

ICTR-98-44-PT
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(19325-19321)

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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
Emile Francis Short
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 19 April 2005

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-PT

JUDICIAL RECORDS/ARCHIVES
ICTR

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**DECISION ON JOSEPH NZIRORERA'S MOTION FOR A REQUEST FOR
GOVERNMENTAL COOPERATION**

Article 28 of the Statute

Office of the Prosecutor:
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Takeh Sendze

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Dior Diagne Mbaye and Félix Sow

Defence Counsel for Mathieu Ngirumpatse
Charles Roach and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal"),

SITTING as Trial Chamber III, composed of Judge Dennis C. M. Byron, Presiding Judge, Judge Emile Francis Short and Judge Gberdao Gustave Kam ("Chamber");

BEING SEIZED "Motion for Request for Cooperation to Government X" ("Motion"), filed by the Defence for Joseph Nzirorera ("Defence") on 20 September 2004;

CONSIDERING the Prosecution's Response filed on 27 September 2004 and the Defence Reply thereto, filed on 29 September 2004;

HEREBY DECIDES the Motion, pursuant to Rule 73(A) of the Rules of Procedure and Evidence ("Rules").

INTRODUCTION

1. While the appeal on continuation of the trial was pending before the Appeals Chamber,¹ the parties case continued to file motions. Those motions remained pending. Upon the appointment of the Presiding Judge, a Status Conference was held on 26 November 2004, where it was noted that six of those motions filed by the Accused Nzirorera, including the current Motion, were still pending.² Having granted leave, on 14 February 2005, to file a Separate Amended Indictment against Rwamakuba and an Amended Indictment against Karemera, Ngirumpatse and Nzirorera,³ the Chamber may now address these Motions.

ARGUMENTS OF THE PARTIES*Defence*

2. The Defence moves the Chamber to issue a request for cooperation to the government of a certain State⁴ to obtain documents that show the total amount of money expended for the benefit of a certain Witness⁵ and his family while in the witness protection program of this State. The Defence submits that the documents sought

- (i) are limited in scope and precisely specified;
- (ii) are relevant to a matter in issue before the Chamber and necessary for a fair determination of that matter since they are relevant in order to assess the credibility of the respective Witness; and
- (iii) could not be obtained through prior efforts deployed by the Defence since it did not receive an answer to the letter it had sent to the respective government.

¹ *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera and André Rwamakuba*, Case No. ICTR-98-44-AR15bis.2 (*Karemera et al.*), Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 28 September 2004; *Karemera et al.*, Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 22 October 2004.

² See Oral Decision, Transcripts of 26 November 2004, pp. 1-2.

³ *Karemera et al.*, Decision on Severance of André Rwamakuba and for Leave to File Amended Indictment (TC), 14 February 2005.

⁴ The Defence defines the State by reference to a document on file with the Registry. The State is specified in a strictly confidential annex to this Decision which has been put under seal.

⁵ The Defence specifies the Witness by reference to his pseudonym. The pseudonym is indicated in a strictly confidential annex to this Decision which has been put under seal.

Prosecution

3. The Prosecution opposes the Motion. It argues that, since the letter by the Defence to the respective State violated a witness protection order,⁶ it could not qualify as a prior effort deployed by the Defence. It further submits that the information sought must be relevant and cites jurisprudence of the International Criminal Tribunal for Former Yugoslavia ("ICTY") to support its claim that the applicant must demonstrate "a reasonable basis for his belief [...] that the information will materially assist him in his case, in relation to clearly identified issues relevant to the trial".⁷ In the Prosecution's view, the money value of the benefits that the Witness received would be irrelevant. It indicates that it is willing to describe the benefits of the witness protection program, without a statement of the actual monies spent by the national authorities to provide such services.

DELIBERATIONS

4. The Chamber notes that the Prosecution's Response has been filed beyond the time-limit prescribed by Rule 73(E) of the Rules. In the interest of justice and since the delay had no impact on the progress of the proceedings, the Chamber nevertheless takes cognizance of the Prosecution's submissions.

5. The present Motion is linked to the "Prosecutor's Urgent Motion for Sanctions against Counsel for Nzirorera for Violation of Witness Protection Order and for an Injunction against Further Violations", filed on 8 September 2004. The Chamber is of the view that the merits of the Prosecution Motion for sanctions have no bearing on the question whether the legal requirements for a request for governmental cooperation are satisfied. The two Motions will therefore be separately decided.

6. Article 28(2)(c) of the Statute of the Tribunal ("Statute") prescribes that States shall comply without undue delay with any request for cooperation issued by a Trial Chamber with respect to the service of documents. According to the jurisprudence of the Tribunal Appeals Chamber, any request for 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.⁸

7. The Chamber finds that the documents requested by the Defence are sufficiently defined and limited in number.

8. Following the jurisprudence, the standards of relevance to be met in the context of requests for governmental cooperation are whether or not the sought information is relevant to any matter in issue before the Chamber and necessary for a fair determination of that matter.⁹

9. The Chamber is of the view that the information sought by the Defence is not necessary for a fair determination of the credibility of the Witness. Contrary to the dollar amount of monies disbursed by the Prosecution, the money value, in any given currency, of the expenditures of the respective government depends on the cost of living in the respective country, on exchange rates and various other external economic factors. The indication of an

⁶ *Karemera et al.*, Decision on the Prosecutor's Motion for Special Protective Measures (TC), 20 October 2003.

⁷ *Prosecutor v. Krstić*, Case No. IT-98-33-A, Decision on Application for Subpoenas (AC), 1 July 2003, par. 10 (*Krstić Decision*).

⁸ *Prosecutor v. Blaskić*, 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, par. 32 (*Blaskić Decision*).

⁹ *Blaskić Decision*, par. 32. See also Rule 54bis ICTY Rules of Procedure and Evidence.

absolute amount has no probative value. The protection does not necessarily compromise the credibility of the Witness. Protective measures for Witness are enshrined in the Statute and the Rules.¹⁰ There is no mathematical relation between the amount spent on witness protection and the degree of credibility.

10. Information concerning the nature of the benefits provided by the witness protection program and their duration could be relevant to the determination of the credibility of the Witness. The Prosecution's offer to describe the said benefits, without a statement of the actual monies spent by the national authorities to provide such services, would provide the information necessary for the fair determination of the matter.

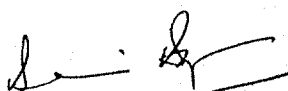
FOR THE ABOVE REASONS,

THE CHAMBER

I. DISMISSES the Motion;

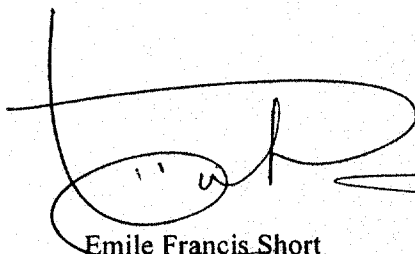
II. ORDERS the Prosecution to honour his undertaking to describe the benefits of the witness protection program.

Arusha, 19 April 2005, done in English.



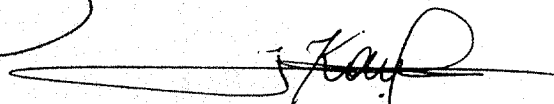
Dennis C. M. Byron

Presiding Judge



Emile Francis Short

Judge



Gberdao Gustave Kam

Judge

[Seal of the Tribunal]



¹⁰ See Articles 19(1) and 21 of the Statute; Rules 69 and 75 of the Rules.