

No. 46888

**United Nations (International Criminal Tribunal for
Rwanda)
and
Netherlands**

Exchange of letters constituting an agreement between the Kingdom of the Netherlands and the International Criminal Tribunal for Rwanda regarding a witness to the ICTR Appeals Chamber staying in the Netherlands. Arusha, 3 March 2009 and The Hague, 4 April 2009

Entry into force: *9 April 2009, in accordance with the provisions of the said letters*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *ex officio,*
12 November 2009

**Organisation des Nations Unies (Tribunal pénal international pour le Rwanda)
et
Pays-Bas**

Échange de lettres constituant un accord entre le Royaume des Pays-Bas et le Tribunal pénal international pour le Rwanda concernant le séjour aux Pays-Bas d'un témoin à la Chambre d'appel du TPIR. Arusha, 3 mars 2009 et La Haye, 4 avril 2009

Entrée en vigueur : *9 avril 2009, conformément aux dispositions desdites lettres*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *d'office,*
12 novembre 2009

[ENGLISH TEXT – TEXTE ANGLAIS]

I

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PÉNAL INTERNATIONAL POUR LE RWANDA
OFFICE OF THE PROSECUTOR**

Arusha, 3 March 2009

OTP/DP/032/09/ts

Honourable Minister,

The Prosecutor of the International Criminal Tribunal for Rwanda presents his compliments to the Royal Netherlands Embassy, and has the honour to present his Confidential Request for Assistance regarding the testimony of Witness 006 in the case of *The Prosecutor v Ephrem Setako* Case No. ICTR-04-81-T. Trial Chamber I that is hearing the Setako case has ordered that Witness 006 should testify by video-link from Monday 20 April to Wednesday 22 April 2009. In that regard, the Prosecutor requests the Government of the Kingdom of the Netherlands to permit the witness to come into its territory, to provide him with state protection and, where necessary, to provide logistics that will facilitate the video-link testimony of the witness. The Prosecutor requires the witness

to arrive in the Kingdom of the Netherlands on 16 April 2009 and experts¹⁾ that that the witness will leave the Netherlands by Friday 24 April 2009.

The Prosecutor presents this Request for Assistance and requests that it be acceptable under the conditions as set out below.

1. The Prosecutor refers to the *Exchange of Letters of 22 and 24 April 1996 between the Government of the Kingdom of the Netherlands and the United Nations containing a Treaty regarding the application of the Agreement between the Kingdom of the Netherlands and the United Nations concerning the Headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991* (the ICTY Headquarters Agreement). The Parties to the said Exchange of Letters agreed that in order to facilitate activities and proceedings that may be undertaken from time to time by the ICTR in The Hague, the pertinent provisions of the ICTY Headquarters Agreement are applicable, *mutatis mutandis*, to such activities and proceedings by the ICTR.

2. Consequently, the Embassy confirms that Article XVIII, Article XXI, paragraph 1 and 2, Article XXII, Article XXIII, Article XXIV, paragraph 1, and Article XXVI of the ICTY Headquarters Agreement will apply in this case.

3. However, in view of the special circumstances of this case:
- the notification referred to in Article XXII is deemed to be fulfilled;
 - and
 - the Embassy assumes that the Registrar of the ICTR will not use the right referred to in the last sentence of Article XXIII;

4. As to the application of Article XXVI, the Ministry of Justice of the Netherlands will:

- a. place Witness 006 in a Dutch Witness Protection Programme;
- b. meet Witness 006 at the point of his arrival, which will be timely communicated by or on behalf of the Registrar of the ICTR to the Ministry of Justice;
- c. provide safe accommodation for Witness 006 throughout his stay in the Netherlands;
- d. provide secure transfer for Witness 006 from the point of arrival to the safe accommodation, daily from the safe accommodation to the

¹⁾ Should read "expects".

main premises of the UN-ICTY, and from the safe accommodation or the main premises of the UN-ICTY to the point of departure from the Netherlands;

e. not allow that Witness 006 receives visitors, with the exception of the Source Handler of the Office of the Prosecutor who has been designated as such by the Prosecutor, as well as the Counsel who have been authorised by the Trial Chamber to be present at the hearing of Witness 006.

5. The rules of the aforementioned Dutch Witness Protection Programme will apply. Witness 006 can only be protected as far as he will follow the instructions by the police officers assigned to him.

6. The responsibility of the Dutch authorities for any claims by Witness 006, the UN or any third party does not go beyond the usual responsibility for witnesses under a Witness Protection Programme according to Dutch law.

7. All protection extended by the Dutch authorities will cease in case Witness 006 does not use the first possible opportunity of leaving the territory of the Netherlands after completion of his testimony. The ICTR will ensure that the stay of Witness 006 will be as short as possible.

8. The costs of the personnel providing security and the transfer costs will be borne by the Dutch authorities. All other costs, such as the rent of safe accommodation, food, daily allowances and costs of travel to and from the Netherlands, will be borne by the ICTR.

The Prosecutor avails himself of this opportunity to renew to the Royal Netherlands Embassy the assurances of his highest consideration.

BONGANI MAJOLI
Deputy Prosecutor

for Hassan B. Jallow
Prosecutor

*Honourable Minister
Ministry of Foreign Affairs
Kingdom of the Netherlands*