

ICTR-00-56-T
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr. Adama Dieng

Date: 14 December 2007

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PROSECUTOR
OFFICE

The PROSECUTOR
v.
Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

DECISION ON NDINDILYIMANA'S REQUEST FOR
THE COOPERATION OF THE KINGDOM OF BELGIUM
FOR THE APPEARANCE OF WITNESSES CBP3 AND CBP4

Office of the Prosecutor:

Mr. Alphonse Van
Mr. Moussa Sefou
Mr. Segun Jegede
Mr. Lloyd Strickland
Mr. Abubacar Tambadou
Ms. Felistas Mushi
Ms. Faria Rekkas
Ms. Marlize Keefer

Counsel for the Defence:

Mr. Gilles St-Laurent and Mr. Ronnie MacDonald for Augustin Bizimungu
Mr. Christopher Black and Mr. Vincent Lurquin for Augustin Ndingilyimana
Mr. Charles Taku and Ms. Beth Lyons for François-Xavier Nzuwonemeye
Mr. Fabien Segatwa and Mr. Seydou Doumbia for Innocent Sagahutu

INTRODUCTION

1. The Prosecution closed its case on 7 December 2006. The Accused Ndingiliyimana is scheduled to start his case on 16 January 2008. On 12 December 2007, the Defence for Ndingiliyimana filed a motion pursuant to Article 28 of the Statute of the Tribunal, requesting the cooperation of the Kingdom of Belgium for the appearance of Defence Witnesses CBP3 and CBP4.¹

DELIBERATIONS

2. Due to the imminent start of the Defence case of the Accused Ndingiliyimana and to ensure the smooth proceedings of the trial in the next session, the Chamber will issue its decision on the Defence motion, without responses from the other parties, if any.

3. Article 28 of the Statute imposes an obligation on States to "cooperate with the International Criminal Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law." According to the jurisprudence of the Tribunal, the Chamber's power under Article 28 may include any request or order, the purpose of which is to assist the Tribunal in its mandate.² Article 28(2) (b) includes requests for State cooperation for the taking of testimony and the production of evidence.

4. A party seeking an order under Article 28 must specify the nature and purpose of the assistance sought from the requested State and its relevance to the trial. It must also demonstrate that efforts have been made to obtain such assistance, and that these efforts have been unsuccessful.³

5. The Defence submits that Witnesses CBP3 (Colonel Luc Marchal) and CBP4 (Colonel André Vincent) are Belgian citizens and were former officers of the Belgian army.⁴ Witness CBP3 also served with the UNAMIR in 1994. The Chamber notes that both witnesses will testify on clearly defined issues relevant to the trial, as delineated in the revised Pre-Defence Brief filed on 3 December 2007. The Chamber further notes that as a general rule, the Kingdom of Belgium requires an order of the relevant Trial Chamber for the appearance of its army officers as witnesses before the Tribunal.⁵ The Chamber is, therefore, satisfied that the requirements of Article 28 are met and requests the cooperation of the Kingdom of Belgium to facilitate the appearance of these witnesses before the Chamber.

6. The Chamber notes that the supporting material indicates that the Office of the Secretary General of the United Nations is seized by a request to waive the immunity of

¹ Augustin Ndingiliyimana's Application for a Judicial Order for the Cooperation of the Kingdom of Belgium for the Appearance of Witnesses CBP3 and CBP4 Pursuant to Rule (sic) 28 of the Statute, filed on 12 December 2007 (Defence Motion).

² Decision on Nzuwonemeye's Motion Requesting Cooperation from the Government of Belgium Pursuant to Article 28 of the Statute (TC), 7 June 2006 (Decision of 7 June 2006), para. 5.

³ Decision of 7 June 2006; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on the Bagosora Defence Request for Subpoena of Ambassador Mpungwe and Cooperation of the United Republic of Tanzania (TC), 29 August 2006, para. 2.

⁴ Defence Motion, para. 2.

⁵ Annexe A, Defence Motion.

Decision on Ndindiliyimana's Request for the Cooperation of the Kingdom of Belgium for the Appearance of Witnesses CBP3 and CBP4

former members of the UNAMIR.⁶ The Chamber reminds the Defence for Ndindiliyimana that this waiver of immunity is required prior to the testimony of Witness CBP3.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Defence motion;

DIRECTS the Registrar to transmit the present decision to the relevant authorities of the Kingdom of Belgium;


REQUESTS the Kingdom of Belgium to facilitate the appearance of Witnesses CBP3 and CBP4 before the Chamber; and

INSTRUCTS the Defence for Ndindiliyimana to present Witness CBP3 as a witness in the case, only after confirmation of the waiver of his immunity.

Arusha, 14 December 2007


Asoka de Silva
Presiding Judge




Tagfirid Hikmet
Judge


Seon Ki Park
Judge

[Seal of the Tribunal]

⁶ *Ibid.*