



ICTR-00-55C-T
03-05-2011
(6051-6048)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

6051
AM

OR: ENG

TRIAL CHAMBER III

Before Judges: Lee Gacuga Muthoga, *Presiding*
Seon Ki Park
Robert Fremr

Registrar: Adama Dieng

Date: 3 May 2011

THE PROSECUTOR

v.

Ildéphonse NIZEYIMANA

CASE NO. ICTR-2000-55C-T

**DECISION ON CONFIDENTIAL, EX PARTE DEFENCE MOTION FOR JUDICIAL
COOPERATION OF THE GOVERNMENT OF BELGIUM**

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

Office of the Prosecution:

Drew White
Kirsten Gray
Yasmine Chubin
Zahida Virani
Astou Mbow

Defence Counsel for Ildéphonse Nizeyimana:

John Philpot
Cainnech Lussiaà-Berdou
Myriam Bouazdi

INTRODUCTION

1. The trial commenced on 17 January 2011 with the opening statements of both the Prosecution and the Defence. The Prosecution closed its case-in-chief on Friday, 25 February 2011, after having called 38 witnesses. The Defence case is scheduled to commence on 9 May 2011.

2. On 20 April 2011, Defence team of the Accused, Ildéphonse Nizeyimana ("the Defence" and "the Accused" respectively) filed a confidential *ex parte* motion for cooperation and judicial assistance from the Kingdom of Belgium.¹ The Defence requests that the Trial Chamber ask the Kingdom of Belgium to cooperate with the Tribunal and provide written confirmation of their assistance in transferring Defence witness Alphonse Higaniro to Arusha for purposes of hearing his testimony, or, alternatively, to facilitate the hearing of his testimony via video-link in Belgium or any other location deemed appropriate.²

DELIBERATIONS

3. Article 28(1) of the ICTR Statute provides that, "States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law."

4. Article 28(2) mandates that

States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including but not limited to:

- (a) The identification and location of persons;
- (b) The taking of testimony and the production of evidence;
- (c) The service of documents;
- (d) The arrest or detention of persons;
- (e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

5. According to the jurisprudence of the Tribunal, a party requesting an order for State cooperation or judicial assistance under Article 28 must identify, to the extent possible, the

¹ Nizeyimana Defense Extremely Urgent Ex Parte Motion for Judicial Cooperation from the Kingdom of Belgium ("Motion"), 20 April 2011.

² Motion, para. 12.



information sought; its relevance to the trial; and the efforts that have been made to obtain it.³ The requesting party should also define with particularity the type of assistance sought.⁴

6. According to the Defence, Higaniro is expected to provide testimony regarding the whereabouts of the Accused between the end of April and the beginning of May 1994.⁵ Higaniro is further expected to provide evidence in contradiction to that of Prosecution Witness AJP's testimony.⁶ Having considered the summary of Higaniro's expected testimony, the Chamber is satisfied that the witness's testimony could be important for the Defence's case.

7. The Chamber further notes the effort made by the Defence to secure judicial cooperation from the Belgian government in this matter.⁷ The Defence presented documentation showing that it requested assistance from the Belgian government in facilitating the hearing of Higaniro's testimony from Belgium.⁸ The Belgian government replied that, in accordance with its national legislation, it cannot assist the Defence in this matter without an order from the Trial Chamber.⁹ The Chamber is satisfied that the Defence has demonstrated that it has made reasonable efforts to obtain the assistance requested without recourse to Article 28.

8. Finally, a Party requesting an order under Article 28 of the Statute must define the assistance sought with particularity.¹⁰ The Defence requests that the Belgian government provide (1) "a written confirmation from Belgium that and (sic) judicial assistance to WVSS to organize [Higaniro's] transfer to Arusha or; (2) judicial assistance in organizing Alphonse Higaniro's videolink testimony from Belgian territory or any other location deemed

³ See, e.g., *Prosecutor v. Ngirabatware*, Case No. ICTR-99-54-T, Decision on Defence Motion for an Order Directed at Switzerland (TC), 28 April 2010, para. 6; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nziirorera's Motion for Cooperation of the Government of Rwanda: RPF Archives (TC), 21 January 2008, para. 3; *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Casmir Bizimungu's Requests for Disclosure of the Bruguière Report and the Cooperation of France (TC), 25 September 2006, para. 25; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Request to the Government of Rwanda for Cooperation and Assistance Pursuant to Article 28 of the Statute (TC), 10 March 2004, para. 4.

⁴ *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Request to the Kingdom of The Netherlands for Cooperation and Assistance (TC) ("Bagosora Decision of 7 February 2005"), 7 February 2005, para. 5.

⁵ Motion, paras. 13-16.

⁶ Motion, para. 16.

⁷ Annexure 2.

⁸ *Ibid.*

⁹ Annexure 3.

¹⁰ Bagosora Decision of 7 February 2005, para. 5.

appropriate.”¹¹ The Chamber is satisfied that the Defence has sufficiently defined the type of assistance sought in this case.

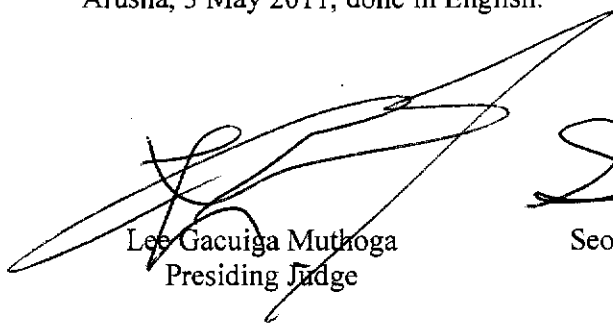
FOR THESE REASONS, THE CHAMBER

GRANTS the Defence motion;

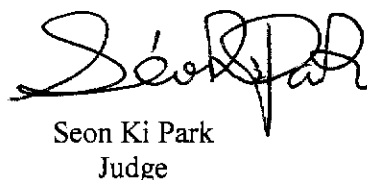
REQUESTS the Kingdom of Belgium to confirm to the Defence team for Ildéphonse Nizeyimana that it will assist in transporting Alphonse Higaniro to testify in Arusha, and alternatively, with a hearing of the testimony via video-link from Belgium, or in another destination in Europe should the Chamber so order; and

DIRECTS the Registry to transmit the present Order to the Kingdom of Belgium, and to report back to the Chamber on its implementation.

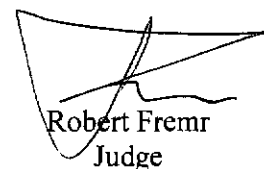
Arusha, 3 May 2011, done in English.



Lee Gacuiga Muthoga
Presiding Judge



Seon Ki Park
Judge



Robert Fremr
Judge

[Seal of the Tribunal]



¹¹ Motion, para. 12.