



UNITED NATIONS
NATIONS UNIES

ICTR-98-44D-1
28-09-2009
(1599 - 1596)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1599
IVAH

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 28 September 2009

THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D-PT

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**DECISION ON CALLIXTE NZABONIMANA'S REQUEST FOR SUBPOENA TO
PROFESSOR PHILIP VERWIMP AND COOPERATION FROM THE KINGDOM
OF BELGIUM**

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

Office of the Prosecution:
Paul Ng'arua
Memory Maposa
Marie Ka

Defence Counsel for Callixte Nzabonimana
Vincent Courcelle-Labrousse
Philippe Laroche

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INTRODUCTION

1. On 11 August 2009, Callixte Nzabonimana filed a Motion requesting the Chamber to issue a subpoena to compel Professor Philip Verwimp (the "Professor") to meet with the Defence¹ in order to assess the relevance of his potential testimony in light of his article, "Testing the Double-Genocide Thesis for Central and Southern Rwanda", published in August 2003 in the *Journal of Conflict Resolution* (the "Article").² The Defence also requests the cooperation of the Kingdom of Belgium in serving the subpoena. The Defence submits that the Professor, despite requests by emails and telephone, has refused to grant it an interview.³ The Prosecution does not in principle object to the Motion.⁴

DELIBERATIONS

2. Pursuant to Rule 54 of the Rules of Procedure and Evidence ("Rules"), a Trial Chamber may issue such subpoenas [...] as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial. A party seeking such an order from the Chamber to compel a potential witness to meet with it is obliged to demonstrate that it has made reasonable attempts to secure the voluntary cooperation of the witness and has been unsuccessful.⁵ Further, the party must have a reasonable belief that the potential witness can materially assist in the preparation of its case.⁶

3. Generally, subpoenas are not to be treated lightly but exceptionally. A subpoena should only be issued if it is at least reasonably likely that an order would produce the degree of cooperation required.⁷

4. The Defence submits that it appears from the Article that the Professor and his team have conducted field research in Gitarama and other *prefectures*⁸ and, from Table 8 of the Article,

¹ Nzabonimana's Request for Subpoena of Professor Philip Verwimp and Cooperation of the Kingdom of Belgium, filed on 11 August 2009 ("Motion").

² See Annex A of the Motion

³ Motion, paras. 11 & 12; Emails sent by Philippe Larochelle dated 19 & 24 April 2009, A telephone conversation of 27 April 2009.

⁴ Prosecutor's Response to Nzabonimana's Motion for Request for Subpoena of Professor Philip Verwimp and Cooperation of the Kingdom of Belgium, filed on 18 August 2009, ("Response").

⁵ *The Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, Case No. ICTR-98-41-T ("*Bagosora et al.*"), Decision on Bagosora's Request to Obtain Cooperation of the Republic of Ghana (TC), 25 May 2004, para. 7; *Bagosora et al.*, Decision on Request for Subpoena Of Major General Yaache and Cooperation of the Republic of Ghana, 23 June 2004, para. 4.

⁶ *The Prosecutor v. Sefer Halilovic*, Case No. IT-01-48-AR73, Decision on Issuance of Subpoenas (AC), 21 June 2004, paras. 6-7; *The Prosecutor v. Radislav Krstic*, Case No. IT-98-33-A, Decision of Application for Subpoena (AC), 1 July 2003, paras. 10-11.

⁷ *The Prosecutor v. Édouard Ka remera, Mathieu Ndirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T, ("*Karemera et al.*"), Decision Joseph Nzirorera's Ex Parte Motion for Order for Interview of Defence Witnesses NZ1, NZ2 and NZ3, 12 July 2006, para.10; *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Subpoena to Amosse Murara, 14 July 2009, para. 3.

that they have "collected data on the identity of people that were killed, the locations where these persons had been killed as well as the identity of the killers".⁹ The Defence further argues that the testimony of the Professor may be material to the Defence case because Callixte Nzabonimana is charged with involvement in a genocide campaign in the *préfecture* of Gitarama.¹⁰

5. The Chamber notes that it appears from the Article that the Professor and his team conducted field research in the summer of 2000 and compared the findings with available data on households surveyed in 1989-1992. Table 8, to which the Defence refers, is titled "Comparing the Pattern of Killing of Hutu and Tutsi in the Sample". Persons killed are only identified as "Tutsi" or "Hutu". Of the number of observations in the sample, 52% of the Tutsi were killed in 1994, and 2% of the Hutu were killed within a time frame of 1994-1998. The locations where they had been killed are indicated, with respect to the Tutsi, as "area of residence, neighbouring communes, church of Kibeho, in Kigali", and with respect to the Hutu, as "Congo, camp of Kibeho, Mukingi, and Kigali". The killers are identified, with respect to the Tutsi, as "*Interahamwe, FAR*", and with respect to the Hutu, as "*RPF, Interahamwe-FAR*". The overall pattern is indicated as follows: with respect to the Tutsi, "household members often killed at the same place and on the same place" and with respect to the Hutu: "households often had no member killed, one member killed or one or more members lost in Congo."¹¹

6. The Chamber further notes that the Article is a scientific work which the Trial Chamber, when appointed, may find admissible as an expert report pursuant to Rule 94 *bis* so that the Professor may be called as an expert witness to testify on the report for the Defence. However, the Chamber observes that it is not apparent from the Defence submissions how issuance of a subpoena to compel the Professor to meet with the Defence could materially assist the Defence in the preparation of its case. The Chamber notes that the Defence fails to sufficiently articulate the relevance of this data to the preparation of its case. Therefore, the Chamber finds that the exceptional measure of compelling the Professor to meet with the Defence by means of a subpoena is not warranted.

7. If the Defence, on the other hand, wishes to interview the Professor to explore whether his research includes data that might serve to rebut the charges against Callixte Nzabonimana, his response, if affirmative, would not be sufficient to call him as an expert witness as Rule 94 *bis* requires that a written statement of his findings be submitted first. However, the Professor

⁸ Motion, para. 4.

⁹ See Annex A of the Motion, p.436.

¹⁰ Motion, paras 1 & 17.

¹¹ See Annex A of the Motion, p.436.


cannot be compelled to reanalyse his research data and make a report. The Chamber therefore finds that a subpoena is not an appropriate means to obtain his cooperation.

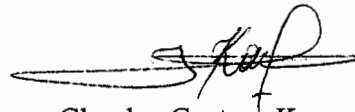
8. Consequently, there is no basis to request the cooperation of the Kingdom of Belgium under Article 28 of the Statute.

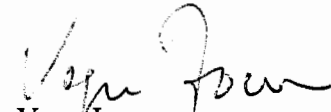
FOR THESE REASONS, THE CHAMBER

DENIES the Motion in its entirety.

Arusha, 28 September 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]

