

ICTR-00-55C-PT
09-06-2010
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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: Mr. Adama Dieng

Date: 9 June 2010

THE PROSECUTOR

v.

Ildephonse NIZEYIMANA
Case No. ICTR-00-55C-PT
EX PARTE

9-06-2010
5:00 p.m.

**DECISION ON ILDEPHONSE NIZEYIMANA'S EX PARTE MOTION FOR
REQUEST FOR COOPERATION TO THE KINGDOM OF BELGIUM**

Article 28 of the Statute and Rules 54 and 73 of the Rules of Procedure and Evidence

Office of the Prosecution:
Richard Karegyesa

Defence Counsel for Ildephonse Nizeyimana
John Philpot and Cainnech Lussiaà-Berdou

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INTRODUCTION

1. On 26 April 2010, Ildephonse Nizeyimana filed a motion seeking to obtain an order from the Chamber requiring cooperation from the Kingdom of Belgium for the production of a case file from the *Cour de Bruxelles*.¹ Nizeyimana filed the motion *ex parte* so as to avoid making confidential and privileged information regarding the orientation of current investigations relating to his defence available to the Prosecution.²

DELIBERATION

2. 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.” Article 28(2)(c) further 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 (i) the nature of the information sought; (ii) its relevance to the trial; and (iii) the efforts that have been made to obtain it. Moreover, the type of assistance sought should be defined with particularity.³

3. Ildephonse Nizeyimana is seeking to obtain from the Kingdom of Belgium the entire case file relating to the case against Vincent Ntezimana (number 30.97.1558/95-No 37/97), including but not limited to the following items: all transcripts from 17 April to 8 June 2001; the judgement; all exhibits considered during the trial; and *dossier d’instruction* (the pre-trial file).⁴

4. Ildephonse Nizeyimana submits that Vincent Ntezimana was charged and convicted for his role in the killing of a Tutsi girl in Ntezimana’s home, an event described in the

¹ *Prosecutor v. Ildephonse Nizeyimana* (“Nizeyimana”), Case No. ICTR-00-55C-PT, *Ex Parte* Defence Motion for Judicial Cooperation with the Kingdom of Belgium, filed on 26 April 2010 (“Motion”), para. 14.

² Motion, para. 22.

³ *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, and Joseph Nzirorera* (“Karemera et al.”), Case No. ICTR-98-44-T, Decision on Joseph Nzirorera’s Motion for Request for Cooperation to Belgium (TC), 24 August 2009, para. 3 (the “Karemera et al. Cooperation Decision of August 2009”); *Karemera et al.*, Decision on Joseph Nzirorera’s Motion for Cooperation of the Government of Rwanda: RPF Achieves (TC), 21 January 2008, para. 3; *Karemera et al.*, Decision on Joseph Nzirorera’s Motion for Request for Cooperation of Government of Rwanda: Statements of Witness BDW (TC), 25 July 2007, para. 4; *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 (TC), 31 March 2009, para. 2; *Prosecutor v. Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bikamumpaka, and Prosper Mugiraneza*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza’s Motion Regarding Cooperation with the Republic of Burundi (TC), 30 October 2008, paras. 4, 5.

⁴ Motion, para. 14.

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Indictment and a witness statement of the present case.⁵ Nizeyimana also submits that Ntezimana was charged for his role in the killing of Professor Pierre Claver Karenzi, a civilian Tutsi, and his family, events described in the Indictment of the present case and included in an excerpt of the trial proceedings for Ntezimana available on the internet.⁶

5. The Chamber considers that the Motion sufficiently articulates the nature of the information sought: Ildephonse Nizeyimana clearly identifies the documents as being those materials included in the dossier of Vincent Ntezimana, a doctor convicted by a Belgian court in 2001 for his involvement in killings in Rwanda in 1994. The Chamber is also satisfied that Nizeyimana has made sufficient efforts to obtain the documents but was unable to do so because Belgian law requires the issuance of a judicial order from the Tribunal before such documents may be produced to Nizeyimana.⁷

6. However, the Chamber is not satisfied that Ildephonse Nizeyimana has demonstrated that all of the documents sought are relevant to his case. Nizeyimana submits that Vincent Ntezimana was charged and convicted for his role in some of the same events as those alleged in the Indictment – the killing of a Tutsi girl in Ntezimana's home and the killings of Professor Pierre Claver Karenzi and his family. Nizeyimana has not, however, demonstrated that all of the items in the case file other than those relating to these two events are relevant to his trial.⁸ As such, the Chamber finds that the entirety of the requested information is not sufficiently relevant and that the request is not adequately particular.

7. Accordingly, the Chamber finds that the conditions for the issuance of a request to the Kingdom of Belgium under Article 28 are satisfied only insofar as the request pertains to documents relevant to Ildephonse Nizeyimana's case, namely: the items of the requested case file relating to the killing of a Tutsi girl in Vincent Ntezimana's home, and those relating to the killing of Professor Pierre Claver Karenzi and his family.

⁵ Motion, paras. 2-4; *Nizeyimana*, Amended Indictment, 1 March 2010 ("Amended Indictment"), para. 19.

⁶ Motion, paras. 5-6; Amended Indictment, paras. 22-23.

⁷ Motion, paras. 7-9, 18-19, Annex 3. Ildephonse Nizeyimana requested the Registry's assistance in obtaining the case file. In response to the Registry's request on Nizeyimana's behalf, the Kingdom of Belgium indicated that according to Article 50 § 1 of the Law of 29 March 2004, "*il ne nous est pas possible de donner suite à une demande émanant d'un conseil de la Défense, à défaut d'ordonnance rendue par la Chambre compétente sollicitant la coopération des autorités belges en l'espèce, conformément à l'article 50§1^{er} de la loi belge du 29 mars 2004 concernant la coopération avec le TPIR.*"

⁸ Cf. the *Karemera et. al.* Cooperation Decision of August 2009. In that decision, the Chamber granted Joseph Nzirorera's request to produce only three *procès verbaux* ("PVs") from the dossier of a case that was currently awaiting trial before a Belgian court.

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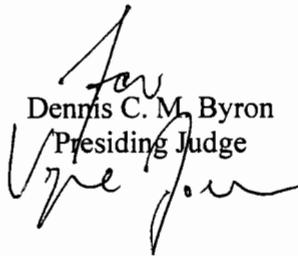
FOR THESE REASONS, THE CHAMBER,

GRANTS Ildephonse Nizeyimana's Motion in part;

RESPECTFULLY REQUESTS the government of the Kingdom of Belgium to produce the following documents requested by Ildephonse Nizeyimana to the extent it possesses such and in whichever form it considers most appropriate: the documents of the case file of Vincent Ntezimana (number 30.97.1558/95-No 37/97) pertaining to the killing of a Tutsi girl in the home of Ntezimana; and those documents of the same case file pertaining to the killing of Professor Pierre Claver Karenzi and his family; and

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

Arusha, 9 June 2010, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]

