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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 5 May 2010

THE PROSECUTION

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

JUDICIAL RECORDS/ARCHIVES
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**DECISION ON JOSEPH NZIRORERA'S THIRD MOTION FOR REQUEST FOR
COOPERATION TO BELGIUM**

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

Office of the Prosecution:
Don Webster
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Dior Diagne Mbaye and Félix Sow

Defence Counsel for Matthieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

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

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INTRODUCTION

1. On 31 July 2009, Joseph Nzirorera moved the Chamber to issue a request for cooperation to the government of Belgium, asking that it produce the following documents, which he considered relevant and necessary to his Defence:¹

PV 009627	Eugene Mbarushimana	2007
PV 140759	Dieudonne Niyitegeka	2006
PV 025971	Joseph Serugendo	2007

The Chamber granted the motion on 24 August 2009.²

2. On 15 January 2010, Joseph Nzirorera filed a second motion requesting the cooperation of the government of Belgium.³ In that motion, he requested the statements of Eugene Mbarushimana (PV #001429/07, dated 11 January 2007) and Dieudonne Niyitegeka (dated 9 and 14 September 2006). Nzirorera also requested records of the testimony of Mbarushimana and Niyitegeka from the trial of Ephrem Nkezabera in November 2009. The Chamber issued a request for cooperation to the government of Belgium for these items.⁴

3. On 25 February 2010, the Belgian government informed the Registrar of the Tribunal that, according to its Federal Prosecutor, it was clear from the Chamber's 24 August 2009 and 29 January 2010 Decisions that counsel for Joseph Nzirorera possessed specific elements of the Federal Prosecutor's file for M. Nkezabera, which should only have been accessible to the parties in that case.⁵ Therefore, the Belgian government stated that it would only cooperate with the Tribunal's request for cooperation if counsel for Nzirorera was required to specifically explain how he obtained the information relative to Nkezabera's file.⁶ Further, the Belgian government suggested that the Chamber reconsider its decisions of 24 August 2009 and 29 January 2010 if it concluded that counsel for Nzirorera had violated rules of confidentiality regarding Nkezabera's file.⁷

¹ Joseph Nzirorera's Motion for Request for Cooperation to Belgium, filed 31 July 2009.

² The Chamber granted the motion for this particular document on 24 August 2009. *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, ("Karemera et al."), Decision on Joseph Nzirorera's Motion for Request for Cooperation to Belgium (TC), 24 August 2009.

³ Joseph Nzirorera's Second Motion for Cooperation to Belgium, filed 15 January 2009.

⁴ *Karemera et al.*, Décision sur la requête de Joseph Nzirorera aux fins d'obtenir la coopération du royaume de Belgique (TC), 29 January 2010.

⁵ *Karemera et al.*, The Registrar's Submission on Decision sur la requete de Joseph Nzirorera aux fins d'obtenir la cooperation du Royaume de la Belgique, filed *ex parte* on 26 March 2010.

⁶ *Id.*

⁷ *Id.*

4. Not having received a response from the Belgian government regarding the requests for cooperation at issue, Joseph Nzirorera moved the Chamber to issue a binding order to Belgium pursuant to Rule 54.⁸ The Prosecution opposes Nzirorera's Motion in its entirety.⁹

DELIBERATION

5. Normally, Rule 75(F)(i) controls situations that concern alleged violations of protective measures for a witness. However, the jurisdiction of this rule only extends to protective measures that were ordered in proceedings before this Tribunal.¹⁰ In contrast, the present situation concerns claims by the government of Belgium that counsel for Nzirorera's may have violated Belgian rules of confidentiality. Therefore, the Chamber does not consider that it has jurisdiction to evaluate whether counsel for Joseph Nzirorera has violated Belgian rules of confidentiality related to his possession of specific elements of the Belgian Federal Prosecutor's file for M. Nkezabera.

6. Nonetheless, the Chamber recalls the Appeals Chamber's finding that the submission of material obtained in direct violation of protective measures ordered by a Trial Chamber seriously undermines the integrity of the Tribunal's proceedings.¹¹ While the Chamber is not faced with a finding that counsel for Joseph Nzirorera has violated protective measures that were ordered by the Tribunal, and makes no conclusion to that effect, it nevertheless considers that the Belgian government's allegation is sufficiently related to the integrity of the Tribunal's proceedings to merit its involvement. Accordingly, the Chamber hereby requests counsel for Joseph Nzirorera to specifically explain to the Government of Belgium how it obtained the information relative to M. Nkezabera's file.

7. While the Chamber acknowledges that it likely lacks the jurisdiction to compel counsel for Joseph Nzirorera to answer the government of Belgium's inquiry, it does not believe that this constitutes the bottom line for whether it should respond. The continued cooperation of States with the Tribunal depends, in great part, on their ability to maintain a positive rapport with the lawyers who practice before it. The Chamber considers that this rapport will be

⁸ Joseph Nzirorera's Third Motion for Request for Cooperation to Belgium, filed on 12 April 2010; Reply Brief: Joseph Nzirorera's Third Motion for Request for Cooperation to Belgium, filed confidentially on 20 April 2010.

⁹ Prosecutor's Response to Joseph Nzirorera's Third Motion for Request for Cooperation to Belgium, filed confidentially on 19 April 2010.

¹⁰ Rule 75(F)(i) states: "Once protective measures have been ordered in respect fo a victim or witness in any proceedings before the Tribunal...such protective measures shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal...unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule..."

¹¹ *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Third Request for Review (AC), 23 January 2008, para. 9.

further bolstered by counsel for Nzirorera's response, which surely contains no reason to doubt its understanding of the rules of professional conduct.

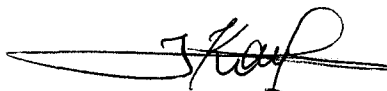
FOR THE ABOVE REASONS, THE CHAMBER

REQUESTS counsel for Joseph Nzirorera to specifically explain to the Government of Belgium how he obtained the information relative to M. Nkezabera's file within four working days of the date this decision is filed.

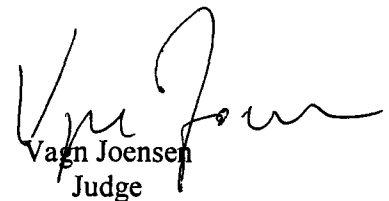
Arusha, 5 May 2010, done in English.



Dennis C. M. Byron
Presiding Judge



Gberdao Gustave Kam
Judge



Vagn Joensen
Judge

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