



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
21-01-2008
(33530 - 33528)

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Duff

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:

Adama Dieng

Date:

21 January 2008

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21-01-2008
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THE PROSECUTION

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR COOPERATION OF
THE GOVERNMENT OF RWANDA: RPF ARCHIVES**

Article 28 of the Statute & Rule 54 of the Rules of Procedure and Evidence

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Defence Counsel for Joseph Nzirorera
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INTRODUCTION

1. On 7 January 2008, Joseph Nzirorera filed a "Motion for Request for Cooperation to Government of Rwanda: RPF Archives". Joseph Nzirorera moves the Chamber, pursuant to Article 28 and Rule 54 of the Rules of Procedure and Evidence ("Rules"), to request the Government of Rwanda to allow him access to all correspondence, notes, memoranda, or official documents from July 1991 through July 1994 purportedly recovered from the MRND party or its officials or agents to which the Prosecutor had been granted access.¹ Joseph Nzirorera outlines therein the various steps taken to seek access to these materials,² noting that the materials were referenced in the Prosecutor's prior motion on the admission into evidence of certain documents marked IP-005 and IP-006.³

2. On 8 January 2008 the Prosecutor filed its response, informing the Chamber that it does not take any position on the request, and leaves the matter to the discretion of the Chamber.⁴ The two co-Accused made no submissions on this issue.

DELIBERATION

3. The Chamber recalls that "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'. Moreover, Article 28(2)(c) prescribes that States shall comply without undue delay with any request for cooperation issued by a Trial Chamber for the service of documents. Any request for the production of documents, under Article 28 of the Statute, must (i) identify as far as possible the documents or information to which the application relates; (ii) set out succinctly the reasons why such documents are deemed relevant to the trial; and (iii) explain the steps taken by the applicant to secure the State's assistance."⁵

¹ Nzirorera's Motion, para. 1.

² Nzirorera's Motion, paras. 5-12.

³ Nzirorera's Motion, para. 2; *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera* ("Karemera et al."), Prosecutor's Motion for Reconsideration of Oral Decisions of 25 June 2007 and 3 July 2007 Concerning Admission in Evidence of Documents Marked IP-005 and IP-006, filed on 16 August 2007.

⁴ Prosecutor's Response to Joseph Nzirorera's Motion for Cooperation to Government of Rwanda: RPF Archives, filed on 7 January 2008, para. 2.

⁵ See *Karemera et al.*, Decision on Defence Motion for Request for Cooperation of Government of Rwanda: Statements of Witness BDW (TC 3), 25 July 2007, para. 4; *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Cooperation of Rwanda to Obtain Statements of Prosecution Witnesses AWD and AJY (TC3), 1 November 2007, para. 2; *Prosecutor v. Théoneste 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; *Prosecutor v. Karemera et al.*, Decision on Defence Motion for Cooperation of Rwanda to Obtain Statements of Prosecution Witnesses ALG, GK and UB (TC), 2 October 2007, para. 6; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on the Defence for Bagosora's Request to Obtain

4. In regard to the first criteria of specificity, the Chamber considers that the request can refer to specific documents or to a clearly defined category of documents. The Chamber is of the view that Joseph Nzirorera has identified the category of material he seeks to access, which material the RPF and Office of the Prosecutor have acknowledged presently exists as a collection located in the RPF Secretariat building in Kigali.

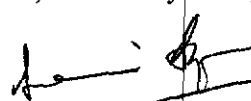
5. The Chamber is also satisfied that Joseph Nzirorera has shown that the material is relevant to the allegation in the Indictment of the existence of joint criminal enterprise amongst the MRND leadership prior to the genocide.⁶

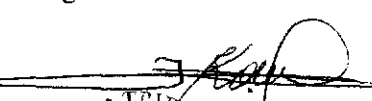
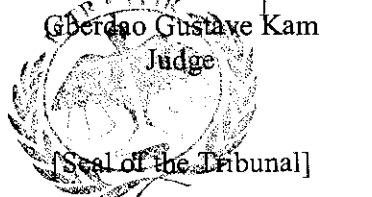
6. The Chamber further considers that Joseph Nzirorera sufficiently details the steps taken to secure the State's assistance in accessing the said materials.⁷ Finally, the Chamber observes that the Prosecutor made no objections to Joseph Nzirorera's submissions in support of his claim to have satisfied the above criteria.

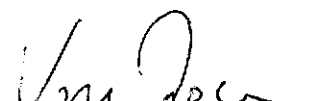
FOR THOSE REASONS, THE CHAMBER,

- I. **GRANTS** Joseph Nzirorera's request for cooperation of the Government of Rwanda;
- II. **REQUESTS** the cooperation of the Government of Rwanda to provide Joseph Nzirorera with the opportunity to inspect and to copy whenever necessary all correspondence, notes, memoranda, or official documents from July 1991 through July 1994 purportedly recovered from the MRND party or its officials or agents and to which the prosecution has been given access, which materials are stored in the RPF Archives in Kigali;
- III. **DIRECTS** the Registrar to serve this request for cooperation on the relevant authorities of the Government of Rwanda.

Arusha, 21 January 2008, done in English.


Dennis C. M. Byron
Presiding Judge

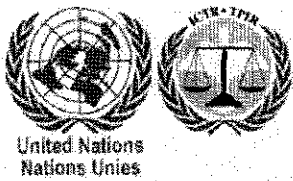

Gberdao Gustave Kam
Judge



Vagn Joensen
Judge

the Cooperation of the Republic of Ghana (TC), 25 May 2004, para. 6; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Request for Assistance Pursuant to Article 28 of the Statute (TC), 27 May 2005, para. 2; see also *Prosecutor v. Blaskic*, Case No. IT-95-14, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997 (AC), 29 October 1997, para. 32; *Prosecutor v. Ndindiyimana et al.*, Decision on Nzuwonemeye's Motion Requesting the Cooperation of the Government of the Netherlands Pursuant to Article 28 of the Statute, 13 February 2006, para. 6.

⁶ Nzirorera's Motion, para. 18.

⁷ Nzirorera's Motion, paras. 5-12.



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