



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-54-T
15-03-2011
(102374-102371)

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Mwamp

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 15 March 2011

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

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ICTR

DECISION ON DEFENCE MOTION REQUESTING
A COOPERATION ORDER DIRECTED TO THE ARAB REPUBLIC OF EGYPT

Office of the Prosecutor

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Ms. Anne-Gaëlle Denier
Ms. Chloé Gaden-Gistucci

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 Urgent Motion Requesting the Trial Chamber to Issue an Order Directed at the Arab Republic of Egypt (pursuant to Article 28 of the Statute of the ICTR)", filed confidentially on 23 February 2011 (the "Defence Motion");

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 Arab Republic of Egypt to provide full assistance and cooperation in facilitating a meeting with an Egyptian national.¹
2. On 20 January 2011, the Office of the Registrar relayed, to the Egyptian Foreign Minister, the Defence request for authorization and assistance to facilitate a meeting with the Egyptian national.²
3. On 10 February 2011, the Egyptian embassy in Tanzania informed the Registrar that it required an Order from the Chamber before it could comply with the Defence request. Accordingly, the Defence is left with no other option but to request such an Order from the Chamber. The Defence recalls the Chamber's Cooperation Order to Togo in response to a Defence request under similar circumstances, wherein the Defence needed to meet with a Togolese national.³
4. The Defence asserts that the Egyptian national possesses firsthand knowledge of the events in Rwanda from January to April 1994, and can therefore be a crucial Defence witness. This individual may have information which can rebut allegations set out in Counts 2, 3, 4 and 5 of the Indictment, and in particular, paragraphs 16, 19, 20, 22-23,

¹ Defence Motion, paras. 1, 27-28.

² *Id.*, para. 2; *ex parte* Annex 1.

³ *Id.*, paras. 3, 22-27; *ex parte* Annex 2; Decision on Defence Motion Requesting an Order Directed at the Togolese Republic (TC), 23 November 2010 ("Decision of 23 November 2010").



25-30, 34-35, 36, 39, 40, 50, and 52 thereof. The Defence, however, will have to meet with the person before it can determine whether to call him as a witness.⁴

DELIBERATIONS

5. 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.⁵

6. In accordance with the Tribunal’s jurisprudence, a party seeking an Order under Article 28 of the Tribunal’s Statute 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.⁶

7. 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 Egyptian national, who may be able to give evidence about some of the allegations against the Accused.

8. The Chamber further considers that the Defence has established that access to the named Egyptian 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.⁷ Thus, the evidence may be relevant.

⁴ *Id.*, paras. 7-20.

⁵ Decision of 23 November 2010, para. 4, citing Decision on Defence Motion Requesting an Order Directed at the Republic of Senegal (TC), 28 April 2010 (“Decision of 28 April 2010”), para. 5; *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

⁶ Decision of 23 November 2010, para. 5, citing Decision of 28 April 2010, para. 5; *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.

⁷ Defence Motion, paras. 16-19. The Chamber notes that the name and nationality of the Egyptian national, among other individuals, appears to be identified on p. 10218 of *ex parte* Annex 1.


9. The Defence has also demonstrated that it has made diligent efforts to obtain the evidence it seeks, and that these efforts have been unsuccessful.⁸

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Defence Motion;


RESPECTFULLY REQUESTS the Arab Republic of Egypt to provide any relevant assistance in facilitating a meeting between the Defence and the named Egyptian national.

Arusha, 15 March 2011


William H. Sekule
Presiding Judge


Solomy Balungi Bossa
ICTR
Judge

[Seal of the Tribunal]


Mparany Rajohnson
Judge

⁸ Defence Motion, paras. 22-24; *ex parte* Annexes 1-2.