



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

Before:

Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 22 October 2004

THE PROSECUTOR

v.

**Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA**

Case No. : ICTR-98-41-T

**REQUEST TO THE REPUBLIC OF FRANCE FOR COOPERATION AND ASSISTANCE PURSUANT
TO ARTICLE 28 OF THE STATUTE**

The Office of the Prosecutor

Barbara Mulvaney
Drew White
Segun Jegede
Christine Graham
Rashid Rashid

Counsel for the Defence

Raphaël Constant
Paul Skolnik
Jean Yaovi Degli
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”),

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

BEING SEIZED of the “Requête de la défense de Bagosora aux fins de coopération de la République Française”, filed on 11 October 2004;

HEREBY DECIDES the motion.

1. The Bagosora Defence requests the Chamber, under Article 28 of the Statute, to order the French authorities to permit the Bagosora Defence to meet with Mr Marlaud and Colonel Maurin.
2. Article 28 (1) of the Statute imposes an obligation on States to “cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law”. Article 28 (2) enumerates types of requests and orders which may be issued by a Trial Chamber. Although the transfer of prospective witnesses is not specifically mentioned, the Chamber’s power is not limited to requests and orders listed in the provision and may include any order whose purpose is to assist the Tribunal in its mandate. Article 18 (2) empowers a Chamber to “issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of a trial”. Rule 54 of the Rules of Procedure and Evidence specifies that a Judge or Chamber may “issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial”. On the basis of these powers, the Chamber is competent to issue an order to a State to request cooperation in the facilitation of a meeting between the Defence and a person in that State. ^[1]
3. As with other applications for an Article 28 request, the applicant must set forth the nature of the evidence sought; the relevance of that evidence to the trial; and the efforts that have been made to obtain the evidence. ^[2] Further, the applicant should identify the nature of the assistance requested with particularity. ^[3]
4. Based on the submissions of the Defence, the Chamber finds that the conditions for an Article 28 request are met. Both Mr Marlaud and Colonel Maurin were present in Rwanda in April 1994 and may have information relevant to the proceedings. Moreover, the French authorities have indicated to the Registry that a meeting between the Bagosora Defence and Mr Marlaud and Colonel Maurin would be facilitated if the Tribunal makes a formal request to that effect.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the motion;

DIRECTS the Registrar to transmit the present decision to the Republic of France, and to report back on its implementation;

RESPECTFULLY REQUESTS the Republic of France, under Article 28 of the Tribunal’s Statute, to facilitate the meeting of the Bagosora Defence with Mr Marlaud and Colonel Maurin.

Arusha, 22 October 2004

Erik Møse
Presiding Judge

Jai Ram Reddy
Judge

Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

^[1] *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.

^[2] *Bagosora et al.*, Request to the Government of Rwanda for Cooperation and Assistance Pursuant to Article 28 of the Statute (TC), 10 March 2004, para. 4; *Bagosora et al.*, Decision on the Defence for Bagosora’s Request to Obtain the Cooperation of the Republic of Ghana

(TC), 25 May 2004, para. 6.

[3]

Bagosora et al., Request to the Government of Rwanda for Cooperation and Assistance Pursuant to Article 28 of the Statute (TC), 31 August 2004, para. 4.