

ICTR-98-41-I

7-2-2001

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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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**TRIAL CHAMBER III**

Original: English

Before: Judge Lloyd George Williams, Presiding  
Judge Yakov Ostrovsky  
Judge Pavel Dolenc

Registrar: Agwu U. Okali

Date: 6 February 2001

**THE PROSECUTOR**  
v.  
**THÉONESTE BAGOSORA**

**THE PROSECUTOR**  
v.  
**ANATOLE NSENGIYUMVA**

**THE PROSECUTOR**  
v.  
**GRATIEN KABILIGI and**  
**ALOYS NTABAKUZE**

Case No. ICTR-98-41-I

JUDICIAL RECORDS ARCHIVES  
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**SCHEDULING ORDER REGARDING BAGOSORA'S  
MOTION FOR DISCLOSURE OF EVIDENCE**

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The Office of the Prosecutor:

Chile Eboe-Osuji  
Frédéric Ossogo  
Patricia Wildermuth

Defence Counsel for Théoneste Bagosora:

Raphael Constant  
Jacques Larochelle

1. The International Criminal Tribunal for Rwanda (Tribunal), sitting today as Trial Chamber III (Chamber), composed of Judges Lloyd George Williams, Presiding, Yakov Ostrovsky, and Pavel Dolenc, is seised of a motion filed by the Defence of Théoneste Bagosora (the “Accused”) seeking the disclosure of evidence.
2. On 17 October 2000, the Defence of the Accused filed its “Motion for Disclosure of Evidence (Article 20 of the Statute and Rules 66, 68, and 70 of the Rules)” (Motion).
3. The Motion seeks the disclosure of allegedly exculpatory or relevant documents that may be in the Prosecutor’s possession tending to show that the Rwandan Patriotic Front and its “head” Paul Kagame were responsible for the death of President Habyarimana on 6 April 1994. Such documents may include: (1) written statements or transcribed oral statements of witnesses; (2) documents provided by such witnesses, and (3) investigators’ comments on the information obtained from such witnesses.
4. On 21 October 2000, the Prosecutor filed the “Prosecutor’s Response to the Defence Motion for Disclosure of Evidence, Article 20 of the Statute and Rules 66, 68, and 70 of the Rules” (Response).

## FINDINGS


5. Notably, the Chamber observes that the Response failed to clearly and unequivocally represent whether or not the Prosecutor was in possession of or knew of the existence of documents responsive to the Defence’s instant requests. Rule 68 of the Tribunal’s Rules of Procedure and Evidence (the “Rules”), however, places the Prosecutor under an affirmative obligation to “. . . disclose to the Defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of the prosecution evidence.”
6. The Chamber intends to dispose of the full Motion based solely on the briefs of the parties, pursuant to Rule 73(A) The Prosecutor, however, has not provided the Chamber with sufficient information to enable it to rule on the Motion. Consequently, the Chamber deems it inadvisable to make a ruling in the absence of a clear understanding of the predicate factual situation.
7. Notwithstanding the absence of clear and unequivocal facts from the Prosecutor, the Chamber is constrained to deny the Defence request for disclosure of investigator’s notes as a matter of law since such material is protected from disclosure. That such a request is without legal merit is evident in Rule 70, which provides in relevant part: “. . . internal documents prepared by a party, its assistants or representatives in connection with investigation or preparation of the case, are not subject to disclosure or notification . . .”
8. The Chamber, therefore, acting *proprio motu* and under Rule 54:
  - (a) **ORDERS** the Prosecutor to, on or before 7 March, 2001, file a Memorandum, indicating clearly whether or not she is in possession of evidence or has knowledge about the existence of evidence sought by the Defence in the instant motion, to wit: (i) written statements or oral statements of potential witnesses in any form, or (ii) documents provided by such potential witnesses, tending to show that the Rwandan Patriotic Front or its leaders were

responsible for the plane crash and subsequent death of President Habyarimana on 6 April 1994, and further

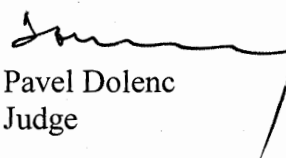
- (b) **ORDERS** the Prosecutor, in such Memorandum, to list and clearly describe the nature of any and all responsive evidence in her custody or control or about which she has knowledge which are not subject to protection from disclosure or notification. In addition, with respect to responsive documents or evidence that the Prosecutor believes are exempt from disclosure and or notification, she is to clearly describe her legal justifications for withholding such documents or knowledge about their existence from disclosure or notification, and further
- (c) **ORDERS** that the Defence Motion is denied to the extent it requests the Prosecutor to disclose investigator's comments on any information that may have been received from potential witnesses.

9. The Chamber reserves decision on the balance of the Defence Motion until after the Prosecutor files the Memorandum called for by this Order.

Arusha, 6 February 2001.

  
Lloyd George Williams  
Judge, Presiding

  
Yakov Ostrovsky  
Judge

  
Pavel Dolenc  
Judge

Seal of the Tribunal