



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-T  
2-10-2006  
(27817 - 27814)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

27817  
2006/10/21

OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Adama Dieng

**Date:** 2 October 2006

**THE PROSECUTOR**

v.

**Édouard KAREMERA**  
**Mathieu NGIRUMPATSE**  
**Joseph NZIRORERA**  
Case No. ICTR-98-44-T

2006 OCT -2 / P 5: 21  
JUDICIAL RECORDS/ARCHIVES  
RECEIVED

**DECISION ON DEFENCE MOTION TO REPORT GOVERNMENT OF RWANDA  
TO UNITED NATIONS SECURITY COUNCIL**

*Rule 7bis of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**  
Don Webster  
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Takeh Sendze

**Defence Counsel for Édouard Karemera**  
Dior Diagne Mbaye and Félix Sow

**Defence Counsel for Mathieu Ngirumpatse**  
Chantal Hounkpatin and Frédéric Weyl

**Defence Counsel for Joseph Nzirorera**  
Peter Robinson and Patrick Nimy Mayidika Ngimbi

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1. The trial in this case started on 19 September 2005. The next trial session is scheduled to start on 23 October 2006. On 13 February 2006, following Joseph Nzirorera's application, the Chamber requested the cooperation of the Government of Rwanda to provide, by 6 March 2006, the Registry with statements taken or received by the Rwandan authorities from and judgements rendered against 37 Prosecution witnesses.<sup>1</sup>

2. On 22 May 2006, noting that none of the requested records had been provided, Defence for Nzirorera moved the Chamber, pursuant to Rule 7bis of the Rules of Procedure and Evidence, to request the Tribunal's President to report the failure of the government of Rwanda to comply with its obligation under Article 28 of the Tribunal's Statute to the United Nations Security Council.<sup>2</sup> It claims that lack of access to prior Prosecution witnesses' statements, while the Government of Rwanda cooperates with the Prosecution, amounts to a denial of equality of arms, guaranteed under Article 19 of the Statute.<sup>3</sup> To support its application, the Defence relies upon an Appeals Chamber Decision in the case of *Prosecutor v. Blaskic* that outlined the procedure to be followed when a State fails to comply with a Trial Chamber's order.<sup>4</sup> The Prosecution took no position on the propriety of referring this matter to the President and relied upon the Chamber's discretionary power on that matter.<sup>5</sup> But in the Prosecution's view, it does not appear that the Rwandan authorities are unwilling to cooperate; rather, from the Prosecution's experience when requesting documents from the Rwandan authorities, it would appear that they often encounter logistical challenges in locating the relevant documents dispersed throughout the country, depending on the prefecture and commune of origin of the witness, reviewing them and keeping track of those already forwarded or remain outstanding.<sup>6</sup>

3. Rule 7bis of the Rules provides that "where a Trial Chamber or a Judge is satisfied that a State has failed to comply with an obligation under Article 28 of the Statute relating to any proceedings before that Chamber or Judge, the Chamber or Judge may request the President to report the matter to the Security Council".

<sup>1</sup> *Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Motions for Order for Production of Documents by the Government of Rwanda and for Consequential Orders (TC), 13 February 2006.

<sup>2</sup> Motion to Report Government of Rwanda to United Nations Security Council.

<sup>3</sup> To support its assertion, Defence for Nzirorera relies upon an Appeals Chamber Decision in the case *Prosecutor v. Tadic*, Case No. IT-94-1-A, 15 July 1999.

<sup>4</sup> Case No. IT-95-14-A, 29 October 1997.

<sup>5</sup> Prosecutor's Response, filed on 29 May 2006. The Prosecutor relies upon two prior Decisions in *Koremera et al.* case, dated 19 March 2004 and 15 February 2006.

<sup>6</sup> Prosecutor's Response, filed on 29 May 2006.

4. This Rule provides a Chamber with discretionary power to decide whether to request the President to report any State's failure to cooperate with the Tribunal to the Security Council.<sup>7</sup>

5. In the present case, the Rwandan authorities have provided some of the documents sought. On 11 July 2006, the *Parquet Général* of Rwanda forwarded a bundle of documents concerning Witnesses ANU, GBU, GFA, GFG and GNK to the Tribunal's Witnesses and Victims Support Section in Kigali. These documents reached the Registrar's Office in Arusha on 17 July 2006, where they were indexed and translation priorities were identified.<sup>8</sup> They were subsequently distributed to the parties on 19 July 2006. This communication by the Rwandan authorities was not accompanied by any letter indicating how they had complied with the Chamber's Decision of 13 February 2006 and, particularly, no information was provided as to the absence of the other material requested.

6. The Chamber finds some relevancy in the Prosecutor's representation of the Rwandan context, which is not actually challenged by the Defence, and is satisfied that the circumstances of the case do not show any unwillingness of the Rwandan authorities to cooperate with the Tribunal. It is appropriate at this stage to determine the reasons why the material sought was only disclosed in part and no material was disclosed at all regarding some of the witnesses concerned by the Chamber's Decision. It is noted that the Defence does not object to the Prosecution's suggestion that further efforts be made to convince the Rwandan government to completely comply with the Chamber's Decision of 13 February 2006.<sup>9</sup>

7. The Defence, however, claims that it is reasonable for the Prosecution not to call any of the witnesses who are subjects of the Chamber's request for cooperation until the issue is resolved. In the Chamber's view, there is no need at this stage to rule on the order of appearance of the Prosecution witnesses called to testify during the next trial session, even if some of them are affected by the request made to the Rwandan authorities.

#### **FOR THE ABOVE REASONS, THE CHAMBER**

**I. DENIES** the Defence Motion in its entirety;

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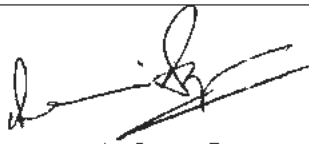
<sup>7</sup> See: *Karemera et al.*, Decision on Defence Motion to Report Government of a Certain State to United Nations Security Council and on Prosecution Motions under Rule 66(C) of the Rules (TC), 15 February 2006, para. 12; *Prosecutor v. Tihomir Blaskic*, Case No. IT-95-14-A, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997 (AC), 29 October 1997, para. 35.

<sup>8</sup> See Registrar's Office filing made on 19 July 2006.

<sup>9</sup> Defence's Reply, filed on 31 May 2006.

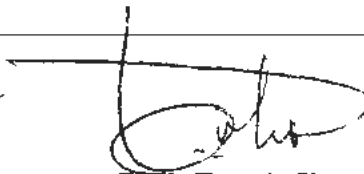
**II. REQUESTS**, pursuant to Article 28 of the Statute, the Rwandan authorities to explain as soon as possible and no later than 13 October 2006, how they complied with the Chamber's Decision of 13 February 2006, and, where appropriate, to provide the reasons why some material sought was not disclosed.

Arusha, 2 October 2006, done in English.



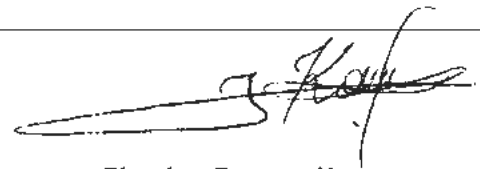
Dennis C. M. Byron

Presiding Judge



Emile Francis Short

Judge



Gberdao Gustave Kam

Judge

