



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:** 09 June 2010

**THE PROSECUTOR**

v.

**Ildephonse NIZEYIMANA**

*Case No. ICTR-00-55C-PT*

*EX PARTE*

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**DECISION ON ILDEPHONSE NIZEYIMANA'S *EX PARTE* MOTION FOR  
REQUEST FOR COOPERATION TO THE UNITED NATIONS ORGANIZATION  
MISSION IN DEMOCRATIC REPUBLIC OF THE CONGO**

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

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**Office of the Prosecution:**  
Richard Karegyesa

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

1. On 6 May 2010, Ildephonse Nizeyimana filed a motion seeking to obtain an order from the Chamber requiring cooperation from the United Nations Organization Mission in the Democratic Republic of the Congo ("MONUC") with respect to logistical assistance in completing its investigations.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

3. Ildephonse Nizeyimana is seeking to obtain cooperation and assistance from MONUC, including but not limited to the following: secure air transport to a location inside the Democratic Republic of the Congo ("DRC"); secure road transport within the DRC to and from locations, namely Kimu and Mutombo; secure facilities for lodging in a mobile camp; and access to secure facilities to interview potential witnesses and prepare statements (if possible).<sup>4</sup>

4. Ildephonse Nizeyimana submits that there are a number of possible witnesses located within the territory of the DRC, who are "potentially pivotal for the defence case"<sup>5</sup> and as a result of the situation at present in the DRC, the assistance of MONUC is required in order to guarantee the security of his team members while completing the investigations.<sup>6</sup>

5. The Chamber considers that the Motion sufficiently articulates the nature of the assistance sought: Ildephonse Nizeyimana clearly identifies and lists the witnesses which he seeks to obtain access to and the type of information they could provide. He also specifies the

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<sup>1</sup> *Ex Parte* Defence Motion for Judicial Cooperation of the United Nations Organization Mission in DR Congo, filed on 6 May 2010 ("Motion"), paras. 4, 14.

<sup>2</sup> Motion, para. 27.

<sup>3</sup> *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, 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, 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, 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, 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, 30 October 2008, paras. 4-5.

<sup>4</sup> Motion, para. 17.

<sup>5</sup> Motion, para. 20.

<sup>6</sup> Motion, paras. 4, 16.

locations where such meetings could potentially take place and the logistical support required such as secure air and road passage with the assistance of MONUC.<sup>7</sup>

6. The Chamber is satisfied that Ildephonse Nizeyimana has demonstrated that the information sought, the testimony of the potential witnesses, is relevant to his case. Nizeyimana submits that the witnesses will provide information regarding the *École des sous-officiers* ("ESO") in which he worked. With reference to the Indictment, the information pertains to the inner operations of the ESO, the superior command responsibility allegations and associated assassinations.<sup>8</sup>

7. However, the Chamber is not satisfied that adequate efforts were made to obtain cooperation through the appropriate authorities. With respect to this kind of request, the DRC should first be contacted to ascertain whether they can provide the assistance required. Therefore, the request should be directed to the Government of the DRC through the Registrar of the Tribunal.

8. Accordingly, the Chamber finds that the conditions for the issuance of a request to the MONUC under Article 28 are not satisfied, as all reasonably adequate and practicable measures have not been taken prior to seeking the order.

**FOR THESE REASONS, THE CHAMBER,**

**DENIES** Ildephonse Nizeyimana's Motion.

**RESPECTFULLY REQUESTS** the Registrar use his good offices to help coordinate the request of Ildephonse Nizeyimana with the authorities of the Democratic Republic of the Congo.

Arusha, 09 June 2010, done in English.

Dennis C. M. Byron  
Presiding Judge

Gberdao Gustave Kam  
Judge  
[Seal of the Tribunal]

Vagn Joensen  
Judge

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<sup>7</sup> Motion, paras. 16,17, 19. The list of witnesses is not exhaustive but is sufficiently detailed to the extent that the information is available at present to the Defence. The locations are open to change and determinable on the advice of MONUC.

<sup>8</sup> Motion, para. 19.