefs filed by the parties, pursuant to Rule 73(A) of the Rules:

### **INTRODUCTION**

1. Although the appeal regarding the continuation of proceedings was still pending,<sup>2</sup> the parties in this case have continued to file motions. The motions in question have remained pending. After the Presiding Judge was assigned in November 2004, a Status Conference was held on 26 November 2004 during which the Defence for Joseph Nzirorera mentioned that the motions which it had filed and which were still pending, only six, including the instant motion, would require to be dealt with by the Chamber.<sup>3</sup> On 14 February 2005, after authorizing the Prosecutor to file a separate amended Indictment against Rwamakuba and an amended Indictment against Karemera, Ngirumpatse and Nzirorera,<sup>4</sup> the Chamber now deems itself in a position to consider the said motions.

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<sup>1</sup> The name of the State is indicated in the confidential annex attached to the present Decision (p.5). The annex has been placed under seal in conformity with the implementation of the various Chamber orders on the protection of witnesses.

<sup>2</sup> *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera and André Rwamakuba*, Case No. ICTR-98-44-AR15bis.2 (*Karemera et al.*), Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera’s Motion for Leave to Consider New Material (AC), 28 September 2004; *Karemera et al.*, Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera’s Motion for leave to Consider New Material (AC), 20 October 2004.

<sup>3</sup> Oral Decision, T. of 26 November 2004, pp. 1-2.,

<sup>4</sup> *Karemera et al.*, Decision on Severance of Andre Rwamakuba and For Leave to File Amended Indictment (TC), 14 February 2005.

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## SUBMISSIONS OF THE PARTIES

### *The Defence*

2. The Defence is requesting the Chamber to grant the request for cooperation from the Government of a State in order that it may obtain the following documents relating to a prosecution witness:<sup>5</sup>

- (i) Copies of all holding or charging documents in the investigation or prosecution of the witness in question which contain a description of the charges being investigated or lodged against the witness or any facts upon which those charges are based; and
- (ii) Copies of any statements made by him to the judicial or law enforcement authorities of the State in question.

The Defence holds that the documents have been identified with specificity and would help it assess the credibility of the witness in question. It also refers to the initiatives taken in vain to obtain the documents from the authorities of the State in question.

### *The Prosecutor*

3. The Prosecutor is not challenging the motion, but is of the view that the disclosure of the documents may prejudice ongoing investigations in the said State. Consequently, he requested the Chamber to grant that State leave to apply for an *in camera* sitting in conformity with Rule 66(C) of the Rules. The Prosecutor also requests that the Chamber serves all parties with copies of any document transmitted by the State in question.

## Deliberations

4. Article 28, paragraph 2(c), of the Statute provides that the States shall cooperate with the Tribunal by responding without undue delay to any request for assistance related to the service of documents. The Chamber recalls that according to well-established case-law of this Tribunal<sup>6</sup> regarding the interpretation of this provision, motions for requesting the assistance of a State shall be granted only if the three following conditions are met by the applicant:

- (i) He must identify as far as possible the documents he requires;
- (ii) He must indicate how such documents are relevant to the trial; and
- (iii) He must prove that the steps taken to secure the documents prior to submitting any request for cooperation pursuant to Article 28 were not successful.

5. In the present instance, with respect to the first condition, the Chamber notes that the documents required by the Defence have been sufficiently identified, and listed in his Motion

<sup>5</sup> The pseudonym of this witness is mentioned in the annex to the present Motion which is under seal.

<sup>6</sup> *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-AR 108, Judgment on the Request of the Republic of Croatia for review of the Decision of Trial Chamber II of 18 July 1997, 29 October 1997, para. 32.

and are limited in number. Regarding the second condition, the Chamber holds that even though it does not know their contents, the documents could be relevant to the assessment of the credibility of the Prosecution witness in question, without making any pronouncement as to the effects of the documents on the outcome of the trial or on its admissibility as evidence. Lastly, regarding the third condition, the Chamber notes that the Defence, despite the reasonable efforts it made, has been unable to obtain access to the documents requested. The Chamber concludes that the conditions for the issuance of a request for cooperation from a State have been met.

6. With respect to the Prosecutor's counter-motion to request authorization to apply the measures set forth in Rule 66(C) of the Rules, the Chamber notes that this provision applies only to the Prosecutor. Moreover, the measure is of no interest to the Prosecutor. Consequently, the Prosecutor's request is inadmissible. However, though neither the Statute nor the Rules expressly provide for this, States can always plead exceptional circumstances based, for example, on security in order to be relieved of the obligation to cooperate, and it is for the requested country to mention this and refer the matter to the Chamber.<sup>7</sup>

7. Lastly, the Chamber grants the Prosecutor's second request for additional disclosure, on the basis of equality of arms between parties, so that the documents requested by the Defence may be served on all the parties to the instant case.

**FOR THE FOREGOING REASONS, THE CHAMBER:**

- I. **GRANTS** the Defence Motion;
- II. **REQUESTS** that the Government of the State whose name appears in the annex to render the necessary assistance so that all the parties to the instant case may receive, as soon as possible, the following documents relating to the witness whose name also appears in the annex:
  - (i) Copies of all holding or charging documents in the investigation or prosecution of the witness in question which contain a description of the charges being investigated or lodged against the witness or any facts upon which those charges are based; and
  - (ii) Copies of any statements made to the judicial or law enforcement authorities of the State in question.
- III. **REQUESTS** the Registrar to transmit the present Decision to the Government of the State referred to in the annex of this Decision and inform the Chamber of the action taken in response thereto.

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<sup>7</sup> *Karemera et al.*, Decision on the *Ex Parte* Defence Motion for orders to the United Nations Department of Peace-Keeping Operations for the Production of Documents (TC), 9 March 2004, para. 18.

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Done in French, in Arusha, on 23 February 2005

[Signed]

Dennis C. M. Byron  
Presiding

[Signed]

Emile Francis Short  
Judge

[Signed]

Gberdao Gustave Kam  
Judge

[Seal of the Tribunal]

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