



ICTR-04-81-T
31-03-2009
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
(5950-5948)

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LW4

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 31 March 2009

THE PROSECUTOR

v.

Ephrem SETAKO

Case No. ICTR-04-81-T

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DECISION ON EXTREMELY URGENT AND EX PARTE DEFENCE MOTION FOR
COOPERATION OF THE KINGDOM OF BELGIUM

The Prosecution
Ifeoma Ojemeni Okali
Simba Mawere
Christiana Fomenky

The Defence
Lennox Hinds
Cainnech Lussiaà-Berdou

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED OF the extremely urgent Defence motion for cooperation of the Kingdom of Belgium, filed on 27 March 2009;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Setako Defence asks the Chamber to make a request to the Government of the Kingdom of Belgium to permit an interview with a witness currently detained in Belgium. It argues that he has inside knowledge of the inner workings of the *Interahamwe* and may contradict that Ephrem Setako was involved in the kinds of activities alleged by the Prosecution. The application was filed *ex parte*.¹

DELIBERATIONS

2. Article 28 of the Statute imposes an obligation on States to “cooperate with the International Criminal Tribunal for Rwanda in the investigation of persons accused of committing serious violations of international humanitarian law”. A request to a Chamber to issue an order under this provision must set forth the nature of the information sought; its relevance to the trial; and the efforts that have been made to obtain it. The type of assistance sought should also be defined with particularity.²

3. The motion adequately articulates the nature of the information sought and its relevance to the proceedings against Setako. The Defence appears to have a reasonable basis to believe that the witness has precise information that may contradict the Prosecution case. Based on these submissions, the Chamber is satisfied that the information sought is relevant to the present trial.

4. It has also been demonstrated that reasonable efforts were made to obtain the information without recourse to Article 28. The correspondence appended to the motion shows that the Defence has tried to arrange the interview without involving the Chamber, but that Belgian law requires the issuance of a judicial order for such an interview to be permitted.³ Accordingly, the Chamber finds that the conditions for the issuance of a request under Article 28 are satisfied.

¹ “Setako Defence Extremely Urgent *Ex Parte* Motion for Cooperation of the Kingdom of Belgium,” etc., filed on 27 March 2009, paras. 1-3, 11-14.

² *Prosecutor v. Bagosora et al.*, Decision on Request for Cooperation of the Government of France (TC), 6 October 2006, para. 2; Decision on Request to the Kingdom of Belgium for Assistance Pursuant to Article 28 of the Statute (TC), 21 September 2006, para. 2; Decision on Request to the Kingdom of Belgium for Assistance Pursuant to Article 28 of the Statute (TC), 21 April 2006, para. 2; Decision on Request to the Kingdom of the Netherlands for Cooperation and Assistance (TC), 7 February 2005, paras. 4-5; Decision on the Defence for Bagosora’s Request to Obtain the Cooperation of the Republic of Ghana (TC), 25 May 2004, para. 6.

³ Motion, paras. 4-7 and annexes 1-3.

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FOR THE ABOVE REASONS, THE CHAMBER

RESPECTFULLY REQUESTS the Kingdom of Belgium to provide any relevant assistance in facilitating meetings between the Setako Defence and the witness indicated in the correspondence with the Belgian authorities;

DIRECTS the Registry to transmit this decision to the relevant authorities of the Kingdom of Belgium.

Arusha, 31 March 2009.



Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Florence Rita Arrey
P.P. Judge

[Seal of the Tribunal]

