



ICTR-98-41-T  
16-02-2004  
(18402-18400)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

18402

S. MUSE

OR: ENG

**TRIAL CHAMBER I**

**Before:** Judge Erik Møse, presiding  
Judge Jai Ram Reddy  
Judge Sergei Alekseevich Egorov

**Registrar:** Adama Dieng

**Date:** 16 February 2004

**THE PROSECUTOR**

v.

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

*Case No. ICTR-98-41-T*

1078  
2004 FEB 16 P 3:35

**DECISION ON NTABAKUZE DEFENCE MOTION FOR THE EXCLUSION FROM  
ALL CONSIDERATION OF DALLAIRE TELEGRAM OF 11 JANUARY 1994  
(EXHIBIT P32) UNTIL SUCH TIME AS A CHAIN OF CUSTODY CAN BE  
ESTABLISHED**

**Office of the Prosecutor:**

Barbara Mulvaney  
Drew White  
Segun Jegede  
Alex Obote-Odora  
Christine Granham  
Rashid Rashid

**Counsel for the Defence**

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

*ghw*

**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 “Ntabakuze Defence Motion for the Exclusion from all Consideration of Dallaire Telegram of January 11, 1994 (Exhibit P32) Until Such Time as a Chain of Custody can be Established”, filed on 27 January 2004;

**NOTING** that the deadline for the Prosecution to respond has passed;

**HEREBY DECIDES** the motion.

**SUBMISSIONS**

1. The Defence seeks to exclude from consideration, until a chain of custody is established, Prosecution Exhibit 32, a copy of a telegram dated 11 January 1994 from L. Gen. Dallaire to UN Headquarters in New York (UNHQ), on the grounds that the veracity and authenticity of the document is in question. Referring to exhibits previously tendered in the case, the Defence raises the issue of a chain of custody, arguing that the telegram was missing from UNHQ files for a time and subsequently replaced by an unknown person, and that it is now missing again and cannot be found. Counsel also raises discrepancies in content between the telegram and other exhibits, and the lack of official stamps on the document, which are found in other UNAMIR telegrams.

**DELIBERATIONS**

2. The Chamber recalls that the copy of the telegram in question has already been admitted into evidence as Prosecution Exhibit 32.

3. The Chamber has taken into account the submissions of the Defence for Ntabakuze and the testimony of Major Brent Beardsley (PW38), who stated that he drafted the telegram and sent it to UN Headquarters in New York on 11 January 1994, and that the Exhibit P32 tendered in court is a copy of the original telegram he drafted.<sup>1</sup>

4. In the circumstances, the Chamber considers that arguments as to the authenticity and subsequent handling of the document should be assessed during deliberations at the end of the trial, in light of the totality of the evidence and the final submissions of the parties.

---

<sup>1</sup> Transcripts of 4 and 5 February 2004.

18400

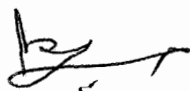
**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the motion.

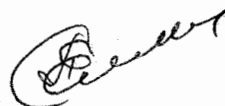
Arusha, 16 February 2004



Erik Møse  
Presiding Judge



Jai Ram Reddy  
Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]

