

ICTR-98-44D-T
03-02-2010
(2990-2986)

2990
Wah



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: 3 February 2010

THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D

JUDICIAL RECORDS ARCHIVES
RECEIVED
2010 FEB -3 P 3:44

DECISION ON REFERRAL BY TRIAL CHAMBER OF THE MATTER OF
FRENCH COOPERATION WITH THE TRIBUNAL TO THE PRESIDENT
PURSUANT TO RULE 54

Rule 7 Bis of the Rules of Procedure and Evidence

Office of the Prosecutor

Paul Ng'arua
Elvis Bazawule
Memory Maposa
Ndeye Marie Ka

Defence Counsel

Vincent Courcelles-Larousse
Philippe Larochelle

JK

2989

INTRODUCTION

1. On 13 November 2009, the Trial Chamber rendered a decision,¹ which addressed the issue of France's compliance with a prior decision of the Chamber dated 19 October 2009 requesting specific information from the French authorities.² The Chamber concluded in its Decision of 13 November 2009 that a stay of proceedings, as requested by the Defence, was not justified. It considered that it had exhausted its powers and referred the matter to the President.³

2. Following the Chamber's decision, the Defence filed on 17 November 2009 a motion requesting the Chamber to clarify the Decision of 13 November 2009 and to allow submissions to the President and the Security Council.⁴ On 18 November 2009, the Trial Coordinator sent an Interoffice-Memorandum to the President, informing him of the Decision of 13 November 2009 and providing a procedural history of events. On 2 December 2009, the Chamber denied the Defence Motion of 17 November 2009.⁵ On the same day, the Defence filed a motion to the Appeals Chamber asking for leave to appeal an *Ultra Vires* Referral to the President by Interoffice Memorandum from a Legal Officer.⁶ On 7 December 2009, the Prosecution asked to dismiss the motion and to sanction Defence Counsel.⁷ On 17 December 2009, the Appeals Chamber assigned judges to the case.⁸

¹ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44-D-T, ("*Nzabonimana*") Decision on Nzabonimana's Motion for Stay of Proceedings, Reconsideration and/or Certification of Decision Rendered on 29 October 2009; and Reconsideration and/or Certification of the Decision rendered on 30 October 2009 (TC), 13 November 2009, ("*Nzabonimana* 13 November 2009 Decision").

² *Nzabonimana*, Decision on Nzabonimana's Motion Asking the Chamber to Request the President to Report the Matter of France's Refusal to Cooperate to the Security Council (TC), 19 October 2009.

³ *Nzabonimana* 13 November 2009 Decision, para. 40.

⁴ , Motion Requesting the Chamber to Allow Nzabonimana to Present Submissions to the President of ICTR and the Security Council on the Matter of France's Refusal to Cooperate with the ICTR and to clarify the Decision of 13 November 2009, filed on 17 November 2009.

⁵ *Nzabonimana*, Decision on Nzabonimana's Motion Requesting the Chamber to Allow Nzabonimana to Present Submissions to the President of ICTR and the Security Council on the Matter of France's Refusal to Cooperate with the ICTR and to clarify the Decision of 13 November 2009 (TC), 2 December 2009.

⁶ Nzabonimana's Motion for Leave to Appeal an *Ultra Vires* Referral to the President in the Form of an Interoffice Memo from a Legal Officer, Trial Chamber III, Dated 18 November 2009, filed on 2 December 2009.

⁷ Prosecutor's Response to Nzabonimana's Motion for Leave to Appeal an *Ultra Vires* Referral to the President in the Form of an Interoffice Memo from a Legal Officer, Trial Chamber III, Dated 18 November 2009, filed on 7 December 2009.

⁸ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44-AR7bis, Order Assigning Judges to a Case before the Appeals Chamber (AC), 17 December 2009.

1 > 2

DELIBERATIONS

3. Article 28 (2) of the Statute of the Tribunal (“Statute”) requires States to comply without undue delay with any requests for assistance or an order issued by the Trial Chamber.

Rule 7bis of the Rules of Procedure and Evidence (“Rules”) provides for the discretionary power of a Trial Chamber to request the President to report a case of failure to comply with the cooperation obligation to the Security Council. The requirement for granting a request under Rule 7 bis is that, except in cases to which Rules 11, 13, 59 or 61 applies, the Chamber has satisfied itself of the non-compliance of a State with its obligations under Article 28 of the Statute.

4. In the Chamber’s Decision of 19 October 2009, cooperation by France was sought on two matters:

First, France was requested to confirm if the French authorities were in the possession of a list of refugees present in the French embassy in Kigali between 7 and 11 April 1994, to confirm, if the list exists, that it will be provided to the Registrar or if not, why not. The French Embassy in Tanzania replied on 28 October 2009 that it could not go beyond prior communications on this issue.

Second, France was requested to provide the Registrar with a copy of a list of personnel working in the French embassy between 7 and 11 April 1994. In its reply of 28 October 2009, the French Embassy provided an excerpt of the diplomatic handbook listing six officially accredited persons.

5. The Chamber noted a positive development in the responses of the French authorities but concluded that the reply by the French Embassy of 28 October 2009 did not adequately respond to the specific requests of the Trial Chamber in its 19 October 2009 Decision.⁹ The Chamber observed that France had not responded to the Chamber’s request regarding the list of refugees, whereas – with regard to the list of employees – France provided incomplete

⁹ *Nzabonimana* 13 November 2009 Decision, para. 39.

information, as it remained unclear whether the provided list included all personnel working at the Embassy during the respective time period.¹⁰

6. Rule 7 *bis* provides for the procedure to be followed to address cases of non-cooperation by a State. Once a formal request is made by the Chamber under Rule 7 *bis* to the President, the Appeals Chamber has held that “apart from the cases provided for in Rule 7 *bis* (B) the President of the International Tribunal simply has the role of *nuncius*, that is to say, he or she shall simply transmit to the Security Council the judicial finding of the relevant Judge or Chamber...”.¹¹

7. However, the Chamber’s 13 November 2009 Decision to refer the matter of cooperation with France to the President was explicitly made pursuant to Rule 54. The Chamber made no explicit finding of non-cooperation and no formal request to the President to refer the matter to the Security Council in accordance with Rule 7 *bis*. The Inter-Office Memorandum of 18 November 2009 sent to the President by the trial coordinator does not constitute a formal request under Rule 7 *bis*.

8. Rule 7 *bis* is *lex specialis* for cases of non-cooperation and provides for a specific procedure to be followed. While Rule 54 gives the Chamber broad discretion to issue orders as may be necessary for the conduct of a trial, it may – as a *lex generalis* – not be used to circumvent the distribution of tasks between the various organs of the Tribunal, as set out in more specific Rules.

9. The role of the President in relation to States regarding non-cooperation is limited to the “*nuncius*” role under Rule 7 *bis*. Other forms of communication with States are either done by the Trial Chamber directly through orders for cooperation under Article 28 of the Statute or through the Registrar, pursuant to Rule 33 (A) in his role as the Tribunal’s channel of communication.

¹⁰ *Nzabonimana* 13 November 2009 Decision, para. 37.

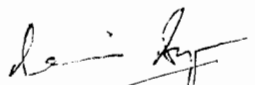
¹¹ *Prosecutor v. Tihomir Blaškić*, Appeals Chamber Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, ICTY Case No. IT-95-14-Ar 108 *bis* (29 Oct. 1997), para. 37.

FOR THOSE REASONS,

THE PRESIDENT

DECIDES that, in the absence of a formal request by the Trial Chamber under Rule 7 *bis*, he has no authority under the Rules to refer the matter of cooperation with France to the Security Council or to take other steps to address the matter.

Arusha, 3 February 2009, done in English.


Dennis C. M. Byron
President

[Seal of the Tribunal]

