



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
24-08-2009
(47604 - 47602)

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**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER III

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

Registrar: Mr. Adama Dieng

Date: 24 August 2009

THE PROSECUTOR

v.

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

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JUDICIAL DEPARTMENT

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR REQUEST FOR
COOPERATION TO BELGIUM**

Article 28 of the Statute and Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecution:

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

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INTRODUCTION

1. On 29 July 2009, Joseph Nzirorera requested the Registry's assistance in obtaining three documents for his defence from the Belgium government.¹ On 30 July 2009, the Belgian government informed the Registry upon its request on behalf of the Defence that it would not provide such documents in the absence of an order from the Trial Chamber.²
2. On 31 July 2009, Joseph Nzirorera filed a motion seeking to obtain an order from the Chamber to Belgium requiring its cooperation for the production of these documents.³ The Prosecution has not responded to the Motion.

DELIBERATION

3. 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. A request to a Chamber to issue an order under this provision must set forth the nature of the information sought; its relevance to the trial; and the efforts that have been made to obtain it. The type of assistance sought should also be defined with particularity.⁴
4. Joseph Nzirorera is seeking to obtain from the Belgian government the following documents: PV 009627, Eugène Mbarushimana, 2007; PV 140759, Dieudonné Niyitegeka, 2006; PV 025971, Joseph Serugendo, 2007.
5. The Chamber considers that the Motion sufficiently articulates the nature of the information sought as Joseph Nzirorera clearly identifies the documents as being *procès verbaux* ("PVs") in the dossier of Ephrem Nkezabera, a member of the National Committee of the *Interahamwe* currently awaiting Trial in Belgium. Nzirorera also demonstrates that the

¹ *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse, Joseph Nzirorera* ("Karemera et al."), Case No. ICTR-98-44-T, Joseph Nzirorera's Motion for Request for Cooperation to Belgium, 31 July 2009 ("Motion"), para. 2, Annex "A".

² Motion, para. 2, Annex "B".

³ Motion, paras. 1 and 3.

⁴ *Karemera et al.* Decision on Joseph Nzirorera's Motion for Cooperation of the Government of Rwanda: RPF Achieves, 21 January 2008, para. 3; *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T, Decision on Extremely Urgent and Ex Parte Defence Motion for Cooperation of the Kingdom of Belgium, 31 March 2009, para. 2; *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion Regarding Cooperation with the Republic of Burundi, 30 October 2008, paras. 4-5; *The Prosecutor v. André Ntagerura*, Case No. ICTR-99-46-A28, Decision on Motion for André Ntagerura for Cooperation with Canada and for Reporting to the Security Council, 31 March 2008, para. 6.

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documents sought are relevant to his case as he submits that the authors of the three PVs are alleged to be his subordinates and the contents of their PVs relate to the *Interahamwe's* activities and structure. Finally, the Chamber is satisfied that Nzirorera has made efforts to obtain the documents but was unable to do so because of the Belgian law which requires the issuance of a judicial order from the Tribunal before such documents may be produced to the Defence.⁵

6. Accordingly, the Chamber finds that the conditions for the issuance of a request to the Kingdom of Belgium under Article 28 are satisfied.


FOR THESE REASONS, THE CHAMBER,

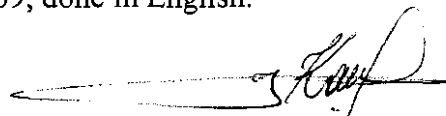
GRANTS Joseph Nzirorera's Motion;

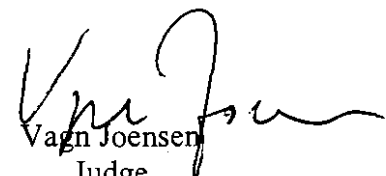
RESPECTFULLY REQUESTS the government of the Kingdom of Belgium to produce the following documents requested by the Defence for Joseph Nzirorera to the extent it possesses such and in whichever form it considers most appropriate: PV 009627, Eugène Mbarushimana, 2007; PV 140759, Dieudonné Niyitegeka, 2006; PV 025971, Joseph Serugendo, 2007; and,

DIRECTS the Registry to immediately transmit this decision to the relevant authorities of the government of Belgium.

Arusha, 24 August 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam


Vagn Joensen
Judge



⁵ Nzirorera's Motion, Annex "B". Art. 50 § 1st paragraph of the Law of 29 March 2004 as amended by the Law of 1 July 2006 states: "*Les demandes du Procureur ou les ordonnances du Tribunal visant à l'accomplissement de mesures relatives à la collecte et à la production d'éléments qui concernent notamment l'identification et la recherche des personnes, la réunion de témoignages, la production de preuves et l'expédition de documents, et qui sont nécessaires à l'instruction ou à la bonne conduite du procès, sont exécutées selon la procédure prévue par la législation belge et, à moins que cette législation ne l'interdise, comme il est dit dans la demande.*"