



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
13-02-2006
(22003 - 22000)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 13 February 2006

The PROSECUTOR

v.

Augustin BIZIMUNGU
Augustin NDINDILYIMANA
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU

Case No. ICTR-00-56-T

ICTR
13 FEB 2006

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**DECISION ON NZUWONEMEYE'S MOTION REQUESTING THE
COOPERATION FROM THE GOVERNMENT OF TOGO PURSUANT TO
ARTICLE 28 OF THE STATUTE**

Office of the Prosecutor:

Mr Ciré Aly Bâ
Mr Segun Jegede
Mr Moussa Sefon
Mr Abubacarr Tambadou
Ms Alayne Frankson-Wallace
Ms Felistas Mushi
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 Ndingilyimana**
Mr Charles Taku and Mr Hamuli Rety 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 SEISED OF Nzuwonemeye's « Motion for Request of Cooperation from the Government of Ghana and the Government of Togo Pursuant to Article 28 of the Statute » (the "Motion") filed on 25 January 2006;

NOTING that the Prosecution has not filed a response;

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 submissions filed by the Defence pursuant to Rule 73(A) of the Rules.

SUBMISSIONS OF THE DEFENCE

1. The Defence for Nzuwonemeye requests the Chamber to issue an order for cooperation and assistance of the Government of Togo in order to facilitate an interview with Captain Apedo.¹ The Defence team wishes to interview Captain Apedo about various issues related to his role as a UNAMIR soldier in Rwanda in 1994, including (a) his perception of the events in Rwanda in 1994; (b) his perception of the military situation in Rwanda and the role of the UNAMIR; (c) the meetings he attended on 6 and 7 April 1994 with the Rwandan senior military officers; (d) the death of the 10 Belgian UNAMIR soldiers on 7 April 1994 and (e) the murder of Agathe Uwilingiyimana, former Prime Minister of Rwanda.²
2. The Defence submits that it has received a letter from the United Nations Assistant Secretary General for Legal Affairs indicating that the United Nations has no objection to the meeting and interview, provided that the questions asked do not "concern (i) information that was provided in confidence to the United Nations by a third person or State or (ii) what happened during closed meetings or informal consultations of the Security Council or (iii) information the disclosure of which would place anyone's life in danger."³
3. The Defence submits that on 29 November 2005, it wrote to Togo's Minister of Defence for authorization to meet and provide the team with the contact details of the former UNAMIR soldier named above.⁴ The Defence avers that it has not yet received a response, even though it sent a reminder to the Minister on 19 December 2005. The Defence therefore fears that its request will be denied.⁵
4. Finally, the Defence submits that the Prosecution case will likely be completed this year, and the Defence therefore does not have much time left to conduct its investigations. Consequently, it is urgent for the Defence team to have access to this witness, interview him

¹ Motion, para. 1.

² Motion, para. 3.

³ Annex 1 to the Motion;

⁴ Motion, para. 4, Annex 2.

⁵ Motion, para. 7.



and assess the relevance of his testimony. The Defence submits that an order from the Tribunal would help speed-up the proceedings.⁶

DELIBERATIONS

5. The Chamber recalls that Article 28 of the Statute imposes an obligation on States to “cooperate with the International Criminal Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.” Article 28(2) provides a non-exhaustive list of the types of cooperation or assistance which the Tribunal may seek from States. According to the jurisprudence of the Tribunal, the Chamber’s power under Article 28 may include any request or order the purpose of which is to assist the Tribunal in its mandate.⁷ In addition, the Chamber recalls Rule 54 of the Rule which enables it to issue any orders it deems necessary for the investigation, preparation or conduct of the trial. Acting under Article 28 and Rule 54, Trial Chamber II has recently issued an order for State cooperation in the instant case.⁸

6. The Chamber further recalls the jurisprudence of the Tribunal to the effect that the party seeking an order under Article 28 must, to the extent possible, specify the nature and purpose of the assistance sought from the requested State, as well as its relevance to the trial. It must also demonstrate that efforts have been made to obtain such assistance, and that these efforts have been unsuccessful.⁹

7. The Chamber notes that paragraph 3 of the Motion specifies the nature of the information sought, as well as its relevance to the trial. Annex 2 to the Motion demonstrates that the Defence has made reasonable efforts to obtain the assistance of the Government of Togo by requesting authorization to meet with the former UNAMIR soldier in question. The Chamber further notes that the Defence efforts have been unsuccessful. Despite a reminder sent to Togo’s Minister of Defence, the Defence team has still not received an answer. The Chamber therefore concludes that the criteria for granting an order requesting cooperation under Article 28 have been met.

8. Furthermore, the Chamber agrees with the *Ad-hoc* Tribunals’ jurisprudence that when the Defence is not fully aware of the nature and relevance of the testimony of a prospective witness, it is in the interests of justice to allow the Defence to meet the witness and assess his testimony.¹⁰

⁶ Motion, para. 8.

⁷ *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Request to the Kingdom of the Netherlands for Cooperation and Assistance, 7 February 2005 (TC I), para. 4 [hereinafter ‘*Bagosora 7 February 2005 Decision*’].

⁸ *Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Nzuwonemeye’s *Ex Parte* and Confidential Motion to Obtain the Cooperation of the Kingdom of Belgium, 9 November 2005 (TC II) [hereinafter ‘*Ndindiliyimana 9 November 2005 Decision*’].

⁹ *Prosecutor v. Bagosora et al.*, Decision on the Defence for Bagosora’s Request to Obtain the Cooperation of the Republic of Ghana, 25 May 2004 (TC I), para. 6, cited with approval in *Ndindiliyimana 9 November 2005 Decision*, para. 10. See also *Prosecutor v. Bagosora et al.*, Decision on Request to the Republic of Togo for Assistance Pursuant to Article 28 of the Statute, 31 October 2005 (TC I), para. 2; *Bagosora 23 June 2004 Decision*, para. 4; *Bagosora 7 February 2005 Decision*, para. 5.

¹⁰ *Prosecutor v. Bagosora et al.*, Decision on Request for Subpoena of Major General Yaache and Cooperation of the Republic of Ghana, 23 June 2004 (TC I), para. 4. See also *Prosecutor v. Krstić*, Case No. IT-98-33-A, Decision on Application for Subpoenas, 1 July 2003 (ICTY Appeals Chamber), para. 8.

9. However, in issuing the order for cooperation, the Chamber is mindful of the fact that the United Nations Assistant Secretary General for Legal Affairs consented to the proposed meetings based on a number of conditions.

FOR THE ABOVE REASONS, THE CHAMBER

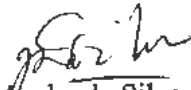
GRANTS the Motion;

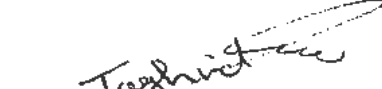

RESPECTFULLY REQUESTS the Government of Togo to give its full cooperation to allow the Defence team for Nzuwonemeye to meet with and interview Captain Apedo, at a place convenient to all the parties;

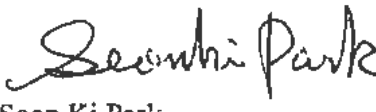
ORDERS that during the meeting, the Defence shall not ask any questions relating to (i) information that was provided in confidence to the United Nations by a third person or State; (ii) what happened during closed meetings or informal consultations of the Security Council; and (iii) information the disclosure of which would place anyone's life in danger;

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

Arusha, 13 February 2006


Asoka de Silva
Presiding Judge


Tahirid Hilemet
Judge

[Seal of the Tribunal]


Seon Ki Park
Judge

