



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
21-04-2006
(27153-27151)

TRIAL CHAMBER I

27153
S. Muna

Before: Judge Erik Møse
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 21 April 2006

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

2006 APR 21 12:31
S. Muna

**DECISION ON REQUEST TO THE KINGDOM OF BELGIUM FOR ASSISTANCE
PURSUANT TO ARTICLE 28 OF THE STATUTE**

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid

The Defence

Raphaël Constant
Allison Turner
Paul Skolnik
Frédéric Hivon
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

6h

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

27152

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the “Urgent Motion Requesting an Order Directed at the Kingdom of Belgium”, etc., filed by the Nsengiyumva Defence on 7 April 2006;

CONSIDERING the Registrar’s submissions, filed on 10 April 2006;

HEREBY DECIDES the request.

1. The Nsengiyumva Defence asks the Chamber to make a request to the Kingdom of Belgium, under Article 28 of the Tribunal’s Statute, to facilitate interviews with four UNAMIR officers who were stationed in Gisenyi Prefecture in 1994. These four individuals, Commander Marc Biot, Captain Luc Geysels, Major Jacques De Koninck, and Warrant Officer Marc Beyens, are said to have information concerning the Butotori training facility – in particular, whether it was used to train *Interahamwe*, as alleged by Prosecution witnesses. The Nsengiyumva Defence also requests permission to meet with a certain Alphonse Higaniro, a person said to be in Belgian custody who can contradict the testimony of Witness XBH that the Accused met with Colonel Bagosora and other persons in Butare before April 1994 to plan a genocide against the Tutsi.¹

2. Article 28 of the Statute imposes an obligation on States to “cooperate with the International Criminal Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law”. A request to a Chamber to make an order under Article 28 must set forth the nature of the information sought; its relevance to the trial; and the efforts that have been made to obtain it. The type of assistance sought should also be defined with particularity.²

3. The motion adequately articulates the nature of the information sought and its relevance to the proceedings against the Accused. The four UNAMIR officers were likely in a position to observe events in Gisenyi prefecture which are relevant to the present trial.³ As to Mr. Higaniro, the Defence appears to have reason to believe that he has precise information which will contradict the incriminating testimony of Prosecution Witness XBH. Based on these submissions, the Chamber is satisfied that the information sought is relevant to the present trial.

4. The Defence has demonstrated that it has made reasonable efforts to obtain the information without recourse to Article 28. The Registrar explains that the Belgian authorities do not object to the content of the request, but that Belgian law requires the issuance of a judicial order as a prerequisite to any cooperation.⁴ Under these circumstances, the Chamber finds that the second condition under Article 28 is satisfied.

¹ Motion, paras. 19-20.

² *Bagosora et al.*, Decision on Request to the Kingdom of The Netherlands for Cooperation and Assistance (TC), 7 February 2005, para. 5; *Bagosora et al.*, Decision on Request for Subpoena of Major General Yaache and Cooperation of the Republic of Ghana (TC), 23 June 2004, para. 4.

³ Several requests to interview former UNAMIR officers have been the subject of previous Article 28 requests: *Bagosora et al.*, Decision on Request to the Republic of Bangladesh Pursuant to Article 28 of the Statute (TC), 31 October 2005; *Bagosora et al.*, Decision on Request to the Republic of Togo for Assistance Pursuant to Article 28 of the Statute (TC); *Bagosora et al.*, Decision on Request to the Kingdom of The Netherlands for Cooperation and Assistance (TC), 7 February 2005, para. 5; *Bagosora et al.*, Decision on Request for Subpoena of Major General Yaache and Cooperation of the Republic of Ghana (TC), 23 June 2004, para. 4.

⁴ Submissions, para. 10.

6h

27151

FOR THE ABOVE REASONS, THE CHAMBER

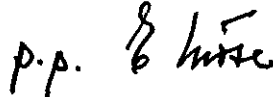
RESPECTFULLY REQUESTS the Kingdom of Belgium to provide any relevant assistance in facilitating meetings between the Defence for Nsengiyumva and Commander Marc Biot, Captain Luc Geysels, Major Jacques De Koninck, Warrant Officer Marc Beyens and Mr. Alphonse Higaniro;

DIRECTS the Registry to transmit this decision to the relevant authorities of the Kingdom of Belgium.

Arusha, 21 April 2006



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

