

ICTR-00-55C-PT
09-06-2010
(1419 - 1415)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 09 June 2010

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09-06-2010
[Signature]

THE PROSECUTION

v.
ILDEPHONSE NIZEYIMANA

Case No. ICTR-00-55C-PT

**DECISION ON ILDEPHONSE NIZEYIMANA'S MOTION
TO SUSPEND TRIAL PROCEEDINGS**

Rule 73 of the Rules of Procedure and Evidence

Office of the Prosecution:
Richard Karegyesa

Defence Counsel:
John Philpot
Cainnech Lussiaà-Berdou

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INTRODUCTION

1. On 28 May 2010, Professor Peter Erlinder who is assigned as Lead Defence Counsel for an accused before this Tribunal was arrested and detained by the Rwandan authorities while on business in Rwanda which did not relate to the Tribunal.
2. On 2 June 2010, Ildephonse Nizeyimana filed a Motion requesting the protection of the Trial Chamber and a suspension of the trial proceedings against him until the release of Peter Erlinder and the withdrawal of all charges against Erlinder.¹ Nizeyimana submits that, according to the available information, the arrest and detention of Peter Erlinder by Rwandan Authorities is based on charges of genocide denial partly with reference to his advocacy for an accused person before this Tribunal and that consequently the arrest of Erlinder threatens all Defence Counsel at the Tribunal and makes it impossible for Nizeyimana's Defence Team to work safely in Rwanda.²
3. The Prosecution opposes the Motion.³ Nizeyimana filed supplemental submissions on 5 June 2010.⁴

DELIBERATION

The Case of Peter Erlinder

4. The Chamber notes that when defence teams wish to conduct investigations in Rwanda, the Registry, in accordance with the provisions of the 1999 Memorandum of Understanding between the United Nations and the Republic of Rwanda to Regulate Matters of Mutual

¹ Motion to Suspend Proceedings, dated 1 June 2010 and filed on 2 June 2010 ("Motion").

² Motion, paras. 14-18.

³ Prosecution Response to Defence Motion to Suspend Trial Proceedings pursuant to Rule 73 (E), filed on 2 June 2010.

⁴ Supplementary Arguments in Motion to Suspend Trial Proceedings, filed on 5 June 2010.

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Concern Relating to the Office in Rwanda of the ICTR ("Memorandum"), notifies the Rwandan Government in order for the defence teams to enjoy the functional immunity and facilities that follow from the Memorandum.

5. Peter Erlinder's current visit to Rwanda is not related to his assignment as Defence Counsel for an accused before the Tribunal.

6. However, the Tribunal is concerned that the arrest and detention of Peter Erlinder might otherwise be related to his functions as a defence counsel for an accused before the Tribunal. Therefore, on 31 May 2010, the Office of the Registrar sent a *note verbale* to the Government of Rwanda requesting clarification regarding the motives for Erlinder's arrest. On 2 June 2010, Rwanda responded that Erlinder's arrest was not related to his assignment at the Tribunal and assured that it remains in full compliance with the provisions of the Memorandum.

7. However, it appears from the available information that the charges against Peter Erlinder are partly related to his submissions before the Tribunal during the *Military I* case. The issue whether as to bring the matter before the Security Council with reference to Articles 28 and 29(4) of the Statute is presently being considered by the President of the Tribunal. Further, the Tribunal continues to monitor the situation with respect to Peter Erlinder's case in Rwanda.

The Case of Ildephonse Nizeyimana

8. Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations ("Immunity Clause") provides that: "[e]xperts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent in connection with their missions. In particular they shall be accorded:

- a) Immunity from personal arrest or detention and from seizure of their personal baggage;
- b) In respect of words spoken or written and acts done by them in the course of their performance of their mission, immunity from legal process of every kind. The immunity from legal process shall continue to be accorded

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notwithstanding that the persons concerned are no longer employed in the mission for the United Nations.

[...]

9. The Memorandum, with reference to the above convention provides that:

“2. [t]he Government of Rwanda shall extend:

“To other persons assigned to the Office whose names shall be communicated to the Government of Rwanda for that purpose, the privileges and immunities to which they are entitled under Articles VI of the Convention”.

10. Section 3 of the Memorandum further specifies the rights and facilities that follow therefrom.

11. The Tribunal, in accordance with the Advisory Opinion of the International Court of Justice on the Applicability of Article VI, Section 22 of the Convention on the Privileges and Immunities of the United Nations, considers defence counsel and their investigators as experts on UN missions, and thus covered by the Immunity Clause and the Memorandum when they conduct investigations in Rwanda that are related to the preparation of their Defence case. This position has previously been communicated to the Government of Rwanda.

12. Since the commencement of the Tribunal, defence teams in all cases before the Tribunal have conducted investigations in Rwanda without interference from the Rwandan authorities.

13. In 2007, a former defence investigator in the *Rukundo* case was arrested by the Rwandan authorities on charges related to his former functions at the Tribunal. Following a *note verbale* from the Tribunal reiterating the Tribunal's position with respect to the status of defence counsel and their investigators, he was released.

14. Currently, a number of defence teams are in Rwanda conducting investigations and the Tribunal has received no complaints about interference from the Rwandan authorities in their missions.

15. Therefore, the Chamber has no reason to be concerned that Ildephonse Nizeyimana's team will not be afforded the rights and facilities that follow from the Immunity Clause and the Memorandum when they conduct investigations in Rwanda pursuant to a notification from the Registry to the Rwandan authorities.

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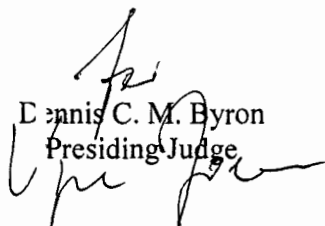
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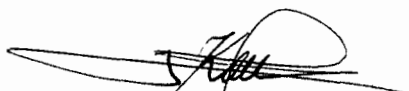
16. Consequently, the Chamber finds that this Motion for suspension of trial proceedings is without merit.

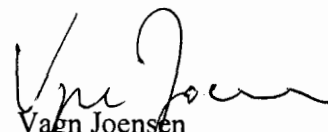
FOR THE ABOVE REASONS, THE CHAMBER

DENIES Ildephonse Nizeyimana Motion in its entirety; and

Arusha, 09 June 2010, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]





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