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UNITED NATIONS
NATIONS UNIES

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
2006 FEB 13 A 11:12

**DECISION ON NZUWONEMEYE'S MOTION REQUESTING THE
COOPERATION FROM THE GOVERNMENT OF THE NETHERLANDS
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 Takwa 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 the Netherlands 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 the Netherlands to facilitate an interview with Major Robert Alexander Van Putten.¹ The Defence team wishes to interview Major van Putten 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 28 November 2005, it wrote to the Minister of Defence of the Netherlands requesting that members of the Defence team be provided with the contact details of Major Robert Alexander Van Putten, and for authorization to meet with the proposed witness.⁴ On 19 December 2005, the Minister sent a reply denying the Defence request and indicating, among other things, that due to resource constraints, it is the policy of the Government of the Netherlands not to accede to non-obligatory requests related to the work of the *Ad-hoc* Tribunals. The Minister, however, indicated that the Government of the Netherlands will comply with an order of the Trial Chamber to provide Major Van Putten as a witness.⁵

¹ Motion, para. 1.
² Motion, para. 3.
³ Annex 1 to the Motion.
⁴ Motion, para. 4; Annex 2.
⁵ Motion, para 5; Annex 3.

4. The Defence submits that it is not in a position to determine whether or not Major Van Putten will be called as a witness without first meeting and interviewing him. Finally, the Defence submits that, in accordance with the relevant case law of both *Ad-hoc* Tribunals, 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.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 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 the Netherlands by requesting authorization to meet with the former UNAMIR officer in question. The Chamber further notes that the Defence efforts have been unsuccessful because of the policy of the Government of the Netherlands not to comply with non-obligatory requests related to the work of *Ad-hoc* Tribunals. 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

⁶ Motion, para. 6, 7.

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. Ndingiyimana 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 '*Ndingiyimana 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 *Ndingiyimana 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.

witness, it is in the interests of justice to allow the Defence to meet the witness and assess his testimony.¹⁰

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

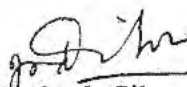
GRANTS the Motion;

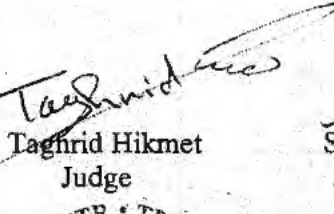
RESPECTFULLY REQUESTS the Government of the Netherlands to give its full cooperation to allow the Defence team for Nzuwonemeye to meet with and interview Major Robert Alexander Van Putten in the Netherlands, at a place convenient to all the parties;

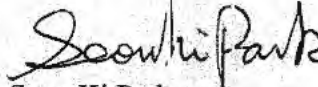
ORDERS that during the meeting, the Defence shall not ask any questions relating to (i) information that was provided in confidence to the United Nations by a third person or State; (ii) what happened during closed meetings or informal consultations of the Security Council; and (iii) information the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


Taghrir Hikmet
Judge


Seon Ki Park
Judge



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.