



## INTRODUCTION

1. By Decision of 2 October 2007, the Chamber granted in part Joseph Nzirorera's Motion for Cooperation of Rwanda to obtain statements of Prosecution witnesses who had already testified in this case ("Decision of 2 October 2007").<sup>1</sup>

2. Thus the Chamber denied Joseph Nzirorera's application to obtain statements of Prosecution Witnesses ALG and GK, on the grounds that the threshold of relevancy that must be met to have a witness recalled should also apply to requests to obtain statements of witnesses who have already testified, and that this requirement had not been met in relation to ALG and GK.<sup>2</sup> On 9 October 2007 the Chamber granted Joseph Nzirorera certification to appeal that part of the Decision.<sup>3</sup>

3. On 8 November 2007, during proceedings, Joseph Nzirorera requested the Chamber to adjourn his cross-examination of Witness AWD until he had obtained the Witness' prior statements, or in the alternative, to reconsider the impugned part of its Decision of 2 October 2007.<sup>4</sup> Joseph Nzirorera argued that he had taken all reasonable steps to timely obtain the prior statements of the Witness before the commencement of his examination. Should the cross-examination be concluded before he had obtained the Witness' prior statements, as a consequence of the Decision of 2 October 2007, Nzirorera claimed he would *de facto* be barred from having the witness recalled, because he would have to meet the threshold of relevancy, not only to have the witness recalled but also to obtain the material that would enable him to ascertain whether that threshold could be met.

4. The Chamber denied Joseph Nzirorera's request for adjournment of the cross-examination of the Witness and indicated that it would rule on the alternative request for reconsideration in a written decision.<sup>5</sup> The Prosecutor submits that the undisclosed material at issue is not relevant as it does not relate to Joseph Nzirorera's guilt or innocence.<sup>6</sup> The Chamber is now ready to rule on the matter.

<sup>1</sup> *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("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

<sup>2</sup> *Karemera et al*, *ibid*.

<sup>3</sup> *Karemera et al*, Decision on Joseph Nzirorera's Application for Certification to Appeal Denial of Motion to Obtain Statements of Witnesses ALG and GK (TC), 9 October 2007

<sup>4</sup> *Karemera et al*, Oral Motion by Joseph Nzirorera (TC), TT, 8 November 2007, p45

<sup>5</sup> *Karemera et al*, Oral Ruling of the Chamber (TC), 8 November 2007, pp47-48

<sup>6</sup> *Karemera et al*, TT, 8 November 2007, pp. 45 - 46.

## DELIBERATION

### On the application for Reconsideration

5. According to the established jurisprudence of the Tribunal, a Chamber has the inherent power to reconsider its decisions. In order for a motion for reconsideration to succeed, the moving party must demonstrate that (i) a new fact has been discovered that was not known to the Chamber at the time it made its original Decision; (ii) there has been a material change in circumstances since it made its original Decision; or (iii) there is reason to believe that its original Decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice thereby warranting the exceptional remedy of reconsideration.<sup>7</sup>

6. The Chamber notes that Joseph Nzirorera's request for the adjournment of the cross-examination of witnesses as a consequence of the Decision of 2 October 2007, if granted, would cause considerable problems in relation to the management of the case. This is a new fact that the Chamber did not take into account when it made its Decision of 2 October 2007. The Chamber also notes that the appeal against the impugned part of the Decision of 2 October 2007 is still pending, but opines that there is a need for the quick resolution of the procedural issues of this case in order for the Prosecutor's case to be completed in this

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<sup>7</sup> *Karemera et al.*, Decision on the Defence Motion for Reconsideration of Sanctions Imposed in Decision on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu, and Omar Serushago (TC), 10 October 2003 ("6. The Chamber considers that none of the reasons submitted in support of the Motion constitute special circumstances warranting a reconsideration of Order II of the Decision of 29 September 2003. The Chamber particularly emphasizes that the issue raised at paragraph 5(ii) above should have been brought to the Chamber's attention at the time of filing of the Motion dismissed in the Decision of 29 September 2003, as this was an issue that Counsel was aware of at the time."); *Karemera et al.*, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses (TC), 29 August 2005 ("8. The Chamber notes its 'inherent power' to reconsider its own decision [...] [and] reminds itself that reconsideration is an exceptional measure available only in particular circumstances such as (i) when a new fact has been discovered that was not previously known to the Chamber, (ii) where new circumstances have arisen since the filing of the impugned decision that affect the premise of the impugned decision, or (iii) where a party shows an error of law or the Chamber abused its discretion, and an injustice has been occasioned"); *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Reconsideration or Certification to Appeal Decision on Motion for Order Allowing Meeting with Defence Witness (TC), 11 October 2005, par. 8; Decision on Reconsideration of Protective Measures for Prosecution Witnesses (TC), 30 October 2006, par. 2; Decision on Reconsideration of Admission of Written Statements in Lieu of Oral Testimony and Admission of the Testimony of Prosecution Witness GAY (TC), 28 September 2007, par. 10; Decision on Joseph Nzirorera's Motion for Reconsideration of Sanctions (TC), 3 October 2007, par. 5. The Appeals Chamber has also rendered decisions on reconsideration in this case: *The Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-AR73(c), Decision on Motions for Reconsideration (AC), 1 December 2006 ("6. The Appeals Chamber may reconsider a previous interlocutory decision under its inherent discretionary power if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice."); Case No. ICTR-98-44-AR11bis, Decision on Motion for Reconsideration of Decision on Joseph Nzirorera's Appeal from Denial of a Request for Designation of a Trial Chamber to Consider Referral to a National Jurisdiction (AC), 21 August 2007, p. 3; Case No. ICTR-98-44-AR73.10, Decision on Ndirumpatse's Motion for Reconsideration (AC), 5 October 2007, p. 3.

session. The outcome of the appeal, however, will concern a large number of cases. The Chamber is therefore satisfied that the requirements for the reconsideration of the impugned part of the Decision of 2 October 2007 have been met.

7. The Chamber maintains that good cause must be shown for recalling a witness. However, on reconsideration, the Chamber finds that when a party, in a timely manner prior to the original examination of a witness, has made all reasonable efforts to obtain the witness' prior statements and/or records and subsequently, after the Witness' testimony, makes a request for cooperation to obtain such material in order to ascertain whether the Witness should be recalled, that party shall only be required to meet the standards that apply before a witness testifies.

**The request for the cooperation of Rwanda.**

8. As explained in the Chamber's Decision of 2 October 2007, the obligation to "cooperate with the [Tribunal] in the investigation and prosecution of persons accused of committing serious violation of international humanitarian law" is imposed on States by Article 28 of the Tribunal's Statute. The service of documents falls under a request for assistance under this provision,<sup>8</sup> and, further, 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. Requirements for the request of production of documents under Article 28 of the Statute have been established by the jurisprudence of this Tribunal and that of the International Criminal Tribunal for the Former Yugoslavia: any request 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>9</sup>

<sup>8</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>9</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, at 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, at para. 6; *Bagosora et al.*, Decision on Request for Assistance Pursuant to Article 28 of the Statute (TC), 27 May 2005, at 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, at para. 32.



9. In the Decision of 2 October 2007 the Chamber has already stated that the criteria under i) and iii) have been met. The Chamber is now further satisfied that Joseph Nzirorera has shown that the documents specified in the Confidential Annex to his Motion are relevant for a fair determination of the credibility of the witnesses concerned. Thus Joseph Nzirorera has also met the criterion under ii).

**FOR THOSE REASONS, THE CHAMBER**

- I. GRANTS** Joseph Nzirorera's Motion for reconsideration;
- II. REQUESTS** the cooperation of the Government of Rwanda to provide the Registry with the statements of Witnesses ALG and GK, 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; and
- IV. DIRECTS** the Registrar to serve this request for cooperation, including the Confidential Annex, on the relevant authorities of the Government of Rwanda.

Arusha, 21 November 2007, done in English.

Dennis C.M. Byron

Presiding Judge

Gberdao Gustave Kam

Judge

Vahne Jensen

Judge

[Seal of the Tribunal]

