



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-T  
25-7-2007  
(29604 - 29600)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

29604  
2007  
2007

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 25 July 2007

**THE PROSECUTOR**

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA

Case No. ICTR-98-44-T

2007 JUL 25 P 3:51  
[Signature]

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR REQUEST FOR  
COOPERATION OF GOVERNMENT OF RWANDA:  
STATEMENTS OF WITNESS BDW**

*Article 28 of the Statute of the Tribunal*

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## INTRODUCTION

1. The trial in this case started on 19 September 2005. The fifth trial session started on 12 June 2007. During the sixth session, the Prosecution intends to call a number of witnesses, including Witness BDW.

2. On 14 September 2005<sup>1</sup>, the Prosecution was ordered to use best efforts to obtain statements made to Rwandan authorities and records pertaining to the criminal prosecution of several witnesses, including Witness BDW. Despite the efforts made by the Prosecution,<sup>2</sup> these documents were not obtained from the Rwandan authorities. As a result, on 9 January 2006 Joseph Nzirorera submitted a "Motion for Order for Production of Documents by the Governments of Rwanda and for Cooperation and for Consequential Orders."<sup>3</sup> The Chamber responded on 13 February 2006<sup>4</sup>, requesting the cooperation of the Rwandan government to produce the documents. However, the Rwandan government informed the Chamber that it "cannot attend to requests made in a generic form"; and that "a party seeking to obtain documents should specify the documents needed."<sup>5</sup>

3. Therefore, on 7 May 2007 Joseph Nzirorera filed another motion moving the Chamber to issue a request to the Government of Rwanda that it produce statements made by Prosecution Witness BDW to Rwandan authorities, as specified in Confidential Annex "A" to the motion.<sup>6</sup> In its Response filed on 8 May 2007, the Prosecution did not oppose this motion, though it observed that there was need for greater specificity in Nzirorera's request.<sup>7</sup> Joseph Nzirorera replied to the Prosecution's Response on 9 May 2007.<sup>8</sup>

<sup>1</sup> *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on Motions to Compel Inspection and Disclosure and to Direct Witnesses to Bring Judicial and Immigration Records (TC), 14 September 2005.

<sup>2</sup> See the Interoffice Memorandum filed by the Prosecution on 13 December 2005.

<sup>3</sup> Joseph Nzirorera's Motion for Order for Production for Documents by the Governments of Rwanda and for Cooperation and for Consequential Orders, filed on 9 January 2006 ("Motion").

<sup>4</sup> *Karemera et al.*, Decision on Motions for Order for Production of Documents by the Government of Rwanda and for Consequential Orders (TC), 13 February 2006.

<sup>5</sup> See Annex A to Joseph Nzirorera's Motion for Further Order to Obtain Documents in Possession of Government of Rwanda, filed on 18 October 2006.

<sup>6</sup> Joseph Nzirorera's Motion for Request for Cooperation of Government of Rwanda: Statements of Witness BDW, filed on 7 May 2007.

<sup>7</sup> Prosecutor's Response to Joseph Nzirorera's Motion for Cooperation of Government of Rwanda: Statement of Witness BDW, filed on 8 May 2007.

<sup>8</sup> Reply Brief: Joseph Nzirorera's Motion for Request for Cooperation of Government of Rwanda: Statements of Witness BDW, filed on 9 May 2007.

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## DISCUSSION

4. Article 28 of the Tribunal's Statute imposes an obligation on States to "cooperate with the [Tribunal] in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law." A request for assistance under this provision may include the service of documents.<sup>9</sup> 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. According to the established jurisprudence of this Tribunal as well as of the International Criminal Tribunal for the former Yugoslavia, 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.<sup>10</sup>

5. With respect to the first criterion, Joseph Nzirorera lists a number of specific prior witness statements in Confidential Annex A to its Motion.<sup>11</sup> The Prosecution observes that for the item "Letters submitted by Witness BDW to Court of Appeal Ruhengeri on various dates between 1995 and 2002" further particulars such as the number of letters and their approximate dates are required if the Rwandan authorities are to have a reasonable chance of locating the requested material.<sup>12</sup> In the opinion of the Chamber, while it is true that the documents sought are described in terms of a category of documents, this category is not so broad as to run afoul of the specificity requirement.<sup>13</sup> The Chamber finds that the documents sought have been identified with sufficient specificity.

6. With respect to the second criterion, the Chamber agrees with the Defence 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 Trial Chamber in its assessment of witness credibility

<sup>9</sup> Statute, Art. 28(2): "States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including but not limited to:

[...]

(c) the service of documents; [...]"

<sup>10</sup> *Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, Case No. ICTR-98-41-T ("Bagosora et al."), Request to the Government of Rwanda for Cooperation and Assistance Pursuant to Article 28 of the Statute (TC), 10 March 2004, para. 4; *Bagosora et al.*, Decision on the Defence for Bagosora's Request to Obtain the Cooperation of the Republic of Ghana (TC), 25 May 2004, para. 6; *Bagosora et al.*, Decision on Request for Assistance Pursuant to Article 28 of the Statute (TC), 27 May 2005, para. 2; *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, para. 32.

<sup>11</sup> Confidential Annex A to Nzirorera's Motion, at 2.

<sup>12</sup> Prosecution Response, paras. 3-5.

<sup>13</sup> *Prosecutor v. Kurtic & Cerkez*, Case No. IT-95-14/2-R108bis, Decision on the Request of the Republic of Croatia for Review of a Binding Order (AC), 9 September 1999, para. 38.

pursuant to Rule 90(G) of the Rules".<sup>14</sup> The Chamber also notes that the prior statements sought were included generically in the Trial Chamber's Decision of 13 February 2006, since the Chamber found at that time that the requirements to request the cooperation of the Rwandan Government for the disclosure of these documents were met.<sup>15</sup> The Chamber is therefore of the view that the documents sought are relevant to the trial.

7. With respect to the third criterion, the Defence explains that it met with Witness BDW, in the presence of representatives of the Prosecution, on 23 February 2007 and that during the meeting Witness BDW provided the Defence with a list of his prior statements and judgements.<sup>16</sup> The Defence contends that on 27 February 2007, it hand delivered a letter to the personal secretary of Prosecutor General Martin Ngoga at his office in Kigali, Rwanda, requesting the prior statements of Witness BDW and that no response to the letter has been received.<sup>17</sup> The Chamber finds that the Defence for Nzirodera has demonstrated that it has taken all reasonable efforts to obtain the prior statements requested from the Rwandan authorities.

<sup>14</sup> *Karemera et al.*, Decision on Motions to Compel Inspection and Disclosure and to Direct Witnesses to Bring Judicial and Immigration Records (TC), 14 September 2005, para. 8.

<sup>15</sup> *Karemera et al.*, Decision on Motions for Order for Production of Documents by the Government of Rwanda and for Consequential Orders (TC), 13 February 2006.


<sup>16</sup> Nzirodera's Motion, para. 6.

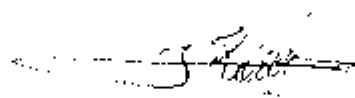
<sup>17</sup> *Ibid.*, para. 7; Confidential Annex A to Nzirodera's Motion, at 2-3.

**FOR THOSE REASONS, THE CHAMBER**

- I. **GRANTS** the Defence Motion for request for cooperation of the government of Rwanda;
- II. **REQUESTS** the cooperation of the Government of Rwanda to provide the Registry with the statements and judgements of Witness BDW which are specified in the Confidential Annex to the present Decision;
- III. **ORDERS** the Registry to disclose to all the parties in the present case the documents specified in paragraph II above;
- IV. **DIRECTS** the Registrar to serve this request for cooperation, including the Confidential Annex, on the relevant authorities of the Government of Rwanda.

At Kigali, 25 July 2007, done in English.

  
Dennis C. M. Byron  
Presiding Judge

  
Gberdao Gustave Kam  
Judge

  
Vigen Joensen  
Judge

