



UNITED NATIONS  
NATIONS UNIES

ICTR-98-440-T 4283  
05-05-2010  
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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**OFFICE OF THE PRESIDENT**

**Before Judge:** Dennis C. M. Byron  
*President of the Tribunal*

**Registrar:** Adama Dieng

**Date:** 5 May 2010

JUDICIAL RECORDS/ARCHIVES  
2010 MAY -5 10 34 PM  
ICTR

**THE PROSECUTOR**

v.

**Callixte NZABONIMANA**

*Case No. ICTR-98-44D*

**DECISION ON NZABONIMANA'S MOTION FOR THE IMPLEMENTATION OF  
THE ORDER OF TRIAL CHAMBER III OF 4 MARCH 2010 AND FOR ALLOWING  
THE DEFENCE TO MAKE SUBMISSIONS BEFORE THE SECURITY COUNCIL**

*Rule 7 Bis of the Rules of Procedure and Evidence*

**Office of the Prosecutor**

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**Defence Counsel**

Vincent Courcelles-Larousse  
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## INTRODUCTION

1. On 21 April 2010, the Defence filed the present Motion before the President of the Tribunal for the Implementation of the Order of the Trial Chamber of 4 March 2010.<sup>1</sup> On 23 April 2010, the Prosecutor filed a response opposing the Defence Motion.<sup>2</sup> In its Decision of 4 March 2010, the Trial Chamber requested the President of the Tribunal to report the failure of the Government of France to comply with its obligations pursuant to Article 28 of the Statute and Rule 7 *bis* of the Rules of Procedure and Evidence to the Security Council.<sup>3</sup>

2. On 16 March 2010, the Registry received a *Note Verbale* from the French Embassy to which were appended several documents containing new information relating to the request for cooperation by the Trial Chamber.<sup>4</sup> On 19 March 2010, the Trial Chamber instructed the Parties to make submissions on the information provided by France.<sup>5</sup> On 23 March 2010, the Defence filed its submission that France had not complied with previous Trial Chamber Decisions.<sup>6</sup> On 24 March 2010, the Prosecution responded to the Defence submissions.<sup>7</sup> On 30 March 2010, the Trial Chamber sent an *Interoffice Memorandum* to the President of the Tribunal, requesting that the President take no action with respect to its Rule 7 *bis* Decision of 4 March 2010 as the matter was under reconsideration.<sup>8</sup>

3. On 23 April 2010, the Trial Chamber issued an Order requesting the President of the Tribunal to rescind its decision of 4 March 2010.<sup>9</sup> On 28 April 2010, the Defence filed a reply to the Prosecutor's response of 23 April 2010.<sup>10</sup>

<sup>1</sup> *Nzabonimana*, Nzabonimana's Motion for the Implementation of the Order of Trial Chamber III of 4 March 2010 and for allowing the Defence to make Submissions before the Security Council, 21 April 2010.

<sup>2</sup> *Nzabonimana*, Prosecutor's Response to Nzabonimana's Motion for the Implementation of the Order of Trial Chamber III of 4 March 2010 and for allowing the Defence to make Submissions before the Security Council, 23 April 2010.

<sup>3</sup> *Nzabonimana*, Decision on Defence Motion to Reconsider Prior Trial Chamber Decisions on France's Cooperation with the Tribunal, 4 March 2010 (TC).

<sup>4</sup> *Note Verbale* from the French Embassy to the Registry received on 16 March 2010.

<sup>5</sup> Email sent to the Parties through the Court Management Section ("CMS") on 19 March 2010.

<sup>6</sup> *Nzabonimana*, Nzabonimana's Submissions Concerning the Documents Received from France on 16 March 2010, 23 March 2010.

<sup>7</sup> *Nzabonimana*, Prosecutor's Response to Defence Submissions Concerning the Documents Received from France on 16 March 2010, 24 March 2010.

<sup>8</sup> *Interoffice Memorandum* from Judge Solomy Balungi Bossa, Presiding Judge, Trial Chamber III, Subject: *Nzabonimana*- Cooperation with France, dated 30 March 2010.

<sup>9</sup> *Nzabonimana*, Order Requesting the President of the Tribunal to Rescind the Decision of 4 March 2010, 23 April 2010 ("*Nzabonimana* 23 April 2010 Order").

## DELIBERATIONS

4. Article 28 (2) of the Statute of the Tribunal (“Statute”) requires States to comply without undue delay with any requests for assistance or an order issued by the Trial Chamber. Rule 7 *bis* of the Rules of Procedure and Evidence (“Rules”) provides for the discretionary power of a Trial Chamber to request the President to report a case of failure to comply with the cooperation obligation to the Security Council. The requirement for granting a request under Rule 7 *bis* is that, except in cases to which Rules 11, 13, 59 or 61 applies, the Chamber has satisfied itself of the non-compliance of a State with its obligations under Article 28 of the Statute.

5. Rule 7 *bis* provides for the procedure to be followed to address cases of non-cooperation by a State. The Appeals Chamber has held that “apart from the cases provided for in Rule 7 *bis* (B) [which refers to submissions about non-cooperation made by the Prosecutor, not by a Chamber] the President of the International Tribunal simply has the role of *nuncius*, that is to say, he or she shall simply transmit to the Security Council the judicial finding of the relevant Judge or Chamber...”<sup>11</sup>

6. This distribution of powers between the Trial Chamber and the President with the President as the “*nuncius*” of the Trial Chamber, implies that it is also in the power of the Trial Chamber at any given moment until the request for transmission to the Security Council has been implemented to reconsider its decision and to rescind a request made under Rule 7 *bis* (B) if a change in circumstances occurs that affects the assessment of the Chamber that a Member State has violated its obligations under Article 28 of the Statute.

7. In Chamber Decisions of 19 October 2009<sup>12</sup> and 13 November 2009,<sup>13</sup> referred to in the Chamber’s Decision of 4 March 2010, cooperation by France was sought on two matters:

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<sup>10</sup> *Nzabonimana*, Reply to Prosecutor’s Response to Nzabonimana’s Motion for the Implementation of the Order of Trial Chamber III of 4 March 2010 and for allowing the Defence to make Submissions before the Security Council, 28 April 2010.

<sup>11</sup> *Prosecutor v. Tihomir Blaškić*, ICTY Case No. IT-95-14-Ar 108 *bis*, Appeals Chamber Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 October 1997, para. 37.

<sup>12</sup> *Nzabonimana*, Decision on Nzabonimana’s Motion Asking the Chamber to Request the President to Report the Matter of France’s Refusal to Cooperate to the Security Council (TC), 19 October 2009.

<sup>13</sup> *Nzabonimana*, Decision on Nzabonimana’s Motion for Stay of Proceedings, Reconsideration and/or Certification of Decision Rendered on 29 October 2009; and Reconsideration and/or Certification of the Decision rendered on 30 October 2009 (TC), 13 November 2009.

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First, France was requested to confirm if the French authorities were in the possession of a list of refugees present in the French embassy in Kigali between 7 and 11 April 1994, to confirm, if the list exists, that it will be provided to the Registrar or if not, why not.

Second, France was requested to provide the Registrar with a copy of a list of personnel working in the French embassy between 7 and 11 April 1994.

8. In its Order of 23 April 2010, rescinding its prior Decision of 4 March 2010, the Trial Chamber stated that it was satisfied that France had through its transmission of documents on 11 March 2010 complied with both requests and therefore with its obligations pursuant to Article 28.<sup>14</sup>

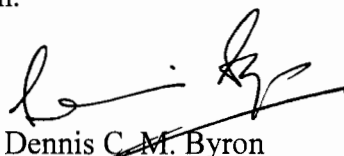
9. In light of this statement by the Trial Chamber, it is not within the jurisdiction of the President to replace the assessment of the Chamber about a Member State's violation of Article 28 of the Statute at the request of a party with his own. A Party disputing the assessment of the Chamber must seek to address this dispute through the normal appeals procedure.

**FOR THOSE REASONS,**

**THE PRESIDENT**

**DISMISSES** the Motion as moot in light of the Order of the Trial Chamber of 23 April 2010.

Arusha, 5 May 2010, done in English.



Dennis C. M. Byron  
President

[Seal of the Tribunal]



<sup>14</sup> *Nzabonimana*, 23 April 2010 Order, para. 20.