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Internaz
Tribunal p nal international pour le Rwanda

22648
D.A.

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 7 June 2006

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

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

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Mr Charles Taku and Mr Hamuli Rety *for Fran ois-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 Belgium Pursuant to Article 28 of the Statute" filed on 18 May 2006 (the "Motion");

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 Belgium in order to facilitate an interview with Major Maggen and Colonel Joseph Dewez.¹ The Defence wishes to interview the individuals concerned about various issues related to their role as UNAMIR (United Nations Assistance Mission for Rwanda) soldiers in Rwanda in 1994, including (a) their perception of the events in Rwanda in 1994; (b) their perception of the military situation in Rwanda and the role of the UNAMIR; (c) the meetings they 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 Belgium's Minister of Defence to provide the team with the contact details of the former UNAMIR soldiers named above and for authorization to meet with them.⁴ On 4 January 2006 the Defence received a letter from the Minister of Defence of Belgium forwarding the request to the Ministry of Justice.⁵ On 10 February 2006, the Defence received a letter from the Ministry of Justice denying its request to interview Major Maggen and Colonel Dewez, on the ground that the Ministry considers Article 28 of the Statute to only apply to requests made to a State by the Prosecutor or by the Tribunal, and therefore the Defence request could not be granted.⁶ The

¹ Motion, para. 8.
² Motion, para. 3
Motion, para 2, Annex 1 to the Motion;
⁴ Motion, para. 4, Annex 2.
⁵ Motion, para 5.
⁶ Motion, para. 6, Annex 3.

Ministry, however, indicated that this request would be granted, upon an Order of the Tribunal.⁷

4. Finally, the Defence submits that it is not fully aware of the nature and relevance of the testimony of these prospective witnesses and therefore it is in the interests of justice to allow the Defence to meet Major Maggen and Colonel Dewez to assess their potential testimonies.⁸

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.⁹ In addition, the Chamber recalls Rule 54 of the Rules which enables it to issue any orders it deems necessary for the investigation, preparation or conduct of the trial at the request of either party or *proprio motu*. Acting under Article 28 and Rule 54, the Chamber has recently issued four orders for State cooperation in the instant case.¹⁰

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.¹¹

7. ~~The Chamber notes that~~ the Motion¹² 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 Belgium by requesting

⁷ Motion, para 6, Annex 3.

⁸ Motion, para.7.

⁹ *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*’].

¹⁰ *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*’]; *Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-00-56-T, “Decision on Nzuwonemeye’s Motion Requesting the Cooperation from the Government of the Netherlands pursuant to Article 28 of the Statute”, 13 February 2006 (TC II); *Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-00-56-T, “~~Decision on Nzuwonemeye’s Motion Requesting the Cooperation from the Government of Ghana pursuant to Article 28 of the Statute~~”, 13 February 2006 (TC II); *Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Nzuwonemeye’s “Motion Requesting the Cooperation from the Government of Togo pursuant to Article 28 of the Statute”, 13 February 2006 (TC II); [hereinafter ‘*Ndindiliyimana 13 February 2006 Decisions*’]

¹¹ *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; cited with approval in *Ndindiliyimana 13 February 2006 Decisions*, para. 6. 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.

¹² Motion, para. 3

authorization to meet with the former UNAMIR soldiers in question. The Chamber further notes that Annex 3 to the Motion demonstrates that the Defence efforts have been unsuccessful. The Chamber therefore concludes that the criteria for granting an order requesting cooperation under Article 28 have been met. Additionally, the Belgian authorities have indicated their willingness to comply with such a request, provided that it is in the form of an order issued by this Tribunal.

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.¹³

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;

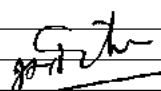
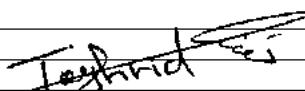
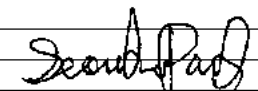
RESPECTFULLY REQUESTS the Government of the Kingdom of Belgium to give its full cooperation to allow the Defence team for Nzuwonemeye to meet with and interview Major Maggen and Colonel Dewez, at a place convenient to all the Parties;

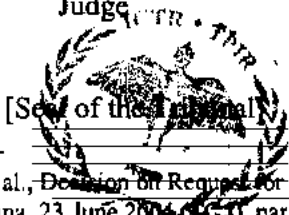
ORDERS that during the meetings, the Defence shall not ask any questions relating to:

- (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 Order 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, 7 June 2006

		
Anoka de Silva Presiding Judge	Taghrid Hikmet Judge	Seon Ki Park Judge



¹³ *Prosecutor v. Bagosora et al., Decision on Request for Subpoena of Major General Yauche and Cooperation of the Republic of Ghana, 23 June 2004 (ICTR)*, 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. Motion para. 7