



ICTR-99-54-T
14-12-2011
(106370 - 106368)

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Mwamp

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: 14 December 2011

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

UNICTR
JUDICIAL RECORDS/ARCHIVES
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**ORDER TO REGISTRAR FOR FURTHER SUBMISSIONS
UPON COMPLETION OF MISSION TO TOGO**

Office of the Prosecutor

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

Defence Counsel

Mr. Peter Herbert
Ms. Mylène Dimitri
Mr. Deogratias Sebureze
Ms. Anne-Gaëlle Denier
Mr. Gregg Shankman
Ms. Adèle Pilote-Babin

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");

RECALLING the Chamber's "Decision on Defence Motion Requesting an Order directed at the Togolese Republic" of 23 November 2010, wherein the Togolese Republic was respectfully requested to provide any relevant assistance in facilitating a meeting between the Defence and a certain Togolese national;¹

RECALLING further the Chamber's "Decision on Defence Motion Asking the Trial Chamber to Request the President to Report the Matter of the Republic of Togo's Refusal to Cooperate to the Security Council" of 14 September 2011, wherein the Togolese authorities were respectfully requested to facilitate and ensure the Defence was able to meet a certain Togolese national as soon as possible, considering that the Chamber expected to conclude the evidence phase by the end of October 2011;²

NOTING the "Defence Second Motion Asking the Trial Chamber to Request the President to Report the Matter of Togo's Refusal to Cooperate to the Security Council (*Article 28 of the Statute of the Tribunal; Rule 7 bis of the Rules of Procedure and Evidence*)", filed confidentially on 11 November 2011 (the "Defence Motion"), which is currently under deliberation;

RECALLING the Chamber's "Order to Registrar for Submissions" and "Order to Registrar for Further Submissions", of 1 and 7 December 2011, respectively;

ACKNOWLEDGING the "Registrar's Submissions in Respect of Trial Chamber II Order of 1 December 2011 (*Rule 33(B) of the Rules of Procedure and Evidence*)" and the "Registrar's Further Submissions in Respect of Trial Chamber II Order of 7 December 2011 (*Rule 33(B) of the Rules of Procedure and Evidence*)" (the "Registrar's Further Submissions"), filed confidentially on 2 and 12 December 2011, respectively;

NOTING the "Defence Comments on the Registrar's Submissions in Respect of Trial Chamber II Order of 1 December 2011" (the "Defence Comments"), and the "Defence Comments on the Registrar's Further Submissions in Respect of Trial Chamber II Order of 7 December 2011" (the "Defence Further Comments") filed on 5 and 13 December 2011, respectively;

OBSERVING that the Defence Comments and the Defence Further Comments appear to identify a potential Defence witness by name;³

¹ Decision on Defence Motion Requesting an Order Directed at the Togolese Republic (TC), 23 November 2010, p. 4.

² Decision on Defence Motion Asking the Trial Chamber to Request the President to Report the Matter of the Republic of Togo's Refusal to Cooperate to the Security Council (TC), 14 September 2011, para. 19.

³ See Defence Comments on the Registrar's Submissions in Respect of Trial Chamber II Order of 1 December 2011, 5 December 2011, paras. 6, 11; Defence Comments on the Registrar's Further Submissions in Respect of Trial Chamber II Order of 7 December 2011, 13 December 2011, para. 16.

NOTING that the Prosecution has not commented on this matter;

TAKING INTO ACCOUNT the Registrar's Further Submissions that the Togolese authorities have failed to acknowledge receipt of the ICTR *Note Verbale* of 23 March 2011 and of the Chamber's Decisions of 23 November 2010 and 14 September 2011;⁴ and

CONSIDERING the Registrar's Further Submissions that the Chief of ERSPPS has been requested to travel to Togo from 16 to 18 December 2011, and that upon his return, the Registry shall report back to the Chamber;⁵

FOR THE ABOVE REASONS, THE CHAMBER

INVITES the Registrar to provide further submissions under Rule 33(B) of the Rules of Procedure and Evidence, in particular addressing whether Togo received the *Note Verbale* of 23 March 2011 and the Chamber's Decisions of 23 November 2010 and 14 September 2011, and to provide any other useful submissions on the issue of cooperation;

REQUESTS the Registrar to provide these submissions to the Chamber and the Parties immediately upon the completion of the mission of the Chief of ERSPPS to Togo;

GRANTS the Parties three days from receipt of the Registrar's submissions to file their comments thereon, if they so wish;

DEFERS its Decision on the pending Defence Motion until the receipt and consideration of these submissions; and

DIRECTS the Registry to place under confidential seal the Defence Comments and the Defence Further Comments of 5 and 13 December 2011, respectively.

Arusha, 14 December 2011



William H. Sekule
Presiding Judge


 Solomy Balungi Bossa
 Judge

 [Seal of the Tribunal]



Mparany Rajohnson
Judge

⁴ Registrar's Further Submissions in Respect of Trial Chamber II Order of 7 December 2011 (*Rule 33(B) of the Rules of Procedure and Evidence*), 12 December 2011, para. 4.

⁵ *Id.* See also *id.*, pp. 1-2 (*Note Verbale* of 12 December 2011).