

ICTR-99-54-T  
23-11-10  
(9408-9405)

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 23 November 2010

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

JUDICIAL RECORDS ARCHIVE  
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DECISION ON DEFENCE MOTION REQUESTING AN ORDER DIRECTED AT  
THE TOGOLESE REPUBLIC

**Office of the Prosecutor**

Mr. Wallace Kapaya  
Mr. Veronic Wright  
Mr. Patrick Gabaake  
Mr. Iskandar Ismail  
Mr. Michael Kalisa  
Ms. Faria Rekkas

**Defence Counsel**

Mr. Peter Herbert  
Ms. Mylène Dimitri  
Mr. Deogratias Sebureze  
Ms. Anne-Gaëlle Denier  
Ms. Chloé Gaden-Gistucci  
Ms. Véronique Ethier

**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 Republic of Togo (pursuant to Article 28 of the Statute)", filed confidentially on 7 October 2010 (the "Defence Motion");

**CONSIDERING** the "Additional Submissions to Extremely Urgent Defence Motion Requesting an Order Directed at the Republic of Togo (Pursuant to Article 28 of the Statute)", filed confidentially on 15 October 2010 (the "Defence Additional Submissions");

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

**CONSIDERING** also 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.

### **SUBMISSIONS**

1. The Defence moves the Chamber to issue an order directed to the Togolese Republic to provide assistance to the Defence and facilitate a meeting with a Togolese national.<sup>1</sup>
2. The Defence submits that, due to the nature of this person's involvement in Rwanda in 1994, he possesses information regarding the allegations contained in the Indictment and made by Prosecution witnesses. The Defence needs to meet with him in order to determine whether it might call him as a witness.<sup>2</sup>
3. The Defence has made numerous attempts to secure the cooperation of the Togolese Republic. Through an exchange of numerous *Notes Verbales* with the Togolese authorities, arrangements were made to facilitate the requested meeting. However, once the Defence delegation arrived in Lomé, it was unable to meet with the named Togolese national for reasons beyond its control. The Defence left Lomé seven days later without having been able to meet with him.<sup>3</sup>

<sup>1</sup> Defence Motion, paras. 1, 4, 36-37, 39; Defence Additional Submissions, paras. 5, 14. The Togolese national is named in the confidential Defence Motion.

<sup>2</sup> Defence Motion, paras. 5-13.

<sup>3</sup> *Id.*, paras. 14-34, Annexes 1-7;

Defence Additional Submissions, paras. 2-4, 7-11, Annex.

## DELIBERATIONS

4. Pursuant to Article 28 (2) of the Statute, 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; [and] (b) The taking of testimony and the production of evidence”. Moreover, the Chamber recalls Security Council Resolutions 955 (1994) and 1165 (1998), urging States to cooperate fully with the Tribunal.<sup>4</sup>

5. In accordance with the Tribunal’s jurisprudence, a party seeking an Article 28 order for State cooperation regarding the production of evidence 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>5</sup>

6. The Chamber considers that the Defence has identified, in as much detail as possible, the evidence it seeks. Specifically, it requests a meeting with the named Togolese national, who may be able to give evidence about some of the allegations against the Accused.

7. The Chamber further considers that the Defence has established that access to the named Togolese might be useful in deciding whether to call him as a witness. In particular, the Chamber notes that the nature of his alleged involvement in Rwanda may yield information relevant to the charges against the Accused.<sup>6</sup> Thus, the evidence may be relevant.

8. The Defence has also demonstrated that it has made diligent efforts to obtain the evidence it seeks, and that these efforts have been unsuccessful.<sup>7</sup>

<sup>4</sup> Decision on Defence Motion Requesting an Order Directed at the Republic of Senegal (TC), 28 April 2010 (“Decision of 28 April 2010”), para. 5, citing Decision on Defence Urgent Motion Requesting an Order Directed to France Pursuant to Article 28 of the Statute (TC), 4 December 2009 (“Decision of 4 December 2009”), para. 7; *The Prosecutor v. Pauline Nyiramasuhuko et al.*, 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

<sup>5</sup> Decision of 28 April 2010, para. 6, citing Decision of 4 December 2009, para. 8; *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. Bicamumpaka’s Request for Order for Cooperation of the Kingdom of Belgium (TC), 12 September 2007, para. 3.

<sup>6</sup> See, for example, Defence Motion, paras. 5, 8.

<sup>7</sup> See, for example, *id.*, Annexes 1-7; Defence Additional Submissions, Annex.

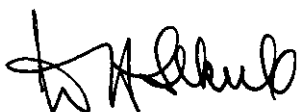
**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the Defence Motion;

**RESPECTFULLY REQUESTS** the Togolese Republic to provide any relevant assistance in facilitating a meeting between the Defence and the named Togolese national; and

**DIRECTS** the Registry to translate and transmit this Decision to the relevant authorities of the Togolese Republic.

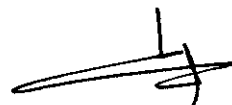
Arusha, 23 November 2010



William H. Sekule  
Presiding Judge



Solomy Balungi Bossa  
Judge



Mparany Rajohnson  
Judge

[Seal of the Tribunal]

