



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
9 NOV. 2005
(21933 — 21930)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

21933
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OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 9 November 2005

The PROSECUTOR
v.
Augustin BIZIMUNGU
Augustin NDINDILYIMANA
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

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ICTR-00-56-T

**DECISION ON NZUWONEMEYE'S *EX PARTE* AND CONFIDENTIAL MOTION
TO OBTAIN THE COOPERATION OF THE KINGDOM OF BELGIUM**

Office of the Prosecutor:

Mr Ciré Aly Bâ
Mr Alphonse Van
Ms Ifeoma Ojemeni Okali
Mr Segun Jegede
Mr Moussa Sefon
Mr Abubacarr Tambadou
Ms Faria Rekkas
Ms Anne Pauline Bodley

Counsel for the Defence:

Mr Gilles St-Laurent and Mr Ronnie MacDonald for **Augustin Bizimungu**
Mr Christopher Black for **Augustin Ndindilyimana**
Mr Charles Taku for **François-Xavier Nzuwonemeye**
Mr Fabien Segatwa and Mr Seydou Doumbia for **Innocent Sagahutu**

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

SITTING as Trial Chamber II, composed of Judge Asoka de Silva, Presiding, Judge Taghrid Hikmet and Judge Seon Ki Park (the “Chamber”);

BEING SEIZED OF the Accused Nzuwonemeye’s « *Requête ex parte et confidentielle aux fins d’obtenir la coopération du Royaume de Belgique* », ¹ filed on 10 October 2005 (the “Motion”);

CONSIDERING the Statute of the Tribunal (the “Statute”), and the Rules of Procedure and Evidence (the “Rules”), in particular Article 28 of the Statute and Rule 54 of the Rules;

HEREBY DECIDES the Motion on the basis of the written submission by the Defence pursuant to Rule 73(A) of the Rules.

SUBMISSIONS OF THE DEFENCE

1. The Defence for Nzuwonemeye requests the Trial Chamber to issue an order aimed at securing the cooperation of the Kingdom of Belgium, where the Defence intends to meet a potential Defence witness currently in detention.

2. The Defence submits that it is in the process of conducting investigations and preparing its case by interviewing various potential Defence witnesses. The Defence asserts that since it was not kept informed about the progress of investigations at the Office of the Prosecutor, it must legitimately expect that its right to confidentiality under Article 20(4)(c) of the Statute will be respected as it pursues its investigations and searches for evidence. The Defence therefore requests that the Prosecution not be informed about its investigations and that the current Motion be examined *ex-parte*. It also requests that the identity of the witness in question not be revealed to the public.

3. The Defence further submits that the potential witness is currently detained by the Belgian authorities and that he is represented by Counsel. The Defence states that it has contacted Counsel for the proposed witness and obtained his agreement to a meeting between his client and the Defence. The Defence notes, however, that the Belgian judge in charge of the case has refused to authorise the meeting with the potential witness.

4. The Defence argues that this witness is important to its case because he is in possession of essential information as he was present at the scene of the crimes with which the Accused Nzuwonemeye is charged in the Amended Indictment. The Defence further requests that it should be allowed to have access to the witness’s case file kept by the Belgian authorities, since it may contain information that can exculpate the Accused.

5. The Defence for Nzuwonemeye submits that due to the refusal by the Belgian authorities to authorise the meeting with this potential witness, it requests the Chamber’s assistance to help secure the cooperation of the Kingdom of Belgium.

6. The Defence therefore prays the Chamber to issue an order pursuant to Article 28(2)(b) of the Statute, as well as Articles 44 and 45 of the Belgian Law on Co-operation

¹ “*Ex-parte* and Confidential Motion to Obtain the Co-operation of the Kingdom of Belgium.”



with the International Criminal Court and International Criminal Tribunals of 29 March 2004 enabling the Defence to meet with the potential witness.

DELIBERATIONS

7. As a preliminary matter, the Chamber would like to draw the Defence's attention to the fact that Article 20(4)(c) of the Statute contains the right of the Accused to be tried without undue delay, and contrary to the Defence submission, does not provide for an express right to confidentiality. Furthermore, the Chamber wishes to underscore that the sole basis for issuing an order for cooperation of a State with the Tribunal is Article 28 of the Statute, and, where necessary, Rule 54 of the Rules.

8. The Chamber recalls Article 28 of the Statute, which provides as follows:

- 1) States shall cooperate with the International Criminal 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 Criminal Tribunal for Rwanda.

9. Rule 54 of the Rules specifies that a Judge or Chamber may "issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial". On the basis of these powers, the Chamber is competent to direct a request for cooperation to any State to facilitate a meeting between a Party to the proceedings and a person in that State.²

10. The Chamber concurs with the following criteria stipulated by Trial Chamber I in the *Bagosora* case for granting a request under Article 28: "The party seeking the request by the Trial Chamber must specifically identify to the extent possible the nature and purpose of the assistance sought from the State, articulate its relevance to the trial, and show that efforts to obtain the assistance have been unsuccessful".³

11. The Chamber notes that the applicant seeks the assistance of the Kingdom of Belgium in order to interview a potential witness. The Chamber is satisfied, on the basis of the Defence Motion, that the potential witness may have information relevant to the Defence case. Further, the Chamber notes that based on the undated communication from the Defence filed with the Registry on 2 November 2005, and transmitted to the Chamber on the same day, it appears that the Defence has made efforts to contact the potential witness; secondly,

² *The Prosecutor v. Bagosora et al.*, Decision on Request for Subpoena of Major General Yaache and Cooperation of the Republic of Ghana (TC), 23 June 2004, para. 4.

³ *The Prosecutor v. Bagosora et al.*, Decision on the Defence for Bagosora's Request to Obtain the Cooperation of the Republic of Ghana, rendered on 25 May 2004, para. 6.

that the Judge presiding over the proposed witness's criminal trial denied the Defence request to meet with the potential witness on the ground that it is not a party to the proceedings in Belgium.

12. The Chamber is therefore satisfied that the criteria to issue an order for cooperation under Article 28 of the Statute have been met.

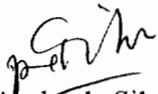
FOR THE ABOVE REASONS, THE CHAMBER

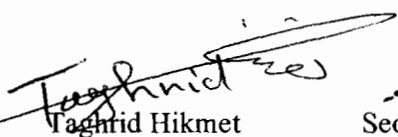
GRANTS the Defence Motion;

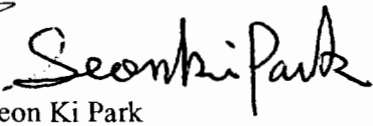
RESPECTFULLY REQUESTS the Government of the Kingdom of Belgium to permit the Defence of Nzuwonemeye to meet with and interview its proposed witness (named in the Motion paper) and to have access to his case file;

DIRECTS the Registry to transmit this Decision to the relevant authorities of the Government of the Kingdom of Belgium; to collaborate with the Defence for Nzuwonemeye in the implementation of this request and to report back to the Chamber.

Arusha, 9 November 2005


Asoka de Silva
Presiding Judge


Taghrid Hikmet
Judge


Seon Ki Park
Judge

