

ICTR-98-44-T  
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THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR RWANDA

CASE No. ICTR-98-44-T

IN TRIAL CHAMBER No. 3

Before: Judge Dennis C.M. Byron, Presiding  
Judge G. Gustave Kam  
Judge Vagn Joensen

Registrar: Mr. Adama Dieng

Date Filed: 28 January 2008

THE PROSECUTOR

v.

JOSEPH NZIRORERA

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JOSEPH NZIRORERA'S MOTION FOR SUBPOENA  
TO PRESIDENT PAUL KAGAME

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The Office of the Prosecutor:

Mr. Don Webster  
Ms. Allayne Frankson-Wallace  
Mr. Iain Morley  
Ms. Gerda Visser  
Mr. Saidou N'Dow

Defence Counsel:

Mr. Peter Robinson  
Mr. Patrick Nimy Mayidika Ngimbi

Counsel for Co-Accused:

Ms. Dior Diagne Mbaye and Mr. Felix Sow for Edouard Karemera  
Ms. Chantal Hounkpatin and Mr. Frederick Weyl for Mathieu Ngirumpatse

1. Joseph Nzirorera respectfully moves, pursuant to Article 28 and Rule 54, for the issuance of a subpoena to President Paul Kagame of Rwanda, directing him to submit to an interview by Mr. Nzirorera's defence counsel.

2. Article 28 provides:

"1. 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.

2. 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."

3. Rule 54 provides:

"At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial."

4. The Appeals Chamber has held that a Trial Chamber may issue a subpoena when it is necessary for the purposes of an investigation or for the preparation or conduct of the trial.<sup>1</sup> This power includes the authority to require a prospective witness to attend at a nominated place and time in order to be interviewed by the defence.<sup>2</sup>

5. Trial Chambers have held that an application for an interview with and testimony from a State official—as opposed to an application for information from a

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<sup>1</sup>*Prosecutor v Halilovic*, No. IT-01-48-AR73, *Decision on the Issuance of Subpoenas* (21 June 2004) at para. 5

<sup>2</sup>*Prosecutor v. Krstić*, IT-98-33-A, *Decision on Application for Subpoenas*, (1 July 2003) at para. 10; *Prosecutor v Halilovic*, No. IT-01-48-AR73, *Decision on the Issuance of Subpoenas* (21 June 2004) at para. 5

State which does not seek to summon a specific official as a witness—should be made for a subpoena rather than a binding order issued to the State.<sup>3</sup>

6. It is also well established that government officials enjoy no immunity from a subpoena.<sup>4</sup> Trial Chambers of the ICTR have issued orders compelling interviews with defence counsel by the Ambassadors of the United States<sup>5</sup>, Tanzania<sup>6</sup>, and France<sup>7</sup>, the Foreign Minister of Tanzania<sup>8</sup>, the Minister of Defence of Rwanda, and military officials from France<sup>9</sup>, Belgium<sup>10</sup>, Togo<sup>11</sup>, and Ghana.<sup>12</sup>

7. The obligation of States under Article 28 extends not only to efforts by the Prosecution to obtain inculpatory evidence, but also efforts by the Defence to obtain exculpatory information.<sup>13</sup>

8. This Trial Chamber and others have held that a Trial Chamber has the power to require a prospective witness to attend at a nominated place and time in order to be

<sup>3</sup> *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Request for a Subpoena* (11 September 2006) at para. 4; *Prosecutor v Milosevic*, No. IT-02-54-T, *Decision on Assigned Counsel Application for Interview and Testimony of Tony Blair and Gerhard Schroeder* (9 December 2005) at para. 27

<sup>4</sup> *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Request for a Subpoena for Major Jacques Biot* (14 July 2006) at para. 4; *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Request for a Subpoena* (11 September 2006) at para. 4

<sup>5</sup> *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Request to the Government of the United States of America for Cooperation* (10 July 2002)

<sup>6</sup> *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on the Bagosora Defence Request for Subpoena of Ambassador Mpungwe and Cooperation of the United Republic of Tanzania* (29 August 2006)

<sup>7</sup> *Prosecutor v Bizimungu et al*, No. ICTR-99-50-T, *Decision on Mr. Bicamumpaka's Request for an Order for the Cooperation of the Government of France* (26 September 2007)

<sup>8</sup> *Prosecutor v Bagosora et al*, No. ICTR-98-44-T, *Decision on Request for Subpoena of Major General Yaache and Cooperation of the Government of Ghana* (23 June 2004); *Prosecutor v Ndindliyiimana et al*, No. ICTR-00-56-T, *Decision on Nzuwonemeye's Motion Requesting the Cooperation of the Government of Ghana Pursuant to Article 28 of the Statute* (13 February 2006)

<sup>9</sup> *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Request to the Republic of France for Cooperation and Assistance Pursuant to Article 28 of the Statute* (22 October 2004)

<sup>10</sup> *Prosecutor v Ndindliyiimana et al*, No. ICTR-2000-56-T, *Decision on Nzuwonemeye's Motion Requesting Cooperation from the Government of Belgium Pursuant to Article 28 of the Statute* (7 June 2006)

<sup>11</sup> *Prosecutor v Ndindliyiimana et al*, No. ICTR-00-56-T, *Decision on Nzuwonemeye's Motion Requesting the Cooperation of the Government of Togo Pursuant to Article 28 of the Statute* (13 February 2006)

<sup>12</sup> *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Request for a Subpoena* (11 September 2006)

<sup>13</sup> *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on the Bagosora Defence Request for Subpoena of Ambassador Mpungwe and Cooperation of the United Republic of Tanzania* (29 August 2006) at para. 2

interviewed when the requesting party shows that (1) it has made reasonable attempts to obtain the voluntary cooperation of the witness; (2) the witness' testimony can materially assist its case; and (3) the witness' testimony is necessary and appropriate for the conduct and fairness of the trial.<sup>14</sup>

9. Mr. Nzirorera contends that he has satisfied all three criteria with respect to the requested subpoena to President Paul Kagame.

### **Efforts to Obtain Voluntary Cooperation**

10. On 2 September 2003, before commencement of the first trial in this case, Mr. Nzirorera's counsel sent a letter to President Kagame requesting an interview.<sup>15</sup> No response to this letter was ever received.

11. On 2 January 2008, after the close of the prosecution case, Mr. Nzirorera's counsel sent another letter to President Kagame requesting an interview. The letter said, in part:

"I am writing to request the opportunity to interview you in connection with the preparation of Mr. Nzirorera's defence. It would be my honor and privilege to meet you and to be able to ask you some questions. I would like to ask you about the assassination of President Juvenal Habyarimana and other events which are important issues in the trial. Your cooperation will assist Mr. Nzirorera in bringing the truth of what happened in Rwanda to light."<sup>16</sup>

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<sup>14</sup> *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Nzirorera's Ex Parte Motion for Order for Interview of Defence Witnesses NZ1, NZ2, and NZ3* (12 July 2006) at para. 9; *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Request for a Subpoena* (11 September 2006) at para. 5; *Prosecutor v Simba*, No. ICTR-01-76-T, *Decision on the Defence Request for a Subpoena for Witness SHB* (7 February 2005); *Prosecutor v Bagosora et al*, No. ICTR-98-44-T, *Decision on Bagosora Defence's Request for a Subpoena Regarding Mamadou Kane* (22 October 2004); *Prosecutor v Rukundo*, *Decision on Defence Motion for Subpoena and Transfer of Detained Witness SJA* (21 September 2007) at para. 3

<sup>15</sup> A copy of that letter is Annex "A" to this motion.

<sup>16</sup> A copy of this letter is Annex "B" to this motion.

12. On 25 January 2008, Mr. Nzirorera received a reply from the Rwandan Minister of Justice, who advised that “the required interview cannot be secured as the reasons stated by the accused’s counsel are not satisfactory.”<sup>17</sup>

13. Therefore, Mr. Nzirorera has made reasonable efforts to obtain the voluntary cooperation of President Kagame.

#### **Relevance of Information from President Kagame**

14. This Trial Chamber has already ruled that evidence that the Rwandese Patriotic Front (“RPF”) may have been responsible for the assassination of President Habyarimana may be admitted.<sup>18</sup> That ruling was consistent with rulings of at least three other Trial Chambers at the ICTR.<sup>19</sup>

15. The prosecution has alleged that Mr. Nzirorera was part of a joint criminal enterprise with virtually the entire leadership of the government of Rwanda to exterminate the Tutsi. It has specified that this joint criminal enterprise came into existence before January 1994.<sup>20</sup> It alleged that:

“Over the course of several years leading up to and including 1994, particularly after 1992, **Édouard KAREMERA**, **Mathieu NGIRUMPATSE**, and **Joseph NZIRORERA** agreed among themselves, and with the individuals identified in paragraphs 6(i)-(iv), meeting severally at various locations on disparate occasions in the context of their political party and official government activities, to plan and prepare the destruction of Rwanda’s Tutsi population, particularly the killing of persons identified as Tutsi and committed acts in furtherance of this agreement.”<sup>21</sup>

16. The prosecution alleged that:

<sup>17</sup> A copy of this letter is Annex “C” to this motion.

<sup>18</sup> Transcript of 17 May 2006 @ 49

<sup>19</sup> *Prosecutor v Bizimungu et al*, No. ICTR-99-50-T, *Reconsideration of Oral Ruling of 1 June 2005 on Evidence Relating to the Crash of the Plane Carrying President Habyarimana* (23 February 2006); *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Ntabakuze Motions to Admit Documents Pursuant to Rule 92 bis* (12 April 2007) at para. 9; *Prosecutor v Zigiranyirazo*, No. ICTR-2001-73-T, (Transcript of 3 April 2007 @ 34)

<sup>20</sup> Amended Indictment at para. 6

<sup>21</sup> Para. 23

“over the course of 1993 and 1994 Édouard KAREMERA, Mathieu NGIRUMPATSE, and Joseph NZIRORERA agreed among themselves, and with others, and collectively undertook initiatives that were intended to create and extend their own personal control, and that of the MRND Steering Committee, over an organized, centrally commanded corps of militiamen that would respond to their call to attack, kill and destroy the Tutsi population.”<sup>22</sup>

17. Among these initiatives were the formation of the Interahamwe<sup>23</sup>, expansion of the Interahamwe throughout the country<sup>24</sup>, and providing military training and firearms to the Interahamwe “intending that *Interahamwe* militias would be deployed to kill and harm Rwanda’s Tutsi population.”<sup>25</sup>

18. The indictment makes specific mention of the assassination of President Habyarimana, alleging that after that assassination, the accused moved swiftly to “execute the destruction of Rwanda’s Tutsi population”.<sup>26</sup>

19. This Trial Chamber and others have held that in order to establish that evidence is relevant, the moving party must show that a connection exists between the evidence sought to be admitted and the proof of an allegation sufficiently pleaded in the indictment.<sup>27</sup>

20. It is undisputed that the assassination of President Habyarimana triggered the Rwandan genocide. Evidence that the accused or the members of their alleged joint criminal enterprise assassinated President Habyarimana would tend to make it more

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<sup>22</sup> Para. 24

<sup>23</sup> Para. 24.1

<sup>24</sup> Para 24.2

<sup>25</sup> Para 24.3

<sup>26</sup> Para. 28

<sup>27</sup> *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on the Prosecutor’s Motion for Admission of Certain Exhibits Into Evidence* (25 January 2008) at para. 6; *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Interim Order for the Prosecution to Identify Relevant and Probative Passages of Certain Materials it Intends to Tender into Evidence Under Rule 89(C) of the Rules of Procedure and Evidence* (8 August 2007) at para. 7; *Prosecutor v Nyiramasuhuko et al*, No. ICTR-98-42-AR73, *Decision on the Appeals by Pauline Nyiramasuhuko and Arsene Shalom Ntahobali on the Decision on Defence Urgent Motion to Declare Parts of Evidence of Witnesses RZ and ABZ Inadmissible* (2 July 2004) at para. 15;

likely that they perpetrated the genocide. On the other hand, evidence that the RPF assassinated President Habyarimana tends to make it less likely that the acts of the accused in creating, expanding, training, and arming the Interahamwe, as charged in the indictment, were for the purpose of committing that genocide.

21. In addition, the prosecution has been permitted to lead evidence that after the assassination of President Habyarimana, the accused selected Theodore Sindikubabwo as Interim President, in violation of the Arusha Accords.<sup>28</sup> If the RPF was responsible for the assassination of President Habyarimana in breach of those accords, the government of Rwanda was not obligated to follow them.<sup>29</sup>

22. Therefore, the information concerning the assassination of President Habyarimana, sought from President Paul Kagame, the commander of the Rwandese Patriotic Army at the time, meets the test of relevance.

23. Other information sought from President Kagame concerns the responsibility of the RPF for the assassinations of MDR party leader Emmanuel Gapyisi in 1993 and PSD party leader Felicien Gatabazi in February 1994. The prosecution's case has included evidence that the MRND was responsible for these assassinations.<sup>30</sup> Therefore, evidence that they were assassinated by the RPF would be relevant to refute such evidence and the allegation that these acts were part of Mr. Nzirorera's joint criminal enterprise to destroy the Tutsi.

24. Therefore, information concerning the assassinations of Gapyisi and Gatabazi sought from President Kagame also meets the test of relevance.

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<sup>28</sup> Testimony of Witness GOB, (Transcript of 23 October 2007 @ 4)

<sup>29</sup> See, for example, UNIDROIT Principles of International Commercial Law art. 7.3.1

<sup>30</sup> Exhibit P220, pp. 7-8, Transcript of 27 November 2006 @ 56 (Claeys); Transcript of 18 October 2005 @ 17-18 (Witness G); Transcript of 29 May 2006 @ 56 (Witness T)

### **Reason to Believe that President Kagame has Relevant Information**

25. To satisfy the third element of necessity, Mr. Nzirorera can demonstrate a good faith basis to believe that President Kagame possesses information concerning the assassinations of President Habyarimana, Gapyisi, and Gatabazi.

26. First, the Trial Chamber has already received evidence from prosecution witness ZF that on the morning of 7 April 1994, the Rwandan Army **intercepted conversations** from the RPF which indicated that they had been responsible for assassinating President Habyarimana.

27. At approximately 8:45 in the morning of 7 April 1994, they intercepted a message with the following text:

“We inform you that the mission of our reinforced squad was brilliantly successful against the MRND/CDR and the FRODEBU Parapehutu. You have to know that the chief of the country of the South died with his Minister of Plan and Minister of Communication. In the main town, they are shooting in all the streets. It seems that there are also arbitrary arrests in the main town. Remember not only the Angola experience that we escaped fortunately and the experience in Liberia. We continue to await the reaction of our friends of the country of the South to give you new instructions. The Chief joined Kampala without any problem and the communication within his services with our elements inside was achieved in the best conditions and that with the aid of the Belgian community and the elements of the Southern country helped us much for the success of our mission that was not easy to realize. We thank sincerely all those who contributed to the success of the mission of our reinforced squad. We especially congratulate the specialist infiltrators in the main town for the reorganization of the squad. For each of your secteurs, the reinforcement will come to you immediately. The Chief is ready to support us strongly and promises to accompany us until the main town. It remains to know if Bekomagu should agree to attack from the South and then we can meet in the main town and then to put an end to the regime of terror in enemy country and in the South. ...courage and remain vigilant. Control the demilitarized zone (all) before the enemy occupies it in the first minutes that the war resumes. The Parapehutu elements have trainings in the enemy country in view to support the government side, but that doesn't increase anything to that Army which is reduced without its Chief and its Chief of Staff. The Chief of Staff was very appreciated by the troops.



Courage our success is irreversible and you can give us an appointment in the main town shortly.”<sup>31</sup>

28. On the morning of 7 April, another message was intercepted which said:

“It is an unforgettable date for us, and even for our ethnic group. If the president of the Republic is killed, we can say we are sure of victory. We have heard the voice of Radio Rwanda saying that the tyrant and the president of Burundi have died through an unfortunate accident. It is not easy for us; we cannot believe it. The invincible who defied the evildoers and traitors... the invincible is dead. Briefly, we congratulate the in depth forward action groups. Victory has given us the advantage over the others; our morale is high.”<sup>32</sup>

29. Another intercepted message said:

“The meeting due to be held in Mulindi today, 7th of April 1994, is cancelled. I thank you and congratulate you for yesterday's operation. For the time being, the reward is due to you. All units must be on the alert; the war is beginning.”<sup>33</sup>

30. Second, other Trial Chambers have heard **sworn testimony** from former Rwandan Patriotic Army members who had personal knowledge of the assassination of President Habyarimana by that Army, on the orders of President Kagame.

31. Lieutenant Aloys Ruyenzi was one of the people in charge of the personal security of then-General Kagame from 1992.<sup>34</sup> He testified in the *Zigiranyirazo* trial that the RPF had assassinated Gapyisi in 1993, and Gatabazi in 1994, on the orders of General Kagame.<sup>35</sup> He further testified that he had attended a meeting at RPA headquarters in Mulindi on 31 March 1994 at which the assassination of President Habyarimana was planned. The meeting was chaired by General Kagame.<sup>36</sup>

<sup>31</sup> Exhibit DNZ-99; Transcript of 17 May 2006 @ 38

<sup>32</sup> Exhibit DNZ-113; Transcript of 18 May 2006 @ 6

<sup>33</sup> Exhibit DNZ-114; Transcript of 18 May 2006 @ 8-9

<sup>34</sup> *Prosecutor v Zigiranyirazo*, No. ICTR-2001-73-T, (Transcript of 3 April 2007 @ 38)

<sup>35</sup> Transcript of 3 April 2007 @ 40

<sup>36</sup> Transcript of 3 April 2007 @ 41

32. Lieutenant Ruyenzi testified that on 6 April 1994, President Habyarimana's plane was shot down, pursuant to that plan, by RPA Second Lieutenant Frank Nziza and Corporal Eric Hakizimana after the missiles had been smuggled to the CND building in Kigali where the RPF was headquartered.<sup>37</sup>

33. Sergeant Joshua Ruzibiza was working in combat intelligence for the RPA in April 1994. He testified in the *Bagosora* trial that he had been told on 3 April 1994 by Lt. Ruyenzi and his commander, Captain Kamugisha, that the RPA was planning to shoot down the plane of President Habyarimana.<sup>38</sup> The RPA troops were placed on high alert.<sup>39</sup> The plane was shot down on orders of General Kagame, who was the only person in the RPA who could have given such orders.<sup>40</sup>

34. Sgt. Ruzibiza also testified that his colleagues in the RPA had assassinated Gapyisi in 1993 and Gatabazi in 1994.<sup>41</sup>

35. Third, French Judge Jean-Louis **Bruguiere** has obtained indictments against members of the RPA for the assassination of President Habyarimana. He has also written a report, which was admitted into evidence in the *Bagosora* trial, which alleges that:

- Christophe Hakizabera, a former RPF leader, testified that he was aware of a plan by General Kagame to assassinate President Habyarimana and seize power in Rwanda by force<sup>42</sup>
- Jean-Pierre Mugabe, former RPA intelligence officer, also testified that General Kagame had planned the assassination of President Habyarimana<sup>43</sup>

<sup>37</sup> Transcript of 3 April 2007 @ 43

<sup>38</sup> *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, (Transcript of 9 March 2006 @ 21)

<sup>39</sup> Transcript of 9 March 2006 @ 22

<sup>40</sup> Transcript of 9 March 2006 @ 44

<sup>41</sup> Transcript of 9 March 2006 @ 35

<sup>42</sup> Report at p. 12 (English version)

<sup>43</sup> Report at p. 12

- Information obtained by ICTR investigator Michael Hourigan revealed that two former RPA officers had told him that the RPA had assassinated President Habyarimana<sup>44</sup>
- ICTR Chief Investigator James Lyons confirmed the existence of a third former RPA officer who also alleged that the RPA had assassinated President Habyarimana<sup>45</sup>
- Former Director of the Rwandan Intelligence Service for the RPF government, Sixbert Musangamfura, had written to Professor Filip Reyntjens in 1995 that he had learned that the RPA had been responsible for the assassination of President Habyarimana<sup>46</sup>
- Emmanuel Ruzingana, a former RPA Sergeant, testified that he had observed the preparations for the missile attack on President Habyarimana's plane, and had subsequently been informed that Nziza and Hakizimana had shot down the plane<sup>47</sup>
- Innocent Murara, a former member of General Kagame's close protection unit, testified that he witnessed meetings presided over by Kagame at which the assassination of President Habyarimana was planned and observed the missiles in Mulindi to be used to shoot down the plane. He further testified that Nziza admitted to him that he had shot down the plane.<sup>48</sup>
- Evariste Musoni, also a member of the unit protecting General Kagame, testified that he had overheard plans being made to shoot down President Habyarimana's plane by the RPA leadership in Mulindi.<sup>49</sup>
- Three former RPF members, Sixbert Musangamfura, Balthazar Ndengeyinka, and Emmanuel Habyarimana testified that RPA officers had admitted to them that the RPA had shot down the plane.<sup>50</sup>
- The two missiles used to shoot down the plane were sold by the Soviet Union to the Ugandan Army<sup>51</sup>

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<sup>44</sup> Report at p. 14

<sup>45</sup> Report at p. 15

<sup>46</sup> Report at p. 16

<sup>47</sup> Report at p. 18

<sup>48</sup> Report at pp. 20-21

<sup>49</sup> Report at p. 22

<sup>50</sup> Report at pp. 24-26

<sup>51</sup> Report at p. 28

- Members of the Ugandan Military Intelligence Service told Professor Reyntjens that the missiles used to shoot down President Habyarimana's plane were supplied to the RPF by Uganda<sup>52</sup>

36. Fourth, **statements** taken by the ICTR Office of the Prosecutor from three additional former RPA soldiers, and disclosed pursuant to the Trial Chamber's *Decision on the Prosecutor's Motion to be Relieved of the Obligation to Disclose the Identity of Certain Witnesses* (2 November 2007), indicated they too have provided evidence as to the RPA's responsibility for the assassination of President Habyarimana, as well as Gapyisi and Gatabazi.

37. Fifth, counsel for Mr. Nzirorera has personally **interviewed** yet another former RPA soldier who has indicated he was present in Mulindi when the plan was made to shoot down the plane in meetings led by General Kagame and that he observed the missiles in Mulindi prior to their being shipped to the CND.

38. The above information provides more than ample reason to believe that President Kagame has information concerning the assassinations of Gapyisi, Gatabazi, and President Habyarimana.

39. The above information contains circumstantial evidence that the RPA was responsible for those assassinations which are relevant to Mr. Nzirorera's case. President Kagame would have direct and first-hand information about these issues. Therefore, his interview is necessary for the preparation of the defence case.

40. President Kagame, since taking office, has stressed honesty and truthfulness in his administration, and as a necessary condition to reconciliation in Rwanda. President Kagame has demonstrated that he has the courage and integrity to address the problems his country is facing directly, rather than hiding from or avoiding them. Counsel for Mr.

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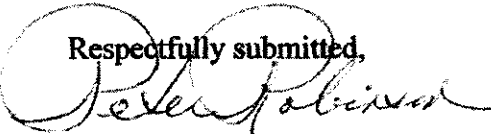
<sup>52</sup> Report at p. 28

Nzirorera has every reason to believe that President Kagame would answer his questions truthfully during an interview if one is granted.

**Conclusion**

41. Joseph Nzirorera has satisfied the conditions for the issuance of a subpoena to President Paul Kagame. He has shown that President Kagame has declined a voluntary interview, and that the matters to be inquired of at such an interview are relevant to the trial and necessary to the defence.

42. Therefore, Mr. Nzirorera respectfully requests that the Trial Chamber issue the subpoena as requested.

Respectfully submitted,  
  
PETER ROBINSON  
Lead Counsel for Joseph Nzirorera

**ANNEX "A"**

**PETER ROBINSON**  
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2 September 2003

His Excellency Paul Kagame  
President  
Republic of Rwanda  
Uruqwiro Village  
P.O. Box 15  
Kigali, Rwanda

Re: Prosecutor v Joseph Nzirorera  
No. ICTR-98-44-I

Dear President Kagame,

I am lead counsel for Joseph Nzirorera at the ICTR.

First, let me congratulate you on your recent election. I am sure that our Governor here in California envies the kind of election results that you were able to achieve.

Second, by way of background on me, I am a former federal prosecutor in the United States and a criminal defence lawyer. I also represent an accused at the International Criminal Tribunal for the former Yugoslavia and was assigned to represent Mr. Nzirorera by the ICTR in April, 2002. For what it is worth, I am listed in the publication, Best Lawyers in America, and have the highest rating for ethics and competence by the Martindale Hubbell Legal Directory.

The reason that I am writing to you is that Mr. Nzirorera's trial, as part of what is known as the "Government I" case, is scheduled to start on 3 November 2003 in Arusha. You are needed as a witness in the trial, to testify about the RPF activities leading up to and including the assassination of President Habyarimana.

The Honorable Paul Kagame  
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I anticipate that the defence will begin calling its witnesses in about March, 2004. I wanted to make contact with you at this early time to work out any issues or problems concerning your availability or willingness to testify. This will also provide me with time to seek appropriate orders to obtain your testimony if necessary.

Would you be willing to meet with me in your office in Kigali so that we can discuss the logistics and details of your testimony? I would just take about one hour of your time.

Thank you very much for your consideration.

Yours truly,

PETER ROBINSON  
Lead Counsel for Joseph Nzirorera



**ANNEX "B"**

**PETER ROBINSON***International Criminal Law*

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2 January 2008

The Honorable Paul Kagame  
President, Government of Rwanda  
State House  
Kigali, Rwanda

Re: *Prosecutor v Joseph Nzirorera*  
No. ICTR-98-44-T

Dear President Kagame,

Greetings from Arusha.

I am Peter Robinson, lead counsel for Joseph Nzirorera at the International Criminal Tribunal for Rwanda.

Mr. Nzirorera is on trial for genocide and other crimes in connection with his role as Secretary General of the MRND party in 1994. The prosecution has now completed its case, and the defence has been ordered to begin presenting its case on 3 March 2008.

I am writing to request the opportunity to interview you in connection with the preparation of Mr. Nzirorera's defence. It would be my honor and privilege to meet you and to be able to ask you some questions. I would like to ask you about the assassination of President Juvenal Habyarimana and other events which are important issues in the trial. Your cooperation will assist Mr. Nzirorera in bringing the truth of what happened in Rwanda to light.

I promise not to take more than one hour of your time.

I will be in Rwanda during the period from 11 to 27 February 2008 and would be most grateful if you could give me an appointment during that time.

Respectfully submitted,



PETER ROBINSON

Lead Counsel for Joseph Nzirorera

**ANNEX "C"**

33620

8 JAN 2008

Nº 66/11.25

REPUBLIKA OF RWANDA

MINISTRY OF JUSTICE

The Registrar,  
International Criminal Tribunal for Rwanda,  
Arusha, Tanzania.

15<sup>th</sup> January 2008

Sir,

Re: Request for Interview of President Paul Kagame

I refer to the Note Verbal referenced ICTR/IOR/ERSPS/01/08/02-1m and dated 4th January 2008, regarding the above subject.

After careful perusal of Mr. Joseph Nzirorera's Notice of Request for Interview of President Kagame and the Correspondence from Lead Counsel from the accused to the President, the required interview cannot be secured as the reasons stated by the accused's counsel are not satisfactory.

Please accept, Sir, the assurances of our highest considerations.

Yours faithfully,

Tharcisse KARUGARAMA  
Attorney General/ Minister of Justice.

CC: His Excellency; the President of the Republic of Rwanda  
His Excellency Minister of Foreign Affairs and Cooperation

JUDICIAL RECORDS/ARCHIVES  
UNICTR  
RECEIVED

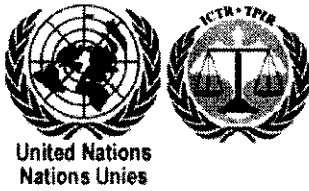
2008 JAN 25 1 A 10: 28

*[Handwritten signature]*



Sent on 20.1.08

ICTR
OFFICE OF THE REGISTRAR BUREAU DU GREFFIER
RECU LE 22 JAN 2008
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# TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

**COURT MANAGEMENT SECTION**  
(Art. 27 of the Directive for the Registry)

## I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

<b>To:</b>	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
<b>From:</b>	<input type="checkbox"/> Chamber (names)	<input checked="" type="checkbox"/> Defence Peter Robinson (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
<b>Case Name:</b>	The Prosecutor vs. Joseph Nzirorera			<b>Case Number:</b> ICTR-98-44-T
<b>Dates:</b>	Transmitted: 27 January 2008		Document's date: 28 January 2008	
<b>No. of Pages:</b>	20	<b>Original Language:</b>	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
<b>Title of Document:</b>	JOSEPH NZIRORERA'S MOTION FOR SUBPOENA TO PRESIDENT PAUL KAGAME			
<b>Classification Level:</b>	<b>TRIM Document Type:</b>			
<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence	<input type="checkbox"/> Submission from non-parties
<input type="checkbox"/> Confidential	<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal	<input type="checkbox"/> Submission from parties
<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book	<input type="checkbox"/> Accused particulars
	<input type="checkbox"/> Judgement	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities	

## II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

**CMS SHALL** take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English  French  Kinyarwanda

**CMS SHALL NOT** take any action regarding translation.

Filing Party hereby submits **BOTH** the original and the translated version for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

**CMS SHALL NOT** take any action regarding translation.

Filing Party will be submitting the translated version(s) in due course in the following language(s):

English  French  Kinyarwanda

**KINDLY FILL IN THE BOXES BELOW**

<input type="checkbox"/> <b>The OTP</b> is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> <b>DEFENCE</b> is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
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## III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	<b>COMMENTS</b>	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: