



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-99-54-T  
27-04-10  
(6003-5992)

6003  
PM

OR: ENG

**TRIAL CHAMBER II**

Before: Judge William H. Sekule, Presiding  
Judge Solomy Balungi Bossa  
Judge Mparany Rajohnson

Registrar: Mr. Adama Dieng

Date: 27 April 2010

**The PROSECUTOR**

v.

**Augustin NGIRABATWARE**

Case No. ICTR-99-54-T

JUDICIAL RECORDS ARCHIVES  
2010 APR 27 | A 10: 21

**DECISION ON DEFENCE MOTION REQUESTING AN ORDER DIRECTED AT  
THE WORLD BANK PURSUANT TO ARTICLE 28**

**Office of the Prosecutor**

Mr. Wallace Kapaya  
Mr. William Egbe  
Mr. Patrick Gabaake  
Mr. Iskandar Ismail  
Ms. Faria Rekkas

**Defence Counsel**

Mr. Peter Herbert  
Ms. Mylène Dimitri  
Mr. Deogratias Sebureze  
Ms. Anne-Gaëlle Denier

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the “Tribunal”),

**SITTING** as Trial Chamber II composed of Judges William H. Sekule, Presiding, Solomy Balungi Bossa, and Mparany Rajohnson (the “Chamber”);

**BEING SEIZED** of the “Defence Extremely Urgent Motion Requesting an Order Directed at the World Bank (pursuant to Article 28 of the ICTR Statute and Resolution 955 of the United Nations Security Council)”, filed confidentially on 19 March 2010 (the “Motion”);

**NOTING** that the Prosecution did not respond to the Motion;

**CONSIDERING** the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

**NOW DECIDES** the Motion pursuant to Article 28 of the Statute and Rule 73 of the Rules.

### INTRODUCTION

1. The Defence moves the Chamber to issue an order directed to the World Bank to secure its cooperation. Specifically, the Defence seeks that the World Bank:

- (a) Confirm or deny that, between 1990 and 1994, World Bank officials worked at the Ministry of Planning of Rwanda;
- (b) Disclose documents, which the Defence has subdivided into 29 items, regarding the World Bank’s policies on, and presence in, Rwanda;
- (c) In the event that 11 of these items are not located or disclosed, provide an explanation for their unavailability;<sup>1</sup>
- (d) Provide the names and contact details of all World Bank officials who, between 1990 and 1994, either worked at the Ministry of Planning of Rwanda, or worked in Kigali or Washington on Credit 2271 RW;
- (e) Facilitate a meeting between the Defence and all of these World Bank officials; and
- (f) Disclose the list of loans contracted by Rwanda between 1990 and 1994, as well as the outstandings of foreign indebtedness of Rwanda in 1994.<sup>2</sup>

2. The Defence requests this information and cooperation to challenge the allegation of diversion of funds arising out of Prosecution Witness ANAC’s report. That report, the Defence suggests, revolves around funds provided by the World Bank, including those

<sup>1</sup> These 11 items are listed, in the *Note Verbale* annexed to this Decision, as numbers 6-8, 21-25, and 27-29.

<sup>2</sup> Motion, paras. 1, 29-32, 52-54, 73-76.



released pursuant to Credit 2271 RW. It also mentions the presence of foreigners who might have been World Bank personnel. The Defence contends that the cooperation from the World Bank is essential to challenge Witness ANAC's report that forms the basis of the diversion of funds allegation.<sup>3</sup>

3. After numerous Defence attempts to secure cooperation,<sup>4</sup> the World Bank responded in a letter dated 2 March 2010 to the Office of the Registrar. In that letter, the World Bank identified four categories of documents: those publicly available, some that can be disclosed only with third-party authorization, others that cannot be disclosed under the policy of the World Bank, and documents that it could not locate.<sup>5</sup> The World Bank consented to provide access to four items, at least one of which the Defence claims it has yet to receive. In response, the Defence requested the missing document, as well as further explanation as to the unavailable items.<sup>6</sup>

### DELIBERATIONS

4. Article 28 of the Statute imposes an obligation on States to "cooperate with the International Criminal Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law". In particular, Article 28 (2) of the Statute requires States to "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; [and] (c) The service of documents". The jurisprudence of the Tribunal, in the Chamber's view, supports that such a request may also be directed to an international organization.<sup>7</sup>

5. The Chamber also recalls Security Council Resolution 955 (1994), which urges intergovernmental and non-governmental organizations to contribute services to the Tribunal.

<sup>3</sup> *Id.*, paras. 33-44.

<sup>4</sup> *Id.*, paras. 2-13, 15-21, 45-51, Annexes 1-3, 5, 7-9, 13.

<sup>5</sup> *Id.*, Annex 10.

<sup>6</sup> *Id.*, paras. 16, 51, Annexes 10, 13.

<sup>7</sup> See *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Ntabakuze Motion for Information from the UNHCR and a Meeting with One of Its Officials (TC), 6 October 2006, para. 5, citing *Prosecutor v. Tihomir Blškić*, Case No. IT-95-14-A, 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. 50, n. 68; *The Prosecutor v. Edouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on the *Ex Parte* Defence Motion for Order to United Nations Department of Peace-Keeping Operations for Production of Documents (TC), 9 March 2004, paras. 9-19; *Prosecutor v. Blagoje Simić et al.*, Case No. IT-95-9-T, Decision on Motion for Judicial Assistance to Be Provided by SFOR and Others (TC), 18 October 2000, paras. 46-49; see also *The Prosecutor v. Pauline Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on the Defence Motion Seeking a Request for Cooperation and Judicial Assistance from a Certain State and the UNHCR Pursuant to Article 28 of the Statute and Resolutions 955 (1994) and 1165 (1998) of the Security Council (TC), 25 August 2004, p. 2, citing *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54A-T, Decision on Kamuhanda's Motions for Extension of Judicial Cooperation to Certain States and to the UNHCR Pursuant to Article 28 of the Statute and Resolution 955 of the Security Council (TC), 9 May 2002; *The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-99-44A-T, Decision on Kajelijeli's Motion for Extension of Judicial Cooperation to Certain States Pursuant to Article 28 of the Statute of the Tribunal (TC), 9 May 2002.

6. In accordance with the Tribunal's jurisprudence, a party seeking an Article 28 order for cooperation regarding the production of evidence or service of documents must:

- (i) Specifically identify, to the extent possible, the evidence sought;
- (ii) Articulate the evidence's relevance to the trial; and
- (iii) Show that its efforts to obtain the evidence have been unsuccessful.<sup>8</sup>

***Documents and Information Requested in the Note Verbale and Later Communication***

7. The Chamber considers that the Defence has identified, in as much detail as possible, the evidence it seeks. Specifically, it requests documents and information pertaining to the World Bank's role in development projects in Rwanda between 1990 and 1994.

8. As for the evidence's relevance to the trial, the Chamber recalls that the Accused is alleged to have diverted development funds to finance the *Interahamwe*, and to have been responsible for such diversion by his subordinates.<sup>9</sup> The identified documents and information may tend to rebut this charge, and are therefore relevant.

9. The Defence has demonstrated that it has made diligent efforts to obtain the information and documents it seeks. Except for three sets of documents to which the World Bank consented to provide access,<sup>10</sup> these efforts have been unsuccessful. The Chamber grants the motion with regards to the documents and information requested in the *Note Verbale* and subsequent communication to the World Bank.

***Names, Contact Details, Meetings and Loan Information***

10. The Defence also seeks the names and contact information of all World Bank personnel who, between 1990 and 1994, either were placed at the Ministry of Rwanda or were working in Kigali or Washington on Credit 2271 RW. It also requests the World Bank's facilitation in arranging meetings between these personnel and the Defence, as well as information pertaining to loans to Rwanda. In this regard, the Chamber considers that the Defence has identified, to the extent possible, the evidence that it seeks.

11. The Defence requests facilitation in meeting with a host of its officials whose identity, it appears, remains unknown to the Defence.<sup>11</sup> The Chamber is not convinced

<sup>8</sup> Decision on Defence Urgent Motion Requesting an Order Directed to France Pursuant to Article 28 of the Statute (TC), 4 December 2009, para. 8, citing *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T ("*Bizimungu et al.*"), Decision on Casimir Bizimungu's Requests for Disclosure of the Bruguière Report and the Cooperation of France (TC), 25 September 2006, para. 25; *Bizimungu et al.*, Decision on Mr. Bicomupaka's Request for Order for Cooperation of the Kingdom of Belgium (TC), 12 September 2007, para. 3.

<sup>9</sup> See Amended Indictment, filed 14 April 2009, paras. 15, 38.

<sup>10</sup> See Motion, para. 51.

<sup>11</sup> See *id.*, paras. 1, 29, 31-32.

that meetings with an unknown number of unidentified officials will be relevant to the trial.

12. The Chamber also considers that the Defence has not shown that it has attempted unsuccessfully to obtain this information or facilitation from the World Bank. From the Motion, it appears that the Defence has never requested such cooperation from the World Bank, but merely added these items to its prayer.<sup>12</sup> Accordingly, the Chamber denies the Motion as it pertains to these requests for cooperation.

**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the Motion in part;

**RESPECTFULLY REQUESTS** the World Bank to disclose to the Defence any of the documents and information listed in the *Note Verbale* annexed to this Decision, which may be in its possession;

**RESPECTFULLY REQUESTS** the World Bank, in the event of unavailability of items numbered 6, 7, 8, 21, 22, 23, 24, 25, 27, 28 or 29 in the *Note Verbale* annexed to this Decision, to provide a brief explanation for their unavailability; and

**DIRECTS** the Registry to translate and transmit this Decision to the relevant authorities of the World Bank.

Arusha, 27 April 2010



William H. Sekule  
Presiding Judge




Solomy Balungi Bossa  
Judge



Mparany Rajohnson  
Judge

[Seal of the Tribunal]

<sup>12</sup> See *id.*, paras. 30-31.