

ICTR-99-46-T
31-03-2008
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

OFFICE OF THE PRESIDENT

Before Judge: Dennis C. M. Byron
President of the Tribunal

Registrar: Adama Dieng

Date: 31 March 2008

THE PROSECUTOR

v.

André NTAGERURA

Case No. ICTR-99-46-A28

JUDICIAL RECORDS/ARCHIVES
RECEIVED

2008 MAR 31 12 17 36
D. Byron

**DECISION ON MOTION OF ANDRÉ NTAGERURA FOR COOPERATION WITH
CANADA AND FOR REPORTING TO THE SECURITY COUNCIL**

Article 28 of the Statute of the Tribunal

Defence Counsel:
Philippe Larochelle

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INTRODUCTION

1. On 25 February 2004, Trial Chamber III acquitted André Ntagerura of the charges brought against him by the Prosecution.¹ On 8 February 2006,² the Appeals Chamber confirmed the acquittal, giving its full reasons on 7 July 2006.³
2. On 24 October 2007, André Ntagerura filed a "Motion [...] Requesting an Order directed at Canada and Asking the President to Report the Matter to the Security Council". In his motion, André Ntagerura detailed various exchange of communications with the Government of Canada in view of securing his relocation in the country, and argued that the Government failed to provide him with any final response to his application as supported by the Registrar of the Tribunal.

DELIBERATIONS

3. André Ntagerura submitted that the Government of Canada has an obligation as United Nations Member State to cooperate with the Tribunal, pursuant to Article 28 of the Statute of the Tribunal. He argued that Article 28 provides for a list of issues on which such cooperation is required, but that the list is not exhaustive, affirming that the relocation of acquitted person also falls within the umbrella of that provision.
4. André Ntagerura further argued that "[t]he President of the Tribunal has jurisdiction to review the Registrar's actions, and a general political and diplomatic mandate on behalf of the Tribunal under which he can act in this matter". He referred to Rule 19(A) of the Rules of Procedure and Evidence granting the President the authority to coordinate the work of the Trial Chambers, and supervise the activities of the Registry. He also referred to a decision of the Appeals Chamber of the Special Court for Sierra Leone to support the idea that "the President [...] has wide discretion in the exercise of his 'administrative and diplomatic mandate'." He finally affirmed that Trial Chamber III which was seized of the case against him is no longer in existence, and as a consequence, the matter should fall under the President's administrative and diplomatic mandate "acting through the Registrar".

¹ *The Prosecutor v. André Ntagerura, Emmanuel Bagambiki, Samuel Imanishimwe*, Case No. ICTR-99-46-T, Judgement and Sentence (TC3), 25 February 2004.

² *Le Procureur c. André Ntagerura, Emmanuel Bagambiki, Samuel Imanishimwe*, Affaire No. ICTR-99-46-A, Dispositif de l'arrêt concernant l'appel du Procureur s'agissant de l'acquiescement d'André Ntagerura et Emmanuel Bagambiki (Chambre d'appel), 8 février 2006.

³ *The Prosecutor v. André Ntagerura, Emmanuel Bagambiki, Samuel Imanishimwe*, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006.

5. The Applicant has submitted that the jurisdiction to sanction a Member State by reporting to the Security Council is vested in the President pursuant to Rule 7bis. It provides that the President can report to the Security Council upon the request a Trial Chamber, Judge or the Prosecutor under certain circumstances. There is nothing in the Rules which suggests that this or any other sanction can be exercised by the President on his own initiative.

6. There is an even more fundamental problem with the Motion. The Applicant has failed to show that an obligation to cooperate in terms of the Statute had actually arisen. Article 28 requires that Member States of the United Nations cooperate with the Tribunal in its investigations and prosecutions. Article 28(2) specifies that the obligation to cooperate arises on a request for assistance or on an order made by a Trial Chamber. There is no allegation in the submissions made by the Applicant that any such request was made or order issued. In such circumstances, an argument that there has been a breach of obligation in the sense of Rule 7bis is not sustainable. In the absence of such a default an application for the issue of sanctions must fail.

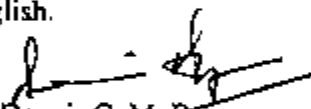
7. The question of whether an application for relocation of an acquitted person is part of the investigation and prosecution process would require being answerable in the affirmative. However, in order for the applicant to have the opportunity for the invocation of Article 28 it would be necessary for a Trial Chamber or a Judge to consider whether a request for the assistance of the Member State should be made. His case having been completed, there is no Trial Chamber or Judge seized of the matter. Rule 19 provides for the President to "coordinate the work of the Chambers", and supports the assignment of a Trial Chamber to deal with the Motion in its merits.

FOR THOSE REASONS, THE PRESIDENT

DENIES the Motion in part;

ASSIGNS Trial Chamber III composed of Judge Dennis Byron (Presiding), Judge Gustave Gberdao Kam and Judge Vagn Joensen to dispose of the motion for cooperation.

Arusha, 31 March 2008, done in English.


Dennis C. M. Byron
President

[Seal of the Tribunal]





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COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

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Case Name:	The Prosecutor vs. André Ntagerura		Case Number: ICTR-99-48-A28	
Dates:	Transmitted: 31 March 2008		Document's date: 31 March 2008	
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