



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-44-T

3-11-2007

(31829-31826)

31829
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OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen
Registrar: Adama Dieng
Date: 1 November 2007

JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR

v.

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

**DECISION ON JOSEPH NZIRORERA'S THIRD MOTION TO REPORT
GOVERNMENT OF RWANDA TO UNITED NATIONS SECURITY COUNCIL**

Rule 7 bis of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
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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

INTRODUCTION

1. The Trial in this case started on 19 December 2005. The sixth trial session started on 1 October 2007. During this session, the Prosecution intends to call a number of witnesses, including Witness BDW.
2. On 25 July 2007, following Joseph Nzirorera's application,¹ the Trial Chamber requested the cooperation of the Government of Rwanda to provide the Registry with statements and judgments for Witness BDW which were specified in a Confidential Annex.²
3. On 23 October 2007, noting that none of the requested records have been provided, the Defence for Nzirorera moved the Chamber, pursuant to Rule 7 *bis*, to request the President of the ICTR to report to the United Nations Security Council the matter of the failure of the government of Rwanda to comply with its obligation under Article 28 of the Statute.³

DELIBERATION

4. In its Motion, the Defence for Nzirorera submits that although the Registry duly served the Decision on the Government of Rwanda, it has never obtained the documents in question.⁴ It further states 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 such an appointment.⁵ It claims moreover that the Rwandan government has never responded to Nzirorera's letter requesting disclosure of the statements dated 27 February 2007 and that the Government therefore had had eight months to produce these statements.⁶ The Defence for Nzirorera claims also that lack of access to prior Prosecution witness' statements, while the Government of Rwanda cooperates with the Prosecution, amounts to a denial of equality of arms, guaranteed under Article 19 of the

¹ Joseph Nzirorera's Motion for Request for Cooperation of Government of Rwanda. Statements of Witness BDW, filed on 7 May 2007.

² *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."). Decision on Joseph Nzirorera's Motion for Request for Cooperation of Government of Rwanda: Statements of Witness BDW (TC), 25 July 2007.

³ Joseph Nzirorera's Third Motion to Report Government of Rwanda to United Nations Security Council, filed on 23 October 2007 ("Nzirorera's Motion").

⁴ Nzirorera's Motion, paras. 5-6.

⁵ *Ibid.*, para. 7.

⁶ *Ibid.*, para. 8.

Statute.⁷ 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.⁸ It submits accordingly that the matter be reported to the President of the ICTR for further reporting to the United Nations Security Council forthwith.⁹

5. 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".

6. This Rule provides the 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.¹⁰

7. In view of the circumstances of the case, the Chamber considers that it is immature for the Security Council to be seized with the matter. Accordingly, the Motion should be dismissed in this regard. Thus, the Chamber is of the view that a response from Rwanda to the request for cooperation issued by this Trial Chamber on 25 July 2007 is necessary. It is therefore proper in the circumstances to reiterate the said request, and to urge the Government of Rwanda to react forthwith before 12 November 2007. The Chamber requests the Registrar to contact the Government of Rwanda on this matter as soon as possible, to continue dealing with the matter until a response to the said request is obtained, and to report thereon to the Chamber.

FOR THOSE REASONS, THE CHAMBER

I. DENIES the Defence Motion to Report Government of Rwanda to the United Nations Security Council

⁷ 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, paras. 52, 53; See Nzirorera's Motion, paras. 9-11.


⁸ *Prosecutor v. Blaskic*, Case No. IT-95-14-A, Appeals Chamber, 29 October 1997.

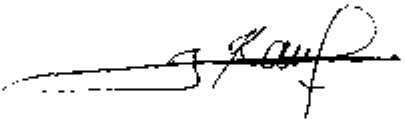
⁹ Nzirorera's Motion, para. 17.


¹⁰ 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.

- II. REMINDS** the Government of Rwanda of its obligation to cooperate with the Tribunal
- III. REQUESTS** the Government of Rwanda to provide a response to the Request for Cooperation of 25 July 2007 as soon as possible and, in any case, before 12 November 2007
- IV. REQUESTS** the Registrar to contact the Government of Rwanda forthwith, to continue dealing with the matter until a response to the Request for Cooperation of 25 July 2007 is received, and to report thereon to the Chamber.

Arusha, 2 November 2007, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge
[Seal of the Tribunal]


Vagn Joensen
Judge

