

ICR-98-44-T
01-11-2007
(31748-31745)

31748
A



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

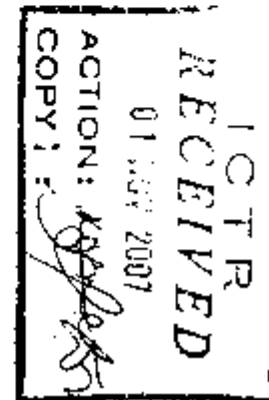
OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 1 November 2007



THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR COOPERATION OF
RWANDA TO OBTAIN STATEMENTS OF PROSECUTION WITNESSES AWD
AND AJY**

Article 28 of the Statute of the Tribunal

Office of the Prosecutor:
Don Webster
Alayne Frankson-Wallace
Iain Morley
Saidou N'Dow
Gerda Visser
Sunkarie Ballah-Conteh
Takch Sendze
Deo Mbutu

Defence Counsel for Édouard Karemera
Dior Diagne Mhaye and Félix Sow

Defence Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Niny Mayidika Ngimbi

Handwritten initials

INTRODUCTION

1. On 17 October 2007, the Defence for Nzirorera filed a motion to request the Government of Rwanda, pursuant to Article 28 of the Statute, to produce statements made by the Prosecution Witnesses AWD and AJY to Rwandan authorities, as detailed in Confidential Annex A to the Motion.¹ On 22 October 2007, the Prosecutor filed its response, questioning whether the requirements of Article 28 have been met as to these statements, but leaving the matter to the discretion of the Chamber.² The Defence for Nzirorera replied in turn on 24 October 2007, moving the Chamber to grant the Motion.³

DELIBERATION

2. Article 28 of the 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”. Moreover, Article 28(2)(c) 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 the 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.⁴

3. With respect to the first criterion, the Defence provides a list of prior statements of the concerned witnesses.⁵ The Prosecution asserts that one of the items listed does not have a

¹ Nzirorera’s Motion for Request for Cooperation of Government of Rwanda: Statements of Witnesses AWD and AJY, filed on 17 October 2007, para. 1 (“Nzirorera’s Motion”).

² Prosecutor’s Response to Nzirorera’s Motion for Request for Cooperation of Government of Rwanda: Statements of Witnesses AWD and AJY, filed on 22 October 2007, para. 2 (“Prosecutor’s Response”).

³ Reply Brief: Motion for Request for Cooperation of Government of Rwanda: Statements of Witnesses AWD and AJY, filed on 24 October 2007 (“Nzirorera’s Reply Brief”).

⁴ *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, para. 32; *Prosecutor v. Ndindiliyimana et al.*, Decision on Nzuwonemeye’s Motion Requesting the Cooperation of the Government of the Netherlands Pursuant to Article 28 of the Statute, 13 February 2006, para. 6.; *Prosecutor v. Karemera et al.*, Decision on Defence Motion for Cooperation of Rwanda to Obtain Statements of Prosecution Witnesses ALG, GK and UB (TC), 2 October 2007, para. 6

⁵ Confidential Annex A to Nzirorera’s Motion.

case number and that the dates are often not indicated, making it difficult to locate the materials.⁶ The Defence replies that the information it has on the statements is based solely upon the questionnaire provided by the Prosecution after it questioned Witness AJY about his prior cases in Rwanda, as this witness refused to meet with the Defence for Nzirorera.⁷ The Chamber is of the view that the list of statements of Prosecution witnesses attached to Joseph Nzirorera's Motion sufficiently identifies what material is sought and is sufficiently specific for the Rwandan Government to locate the requested documents.

4. With respect to the second criterion, the Chamber notes 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 The Chamber finds, in the present case, that the statements taken or received by the Rwandan authorities from Witnesses AWD and AJY and the judgments sought are relevant for a fair determination of the credibility of the witnesses concerned.

5. In arguing that its efforts to obtain the cooperation of the Rwandan Government satisfy the third criterion, the Defence attaches a copy of a letter addressed to the Prosecutor General in Kigali, requesting copies of the specific witness statements of AWD and AJY, purportedly sent on 10 September 2007⁹ and for which it claims to have received no response.¹⁰ It further states that Witnesses AWD and AJY have refused to meet with the Defence for Nzirorera and that, despite the many requests to the Prosecutor General in Kigali for an appointment with him to discuss access to the statements, the Defence for Nzirorera has never been granted an appointment.¹¹ The Chamber is of the view that the Defence for Nzirorera has demonstrated that it has taken all reasonable efforts to obtain the prior statements requested from the Rwandan authorities.

⁶ Prosecutor's Response, paras. 3-5.

⁷ Nzirorera's Reply Brief, para. 3.

⁸ *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motions to Compel Inspection 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; *Prosecutor v. Karemera et al.*, Decision on Defence Motion for Cooperation of Rwanda to Obtain Statements of Prosecution Witnesses ALG, GK and UB (TC), 2 October 2007, para. 8; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph's Nzirorera's Motion for Request for Cooperation of Government of Rwanda: Statements of Witness BDW (TC), 25 July 2007, para. 6.

⁹ Confidential Annex B to Nzirorera's Motion.

¹⁰ Nzirorera's Motion, para. 7.

¹¹ *Ibid.*, paras. 6 and 8.

6. Consequently, the Chamber finds that the Defence has met the requirements of Article 28 of the Statute regarding the statements of Witnesses AWD and AJY for granting cooperation of the Government of Rwanda.

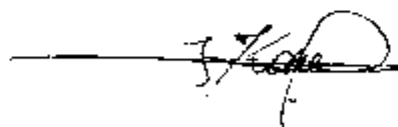
FOR THOSE REASONS, THE CHAMBER

- I. **GRANTS** the Defence for Nzirorera's Motion;
- II. **REQUESTS** the cooperation of the Government of Rwanda to provide the Registry with the statements of Witnesses AWD and AJY which are specified in the Confidential Annex A to the Motion;
- III. **ORDERS** the Registry to disclose to all 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.

Arusha, 1 November 2007, done in English.

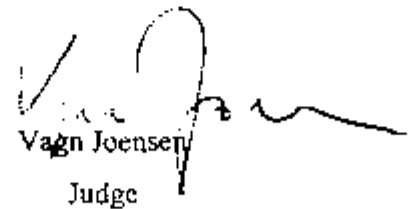


Dennis C. M. Byron
Presiding Judge



Gberdao Gustave Kam

Judge
[Seal of the Tribunal]



Vagn Joensen
Judge