



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 22 June 2012

ICTR-99-54-T
22nd June 2012
(111240 - 111236)

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

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DECISION ON DEFENCE ORAL MOTION REQUESTING A COOPERATION
ORDER DIRECTED AT THE FEDERAL REPUBLIC OF NIGERIA

Office of the Prosecutor

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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 Oral Motion Requesting the Trial Chamber to Issue an Order Directed at the Federal Republic of Nigeria, proffered on 8 June 2012 (the "Defence Motion");¹

CONSIDERING:

- (a) the Prosecution Oral Response, proffered on 8 June 2012;²
- (b) the Defence Oral Reply, proffered on 8 June 2012;³ and

CONSIDERING also the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

NOW DECIDES the Defence Motion pursuant to Article 28 of the Statute.

INTRODUCTION

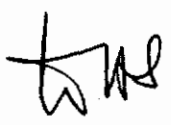
1. From 5 to 8 June 2012, Witness PRVIII testified as a Prosecution rebuttal witness. In the course of his testimony, the witness indicated that he was unable to answer certain questions for lack of authorization from his government.⁴
2. On 7 June 2012, the Chamber rendered an oral decision to have the witness return on 2 July 2012 to testify "on the specific issues of the stamp impressions".⁵

SUBMISSIONS

Defence Motion

3. The Defence prays the Chamber to issue a cooperation order requesting the Federal Republic of Nigeria to authorize Witness PRVIII to answer all questions which were put to him that he could not answer, and any other questions that will be put to him during his expected testimony on 2 July 2012. According to the Defence, answers to these questions are needed, among other reasons, to determine whether to file a motion for rejoinder evidence, and to ensure that the proceedings run smoothly. The Defence

¹ T. 8 June 2012, pp. 54-56 (CS).
² *Id.*, pp. 57-59 (CS).
³ *Id.*, pp. 58-59 (CS).
⁴ See, for example, T. 7 June 2012, pp. 12-13, 15, 39, 53-54 (CS).
⁵ *Id.*, pp. 4-5.



primarily bases its request on Article 28 of the Statute, and submits that its request fulfils the three requirements for a cooperation order set forth by the Tribunal's jurisprudence.⁶

4. The Defence argues that securing the authorization of the Nigerian authorities should be assigned to the Registry. This is because the Prosecution can no longer be in contact with the witness, who is in the middle of his testimony.⁷

Prosecution Response

5. The Prosecution responds that the Chamber has already rendered a decision on the substance of the Defence Motion, ruling that it was not necessary for the witness to provide specific names of embassy personnel. The Prosecution submits that, because the witness provided categories of persons working at the embassy, the Defence now has the information required to investigate and obtain the necessary answers.⁸

6. The Prosecution further argues that the Chamber is unable to order a sovereign government or state officials acting in their official capacities.⁹

Defence Reply

7. The Defence replies that it is not requesting a subpoena, as the witness came before the tribunal voluntarily and has promised to return on 2 July 2012 to complete his testimony.¹⁰

8. The Defence further denies the Prosecution's assertion that all questions posed were answered. Some questions touched on specific aspects, such as the name of the officer in charge of issuing visas at the embassy; despite knowing the name in question, he refused to answer.¹¹ The Defence reiterates that it is in the interest of justice that the witness comes to Arusha on 2 July with the necessary authorizations to answer all questions put by the Defence.

DELIBERATIONS

9. 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: (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.¹²

⁶ T. 8 June 2012, pp. 54-56 (CS). The Defence additionally relies upon Articles 19 and 20 of the Statute, and Rule 54 of the Rules.

⁷ *Id.*, p. 56 (CS).

⁸ *Id.*, p. 57 (CS).

⁹ *Id.*, pp. 57-58 (CS).

¹⁰ *Id.*, pp. 58-59 (CS).

¹¹ *Id.*, p. 59 (CS).

¹² Decision on Defence Motion Requesting a Cooperation Order Directed at the Kingdom of Belgium (TC), 23 August 2011 ("Decision of 23 August 2011"), para. 7, citing Decision on Defence Motion Requesting an Order Directed at the Togolese Republic (TC), 23 November 2010 ("Decision of 23 November 2010"),

10. In accordance with the Tribunal's jurisprudence, a party seeking an Order under Article 28 of the Tribunal's Statute for State cooperation 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.¹³

11. According to the Defence Motion, Witness PRVIII failed to answer a number of questions, such as the names of various embassy personnel in Dakar, Senegal, in the course of his testimony. The Defence submits that answers to these questions are necessary for several reasons, including to determine whether it will make a motion for rejoinder and to ensure efficient proceedings on 2 July 2012.¹⁴

12. The Chamber considers that the Defence Motion fails to articulate the relevance of the sought evidence to the trial. During Witness PRVIII's testimony, the Chamber took note of the witness's answers and found that they were sufficient, *inter alia*, to address the issues pertinent to his testimony and to allow the Defence to conduct any further investigations if it so wished. The Chamber further recalls that it made a number of oral rulings clarifying this matter during the witness's testimony.¹⁵

13. The Chamber thus concludes that the Defence has failed to meet the second criterion for a cooperation order with regards to the questions asked during Witness PRVIII's cross-examination.

14. With regard to any question about stamp impressions that will be put to the witness on 2 July 2012, the Chamber considers this Motion to be speculative.

para. 4; Decision on Defence Motion Requesting an Order Directed at the Republic of Senegal (TC), 28 April 2010 ("Senegal 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 1465 (1998) of the Security Council (TC), 25 August 2004, p. 2.

¹³ Decision of 23 August 2011, para. 8, citing Decision of 23 November 2010, para. 5; Senegal Decision of 28 April 2010, para. 6; *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T ("*Bizimungu et al.*"), *Décision Relative à la Requête de Bicomumpaka Tendant à Faire Solliciter la Coopération du Royaume de Belgique* (TC), 12 September 2007, para. 3; *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; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Request to the Republic of Togo for Assistance Pursuant to Article 28 of the Statute (TC), 31 October 2005, para. 2.

¹⁴ T. 7 June 2012, p. 55 (CS).

¹⁵ See, for example, *id.*, pp. 23, 44, 47, 50-51, 55-56 (CS).

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FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence Motion; and

REQUESTS the Registry to take all necessary measures to ensure Witness PRVIII's return to Arusha on 2 July 2012 to complete his testimony.

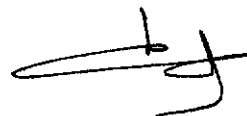
Arusha, 22 June 2012



William H. Sekule
Presiding Judge



Solomy Balungi Bossa
Judge



Mparany Rajohnson
Judge

