

ICTR-99-54-T
23-08-2011
(104105 - 104102)

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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 August 2011

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

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**DECISION ON DEFENCE MOTION REQUESTING
A COOPERATION ORDER DIRECTED AT THE KINGDOM OF BELGIUM**

Office of the Prosecutor

Mr. Wallace Kapaya
Mr. Patrick Gabaake
Mr. Rashid Rashid
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Mr. Michael Kalisa
Ms. Faria Rekkas

Defence Counsel

Mr. Peter Herbert
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Mr. Deogratias Sebureze
Ms. Anne-Gaëlle Denier
Ms. Chloé Gaden-Gistucci
Ms. Julie Hotte

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 Kingdom of Belgium (pursuant to Article 28 of the Statute of the ICTR)", filed confidentially on 4 July 2011 (the "Defence Motion");

NOTING that the Prosecution did not respond to the Defence 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. On 21 June 2011, the Defence filed an *ex parte* motion requesting the Chamber to issue an order directed at the Kingdom of Belgium. On 1 July 2011, the Chamber, through the Registry's Court Management Section, indicated that it would be appropriate and in the interest of justice that the motion be filed *inter partes*, should the Defence wish to pursue the matter.¹
2. On 4 July 2011, the Defence filed confidentially the present Motion, with two *ex parte* annexes.

SUBMISSIONS

3. The Defence moves the Chamber to issue an Order directed to the Kingdom of Belgium to provide full assistance and cooperation in facilitating a meeting with two Belgian nationals.²
4. On 7 June 2011, the Office of the Registrar relayed, to the Minister of Foreign Affairs and Institutional Reforms of the Kingdom of Belgium, the Defence request for authorization and assistance to facilitate a meeting with the two Belgian nationals.³
5. On 8 June 2011, the Kingdom of Belgium 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. The Defence recalls the Chamber's Cooperation Order to Togo and to Egypt in response to a

¹ See Facsimile Transmission of 1 July 2011.

² Defence Motion, paras. 1-2.

³ *Id.*, para. 2; *ex parte* Annex 1.

Defence request under similar circumstances, wherein the Defence needed to meet with a Togolese and an Egyptian national.⁴

6. The Defence asserts that the two Belgian nationals possess firsthand knowledge of the events in Rwanda before and after 6 April 1994, and can therefore be crucial Defence witnesses. These individuals may have information which can rebut allegations set out in four counts and 18 paragraphs of the Indictment. The Defence, however, will have to meet with the persons before it can determine whether to call them as witnesses.⁵

DELIBERATIONS

7. 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.⁶

8. 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.⁷

9. 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 two named Belgian nationals, who may be able to give evidence about some of the allegations against the Accused.

⁴ *Id.*, paras. 3, 18-20; *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”); Decision on Defence Motion Requesting a Cooperation Order Directed to the Arab Republic of Egypt, 15 March 2011.

⁵ Defence Motion, paras. 7-16.

⁶ 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

⁷ 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. Bicumupaka’s Request for Order for Cooperation of the Kingdom of Belgium (TC), 12 September 2007, para. 3.

10. The Chamber further considers that the Defence has established that access to the two named Belgian nationals might be useful in deciding whether to call them as a witness. In particular, the Chamber notes that the nature of their alleged involvement in Rwanda may yield information relevant to the charges against the Accused.⁸ Thus, the evidence may be relevant.

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

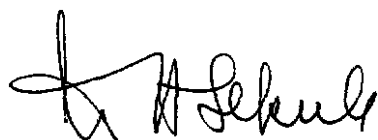
FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Defence Motion;

RESPECTFULLY REQUESTS the Kingdom of Belgium to provide any relevant assistance in facilitating a meeting between the Defence and the two named nationals; and

DIRECTS the Registry to translate and transmit this Decision to the relevant authorities of the Kingdom of Belgium.

Arusha, 23 August 2011



William H. Sekule
Presiding Judge

Solomy Babirye Rossa



[Seal of the Tribunal]



Mparany Rajohnson
Judge

⁸ See generally Defence Motion, paras. 10-14

⁹ *Id.*, paras. 18; *ex parte* Annexes 1-2.