



TRIAL CHAMBER II

OR: ENG.

Before:

Judge William H. Sekule, Presiding
Judge Yakov A. Ostrovsky
Judge Tafazzal H. Khan

Registry:

Mr. John Kiyeyeu

Decision of:

6 June 1998

THE PROSECUTOR
VERSUS
THÉONESTE BAGOSORA

Case No. ICTR-96-7-T

DECISION ON THE AMICUS CURIAE APPLICATION BY THE
GOVERNMENT OF THE KINGDOM OF BELGIUM

The Office of the Prosecutor:

Mr. James Stewart
Mr. Chile Eboe-Ossuji
Mr. Frederick Osoko

The Counsel for the Accused:

Mr. Jacques Larochelle
Mr. Raphael Constant

The Government of Belgium:

Mr. Eric David

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

SITTING AS Trial Chamber II, composed of Judge William H. Sekule Presiding, Judge Yakov A. Ostrovsky and Judge Tafazzal H. Khan; (the “Chamber”)

CONSIDERING the indictment submitted by the Prosecutor against Théoneste Bagosora, confirmed on 10 August 1996, by Judge Aspegren pursuant to rule 47 of the Rules of Procedure and Evidence (the “Rules”), on the basis that sufficient evidence was presented to provide for reasonable grounds that the accused committed genocide, conspiracy to commit genocide, crimes against humanity and violations of Article 3 common to the 1949 Geneva Conventions and Additional Protocol II thereto;

CONSIDERING the initial appearance of the accused Théoneste Bagosora which took place on 7 March 1997;

CONSIDERING the application by the government of the Kingdom of Belgium (the “Belgian Government” or “Belgium”) to appear as amicus curiae in this matter;

CONSIDERING the provisions of rule 74 of the Rules which defines the permissible scope of amicus curiae appearances;

HAVING HEARD all the parties in an open session on 13 March 1998.

SUBMISSIONS OF THE PARTIES:

WHEREAS the Belgian Government sought the Tribunal’s authorization to appear as amicus curiae, on some or all of the following points:

- (1) clarification on the power of the Tribunal to prosecute the accused pursuant to article 3 (Crimes Against Humanity) of the Statute of the Tribunal (the “Statute”); for his responsibility for the killings committed on 7 April 1994 by the Rwandese Armed Forces against ten UNAMIR Belgian para-commandos, and by the members of the Interhamwe militia against three members of the Belgian technical assistance mission;
- (2) the legal possibility for the Tribunal to hear the Belgian legal authorities, who conducted investigations in Rwanda and Belgium, as well as other African countries, after the Rwandan massacres, who wish to testify as witnesses pursuant to rule 89 of the Rules;
- (3) the right of Belgians or their rightful claimants, prejudiced by the massacres committed in the 1994 Rwandan genocide, to appear before the Tribunal as plaintiffs and not as mere witnesses, in accordance with article 23(3) of the Statute (relating to penalties), and rules 105 and 106 of the Rules, (relating to restitution of property and compensation to victims, respectively).

HAVING CONSIDERED the oral submissions made by the representative of the Belgian Government, Mr. Eric David, as to the reasons behind the desire to be heard on these matters and



further referring to rules 56 and 115 of the Rules (cooperation of states and additional evidence, respectively);

WHEREAS the Office of the Prosecutor (the "OTP") declined to take a position on the admissibility or inadmissibility of the instant amicus curiae by the Belgian government, emphasizing however that the only issue before the Trial Chamber at the 13 March 1998 hearing was whether leave should be granted to the Belgian government to appear;

WHEREAS the Defence Counsel, during oral submissions, objected to the filing of an amicus curiae brief by the Belgian government, contending that such an appearance would create a unacceptable disequilibrium in the proceedings in favor of the Prosecutor, as the Belgian Government could not be considered a neutral party;

WHEREAS the Defence further objected to the admission of the amicus curiae brief, on grounds of relevance, and the Belgian Government's attempt to raise issues not within its purview, namely the presentation of witness and appearance as plaintiffs.

DELIBERATIONS:

As a preliminary matter, we note that the general definition of amicus curiae does not call for impartiality on the part of the filing party. Rather it takes into consideration that such briefs are filed by a party, not a part of the action, but one with strong interests in or views on the subject matter before the court. In addition, rule 74 of the Rules provides

A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organisation, or person to appear before it and make submission on *any issue specified by the Chamber*.
(Emphasis added.)

With these details as a back drop, we consider the application of the Belgian government.

(1) The first point made in the Belgian request, namely the clarification of issues centering on Crimes Against Humanity, as it relates to the Bagosora matter, will be an important technical question in the proper determination of the present case. We note however, that the indictment as it currently stands, does not charge the accused with the killings of the three members of the Belgian technical assistance mission. Hence, the general point is one of relevance, and the applicant may present its amicus curiae brief on the issue, as it relates to the deaths of the ten UNAMIR Belgian para-commandos.

(2) The second point addresses the legal possibility of the presentation of Belgian witnesses, who conducted investigations into the 1994 Rwandan genocide. This question is matter of concern for the Prosecution and Defence and therefore, does not fall within the purview of the Belgian government.

Although rule 89(C) of the Rules does contain provisions for the admission of "any relevant



evidence which [the Trial Chamber] may deem to have probative value," it is clear that these witnesses must be brought before the Trial Chamber by either the Prosecution or Defence. Hence, we cannot, at present, invite the Belgian Government to address the second point before this Trial Chamber. Should the Belgian Government have additional information they wish to forward to the OTP they may do so in accordance with article 17(1) of the Tribunal's Statute.

(3) The third and final issue on which Belgium wishes to address the Trial Chamber, is that of the right of those Belgians, or their rightful claimants, injured by the 1994 Rwandan genocide, to appear before the Tribunal as plaintiffs, seeking penalties against the accused. We note that pursuant to rules 100 and 101 (pre-sentencing procedure and Penalties, respectively) of the Rules, these phases of the proceedings are open to the Prosecution and Defence only. At this juncture, the Trial Chamber is of the view that this question is not yet ripe for our consideration. This is because a discussion of penalties does not arise before a determination of guilt or innocence.

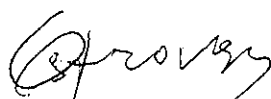
FOR ALL THE ABOVE REASONS THE TRIAL CHAMBER:

INVITES the Belgian Government to appear before it and make submissions on the jurisdiction of the Tribunal to prosecute the accused, for his responsibility for the killings committed on 7 April 1994, by the Rwandese Armed Forces against the ten UNAMIR Belgian para-commandos, pursuant to article 3 of the Statute.

Done in Arusha, on this 6th day of June 1998.



William H. Sekule
Presiding Judge



Yakov A. Ostrovsky
Judge



Tafazzal H. Khan
Judge

(Seal of the Tribunal)

