



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
13-2-2005
(25291-25287)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Emile Francis Short
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 13 February 2006

THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

2006 FEB 13 P 14:06
ICTR
OFFICIAL RECORDS/ARCHIVES

**DECISION ON MOTIONS FOR ORDER FOR PRODUCTION OF DOCUMENTS BY
THE GOVERNMENT OF RWANDA AND FOR CONSEQUENTIAL ORDERS**

Article 28 of the Statute of the Tribunal and Rule 54 (B) of the Rules of Procedure and Evidence

Office of the Prosecutor:

Don Webster
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Defence Counsel for Mathieu Ngirumpatse
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Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika Ngimbi

INTRODUCTION

1. The trial in this case commenced on 19 September 2005. During the testimony of Prosecution Witness Ahmed Mbonnyunkiza at the first trial session, the Accused Joseph Nzirorera sought to obtain a statement of this witness made to the Rwandan judicial authorities. During the same session, the Prosecution was requested to submit proof of its best efforts made to obtain the Rwandan judicial records of another Prosecution witness, Witness HH, scheduled to be heard during the second trial session starting on 13 February 2006. Despite the efforts made by the Prosecution,¹ these documents were not obtained from the Rwandan authorities. As a result, the Chamber is now seized of "Joseph Nzirorera's Motion for Order for Production of Documents by the Governments of Rwanda and for Cooperation and for Consequential Orders",² the Prosecutor's Response³ and Joseph Nzirorera's Reply Brief.⁴ In his Motion, Joseph Nzirorera seeks the Chamber to order the Government of Rwanda to produce documents relating not only to Prosecution Witnesses Ahmed Mbonnyunkiza and HH but also to other Prosecution witnesses. In addition, he moves the Chamber to postpone the testimony of all the witnesses listed in Annex 1 of his Motion until the reception of the documents sought.

2. The Defence Counsel for Mathieu Ngirumpatse has also seized the Chamber with a Motion entitled "Requête aux fins de communication des procédures rwandaises contre les témoins HH, ALG, UB et AWB".⁵ It has requested the postponement of the testimony of Witnesses HH, ALG, UB, and AWB until the disclosure of their Rwandan judicial records, judgements and other pertinent documents.

DISCUSSION

Request for Cooperation of the Rwandan Authorities

3. Joseph Nzirorera seeks the Chamber to issue, pursuant to Article 28 of the Statute of the Tribunal ("Statute") and Rule 54 of the Rules of Procedure and Evidence ("Rules"), an Order directing the Government of Rwanda to provide copies of the following documents pertaining to each of the Prosecution witnesses listed in Annex 1 to the Motion:

- (A) All statements taken or received by the Rwandan authorities from the listed persons
- (B) All documents containing any charges filed against the listed persons and judgement rendered
- (C) All information from witnesses or victims which accuse the listed persons of crimes relating to events in 1994.

4. The Defence has attached a confidential Annex 1 to its Reply Brief, listing thirty seven Prosecution witnesses' names and pseudonyms in the current case believed to have

¹ See the Interoffice Memorandum filed by the Prosecution on 13 December 2005.
² Motion for Order for Production for Documents by the Governments of Rwanda and for Cooperation and for Consequential Orders, filed by Joseph Nzirorera on 9 January 2006 ("Motion").
³ Filed on 16 January 2006.
⁴ Filed on 18 January 2006. A Confidential Annex 1 to the Motion was also filed on 18 January 2006.
⁵ Filed on 8 February 2006.

been prosecuted in Rwanda and for whom judicial documents are missing. On the list, the names of six witnesses are not indicated. The Defence moves the Chamber to order the Prosecution to provide the identity of the six witnesses to the Rwandan authorities to enable them comply with the Chamber's Order.

5. Joseph Nzirorera submits that the Chamber should make an Order under Article 28 of the Statute to oblige the Rwandan authorities to disclose the required material encompassing for all of the Prosecution witnesses who lived in Rwanda after 1994 in order to avoid multiple Article 28 Orders and the disruption of trial sessions.

6. The Prosecution states that it is not in possession of a list of witnesses who made statements before the Rwandan authorities. It claims that all of its witnesses who have been prosecuted in Rwanda are known and it has requested their judicial records from the Rwanda authorities. The Prosecution contends that Joseph Nzirorera failed to first seek the assistance of the Rwandan Government through cooperative means.⁶ In addition, the Prosecution asserts that the Defence Motion lacks specificity.

7. Article 28(2)(c) of the Statute prescribes that States shall comply without undue delay with any request for cooperation issued by a Trial Chamber for the service of documents. Any request for production of documents, under Article 28 of the Statute, must (i) identify as far as possible the documents or information to which the application relates; (ii) set out succinctly the reasons why such documents are deemed relevant to the trial; and (iii) explain the steps taken by the applicant to secure the State's assistance.⁷ Further, it must be noted that the Trial Chambers of this Tribunal have concluded that disclosure of judicial records is not merely for the benefit of the preparation of the Defence but it is also required to assist the Chambers in their assessments of witnesses' credibility pursuant to Rule 90(G) of the Rules.⁸

8. In the present case, the Chamber is of the view, that among all of the documents requested by the Defence, only the statements taken or received by the Rwandan authorities from the listed Prosecution witnesses and judgements rendered against them have been sufficiently defined. The Chamber is of the view that the list of Prosecution witnesses attached to Joseph Nzirorera's Motion sufficiently identifies those witnesses whose material is sought. However, the Prosecution should provide to the Rwanda authorities the names of the six witnesses, for whom only pseudonyms were given. The

⁶ *Prosecutor v. Blaskic*, Case No. IT-95-14, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997 (AC), 29 October 1997, par. 31.

⁷ *Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Request to the Government of Rwanda for Cooperation and Assistance Pursuant to Article 28 of the Statute (TC), 10 March 2004, para. 4; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on the Defence for Bagosora's Request to Obtain the Cooperation of the Republic of Ghana (TC), 25 May 2004, para. 6; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Request for Assistance Pursuant to Article 28 of the Statute (TC), 27 May 2005, para. 2; see also *Prosecutor v. Blaskic*, Case No. IT-95-14, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997 (AC), 29 October 1997, par. 32.

⁸ *Prosecutor v. Edouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motions to Compel Insoection and Disclosure and to direct Witnesses to Bring Judicial and Immigration Records (TC), 14 September 2005, para. 8; *Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case No. ICTR-96-10-A, ICTR-96-17-A, Reasons for the Decision on Request for Admission of Additional Evidence (AC), 8 September 2004, paras. 47-52.

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Chamber is of the view that the statements taken or received by the Rwandan authorities from the listed persons and the judgements sought are necessary and relevant for a fair determination of the credibility of the witnesses concerned. The Chamber also finds that Joseph Nzirorera, by the letters addressed to Office of the Prosecution and the Special Representative of Rwandan Government, and the meetings held with the latter, has demonstrated that he has taken all reasonable efforts to obtain the judicial records requested. However, with regard to the documents containing charges filed against the listed persons and information from witnesses or victims which accuse the listed Prosecution witnesses of crimes relating to events in 1994, the Chamber finds that the material requested is not adequately precise for a request of cooperation of the Rwandan authorities.

9. Consequently, the Chamber finds that the Defence has met the requirements of Article 28 of the Statute regarding all statements taken or received by the Rwandan authorities and the judgements rendered against the listed persons.

10. The names of the six protected witnesses whose pseudonyms are AWE, BDW, BDX, BGD, BIS, and BIT should be provided to the Rwandan authorities. In addition, since the Witnesses HH, UB, ALG, AWB, GFA, and GBU are going to be called during the next trial session, the cooperation of the said authorities is necessary in the earliest possible time.

Consequential orders

11. Joseph Nzirorera requests the Chamber to delay the testimony of Witness HH who is scheduled to testify in the next trial session. Joseph Nzirorera recalls that Witness HH acknowledged making false statements by lying to the Prosecution investigators in 1998. He affirms that Witness HH judicial records should contain false statements. The Prosecution acknowledges that Witness HH's prior statements were either incomplete or untruthful but opposes any request for postponement.

12. Joseph Nzirorera is also asking the Chamber to postpone the testimony of the witnesses listed on Annex 1 until the disclosure of all the required Rwandan judicial records to enable him to prepare his defence adequately. Mathieu Ngirumpatse also requests the Chamber to postpone the testimony of Witnesses HH, ALG, UB, and AWB to enable him to prepare the cross-examination of the witnesses.

13. The Chamber is of the view that the overall interest of the proceedings in this case would not be served by an order delaying the testimonies of some Prosecution witnesses scheduled to testify during the next trial session before the Chamber, even if their judicial records are not disclosed before they testify. They can be recalled at a later stage of the proceedings, if necessary.

FOR THE ABOVE REASONS THE CHAMBER

I. GRANTS in part "Joseph Nzirorera's Motion for Order for Production of Documents by the Government of Rwanda and for Consequential Orders" and Mathieu Ngirumpatse "Requête aux fins de communication des procédures rwandaises contre les témoins HH, ALG, UB et AWB";

II. ORDERS the Prosecution to provide the names of its witnesses omitted in the list provided by Joseph Nzirorera, and to transmit them only to the Rwandan authorities to enable them to comply with the present Order;

III. REQUESTS the cooperation of the Government of Rwanda to provide the Registry with:

A) All statements taken or received by the Rwandan authorities from the persons whose names are specified in the confidential Annex to the present Decision and the six names specified by the Prosecution; and

B) All judgements rendered against the listed persons.

IV. ORDERS the Registry to redact the names, addresses, locations and other identifying information as may appear in Witnesses AWE, BDW, BDX, BGD, BIS, and BIT statements or other material disclosed in accordance with Paragraph 11 of the Chamber's Order on Protective Measures for Prosecution witnesses of 10 December 2004;

V. REQUESTS the Government of Rwanda to provide the Registry with all statements taken or received by the Rwandan authorities from Witnesses HH, UB, ALG, AWB, GFA, and GBU no later than 6 March 2006;

VI. ORDERS the Registry to disclose to all the parties in the present case the documents specified in paragraph III (A) and (B) above;

VII. DIRECTS the Registrar to serve this request for cooperation, including the Confidential Annex, on the relevant authorities of the Government of Rwanda;

VIII. DENIES the remainder of the Motions in their entirety.

Arusha, 13 February 2006, done in English.

Dennis C.M. Byron
Presiding

Emile Francis Short
Judge

Gerdao Gustave Kam
Judge

