



ICTR-98-41-T
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
10-03-2004
(18892 - 18866)

18892

Inen

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 10 March 2004

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

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10:10
2004 MAR 10 P 14:40

REQUEST TO THE GOVERNMENT OF RWANDA 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

76m

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

18891

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

BEING SEIZED OF the “Requête conjointe de la défense aux fins d’obtenir la coopération de l’état Rwandais conformément à l’article 28 du Statut du Tribunal”, with annexes, filed on 28 July 2003; the Addendum thereto filed by the Defence for Bagosora on 17 November 2003; and the “Liste commune des documents réclamé”, etc., filed on 1 December 2003;

CONSIDERING the oral submissions of the parties on 16 and 17 December 2003, and 26 February 2004; the written submissions of the Prosecution filed on 18 December 2003; the written submissions of the Defence for Nsengiyumva, filed on 19 December 2003; the written submissions of the Defence for Bagosora, filed on 10 March 2004; and the informal oral submissions of the parties on 16 December 2003 and 27 February 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. This joint Defence motion requests the Chamber to order the Government of Rwanda, pursuant to Article 28 of the Statute, to allow the Defence to visit various ministries to review and obtain documents listed in an annex. An order is also requested for the disclosure of judicial records, if they exist, of certain named individuals.

SUBMISSIONS

2. The motion was originally accompanied by a list of documents requested by each Defence team, which were subsequently consolidated into a joint list at the request of the Chamber. Generally, the documents concern the organization of the Rwandan army and government, and the personal situation and status of the Accused. The motion states that requests for these documents have been addressed to the Prosecution. The Defence for Bagosora and for Nsengiyumva also submitted evidence of written requests for some of the documents to the Ministries of Defence, Foreign Affairs and Justice of the Government of Rwanda, attached at Annex B. The Defence for Kabiligi and for Ntabakuze did not demonstrate that they had made any requests to the Government of Rwanda.

3. The Prosecution filed no formal response to the motion, but questioned whether the Defence had shown due diligence in requesting the documents from the Rwandan Government before seeking the assistance of the Chamber under Article 28. It also asserted that some of the documents had already been disclosed to the Defence, were publicly available, or were probably not in the possession of the Government of Rwanda.

DISCUSSION

4. Article 28(1) 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) requires States to comply with requests for assistance issued by a Trial Chamber. The jurisprudence of this Tribunal and that of the Tribunal for the former Yugoslavia (whose statute contains a provision mirroring Article 28) establishes that a Trial Chamber is empowered to issue requests for the

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production of documents by a State.¹ The party seeking the request by the Trial Chamber must specifically identify, to the extent possible, the documents sought; articulate their relevance to the trial; and show that efforts to obtain the documents have been unsuccessful.²

5. The present motion does not expressly request the disclosure of the documents; rather, it seeks an order directing the Government of Rwanda to give the Defence access to its files and archives in order to locate and obtain the documents. Previous requests for broad categories of documents from the archives of a State have been rejected by this Tribunal.³ *A fortiori*, requests to inspect archives are equally inappropriate and over-broad, particularly absent any showing that inspections are necessary to obtain the documents. The same policy of cooperation that requires parties to make non-judicial requests to States prior to making an application to the Chamber under Article 28, also requires that requests for cooperation be tailored as narrowly as possible to the needs of the requesting party, and based on the presumption of good faith compliance by the requested State.⁴ A request for inspection of documents, therefore, will not be issued. The Chamber will treat the motion as a request that the Government of Rwanda itself locate and transmit the documents to the Defence. The Chamber will refer to the documents requested on the basis of the codes used in the Defence's consolidated list of documents, filed on 1 December 2003.

i) Document Requests Withdrawn

6. The Defence acknowledged that it already possessed some of the documents identified in the motion, in particular the Rwandan Penal Code in 1994 (item I.a on the Defence's consolidated list) and a Presidential decree concerning the organization of the government in April 1992 (item III.j). These requests are considered withdrawn.

ii) Documents Not Previously Requested from the Government of Rwanda

7. The Defence pleaded that it had requested all of the documents from the Prosecution, but made no showing that the Prosecution had any obligation to obtain these documents. Requests to the Prosecution do not discharge the Defence's obligation to make reasonable efforts to obtain the documents directly from the State before seeking the Chamber's assistance. The requirement reflects the fundamental values of comity and respect between this Tribunal and States. States must have a reasonable opportunity to assist the Tribunal

¹ See e.g. *Nahimana et al.*, Request for Cooperation By the Government of the Republic of Rwanda Pursuant to Article 28 of the Statute (TC), 24 September 2002 ("*Nahimana Decision*"); *Nzitorera et al.*, Request for the Cooperation of the Republic of Rwanda Pursuant to Article 28 of the Statute (TC), 25 October 2002 ("*Nzitorera Decision on Rwanda*"); *Blaskic*, Judgement on the Request of the Republic of Croatia for Review of the Decision of the Trial Chamber II of 18 July 1997 (AC), 29 October 1997 ("*Blaskic Decision I*").

² *Ngeze*, Decision on the Defence Motion to Have the Court Request a Subpoena *Duces Tecum* for the Production of the Defendant's Arrest and Certified Court Records, 11 May 2000, pp. 3-4 ("*Ngeze Decision*"), where the Chamber denied the motion for an Article 28 request ("...there is no evidence to show that the Defence has first made an effort to obtain the documents it needs from the State authority concerned, before requesting the Tribunal"); *Blaskic Decision I*, para. 32 ("It is therefore to be regarded as sound policy for the Prosecutor, as well as defence counsel, first to seek, through cooperative means, the assistance of States, and only if they decline to lend support, then to request a Judge or a Trial Chamber to have recourse to the mandatory action provided for in Article [28]"); *Nzitorera et al.*, Request for Cooperation and Assistance By the Government of Benin Pursuant to Article 28 of the Statute of the Tribunal (TC), 31 January 2003 ("*Nzitorera Decision on Benin*"); *Blaskic*, Decision on the Prosecutor's Request for the Issuance of a Binding Order to Bosnia and Herzegovina for the Production of Documents (TC), 27 February 1998 ("*Blaskic Decision II*"). The importance of making an initial request is underlined by the changes to the Rules of the ICTY in Rule 54 *bis*, which require the movant to "explain the steps that have been taken by the applicant to secure the State's assistance" and permits the Trial Chamber to reject a request "if no reasonable steps have been taken by the applicant to obtain the documents or information from the State".

³ *Ngeze Decision*, pp. 3-4.

⁴ *Blaskic Decision II*, para. 31.

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voluntarily, and to respond to the requests, before being subject to a mandatory order. Prior decisions have adhered strictly to the requirement that the Defence show that a prior request has been made and that it has been unsuccessful.⁵

8. The Defence for Bagosora and the Defence for Nsengiyumva have previously requested some, but not all, of the documents, albeit in language that does not exactly mirror the description of the documents in the present motion. Further, some of the same categories of documents have been requested, but for more restricted dates. The previous requests to the Government of Rwanda cover the following categories of documents on the Defence's consolidated list: I.c (*Journaux Officiels* from July 1992 to December 1993); II (administrative, military and personal files of the Accused Théoneste Bagosora, but not the other Accused); III.b (a 1987 report on national security); III.c (the administrative files of seven named officials); III.e (*ordres de bataille* and/or *liste nominative* of the Paracommando Battalion dated 1 October 1993 and 1 January 1994); III.f (*ordres de bataille* and/or *liste nominative* of the Reconnaissance Battalion issued on 1 January 1994); III.g (*ordres de bataille* and/or *liste nominative* of the Presidential Guard issued on 1 October 1993 and 1 January 1994); III.h (*ordres de bataille* and/or *liste nominative* of the *Gendarmerie Nationale* issued on 1 October 1993, 1 January 1994 and 1 March 1994); III.k (a directive issued by the Ministry of Defence in late January or early February 1993 limiting the powers of the *chef de cabinet*); III.o (a letter from the Accused Bagosora to the commander of UNAMIR, dated late February or early March 1994, protesting provocative acts against him by Belgian UNAMIR troops); IV.a (copies of civil, military and diplomatic passports of the Accused Bagosora between 1990 and 1994); and VI.a (records of judicial proceedings concerning named individuals).⁶ The Chamber dismisses all other document requests as not having been previously sought from the Government of Rwanda on a voluntary basis. This includes requests for the same documents over a broader time period. For example, item III.e seeks *ordres de bataille* from 1990 to 1994, whereas the previous letters to Rwanda asked only for *ordres de batailles* on specific dates, namely 1 October 1993 and 1 January 1994. The Chamber will only consider issuing an Article 28 request in respect of documents with those particular dates.⁷

iii) Relevance of Document Requests

9. The motion requests documents dated as early as 1987. In accordance with the Chamber's own decisions concerning oral testimony, documents from prior to 1994 must be shown to be relevant to events in 1994 in order to be admissible.⁸ Although the Defence need not prove that a document will be admissible to make a request for its disclosure, it must at least make a showing that the documents are likely to be relevant to the case. The Chamber considers it obvious that documents created or issued in the months preceding the start of 1994 probably describe policies that may still have been in effect in that year and are, therefore, likely to be relevant. Documents that are said to be dated from July 1993 through July 1994, that is, the *ordres de batailles* issued on 1 October 1993 or later (categories III.e

⁵ *Nzirorera* Decision on Benin, p. 2.

⁶ The letters are attached as Annex B. The motion seeks disclosure of the *ordres de batailles* of the Paracommando Battalion and the *Gendarmerie Nationale* going back to 1990 (III.e and h), but the letters to the Rwandan government seek only *ordres de batailles* issued on specific dates: for the army, dated 1 October 1993 and 1 January 1994; and for the *Gendarmerie Nationale*, dated 1 October 1993, 1 January 1994, and 1 March 1994. Only those dates requested in the letters can be considered to have been previously requested. The motion also seeks *ordres de batailles* in 1994 for the Reconnaissance Battalion and the Presidential Guard. The only *ordres de batailles* requested in previous letters that falls within that time frame is 1 January 1994.

⁷ Similarly, where the prior letters define a broader temporal scope than requested in the motion, then the temporal scope of the motion shall govern.

⁸ Decision on Admissibility of Proposed Testimony of Witness DBY (TC), 18 September 2003; affirmed, Decision on Prosecutor's Interlocutory Appeals Regarding Exclusion of Evidence (AC), 19 December 2003.

through h) and a letter from the Accused Bagosora dated in February or March 1994 (item III.o), are likely relevant to events in 1994. Editions of the *Journaux Officiels* dated after July 1993, but not before, are deemed relevant on this basis (item I.c). The document concerning the authority of the *chef de cabinet* of the Ministry of Defence (III.k), though of a slightly earlier date, will also be requested as being likely relevant.

10. Some evidence has been admitted at trial of events in 1992, which the Prosecution says is probative of an ongoing conspiracy through 1994. Categories II, III.c and IV.a appear to the Chamber to be relevant to these questions and, therefore, the requested period for these documents shall be defined more broadly as January 1992 through July 1994.

11. The Defence has requested a copy of a specific document, a report of a military commission on national security headed by the Accused Bagosora, dated June 1987 (item III.b). In the absence of more specific submissions on the relevance of this document, dated seven years before the events of 1994, the request is disallowed.

iv) Requests for Records of Judicial Proceedings

12. The Chamber has previously directed the Prosecution to request from the Government of Rwanda records of judicial proceedings concerning individuals scheduled to appear as Prosecution witnesses.⁹ Many of the individuals listed in Category VI of the motion are Prosecution witnesses and no further request in respect of those individuals need be made at this stage. Some are not Prosecution witnesses, however, and have been the object of prior Defence requests to the Government of Rwanda, by letters dated 25 October 2001 and 10 June 2003, included in Annex B. Requests in respect of these individuals may now be made under Article 28, for proceedings conducted after July 1994.

v) Conclusion

13. The document requests approved by the Chamber are appended as Annex A.

FOR THE ABOVE REASONS, THE CHAMBER GRANTS THE MOTION IN PART;

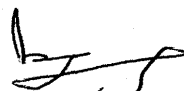
DIRECTS the Registrar to transmit the present decision to the Government of Rwanda, and to report back to the Chamber on its implementation;

RESPECTFULLY REQUESTS the Government of Rwanda to determine whether it possesses any of the documents listed in Annex A of this decision and, if so, to transmit them to the Registry as soon as possible for disclosure to the Defence.

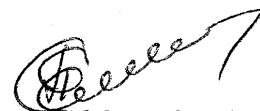
Arusha, 10 March 2004



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

⁹ Decision on the Defence Request for Document Arising from Judicial Proceedings in Rwanda in Respect of Prosecution Witnesses (TC), 17 December 2003.



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10-03-2003
(18887-18866)

ANNEX A

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[Signature]

List of Documents Requested From the Government of Rwanda
in Accordance With the Decision of 10 March 2004 of Trial Chamber I of the
International Criminal Tribunal for Rwanda

1. *Journaux Officiels* from July 1993 through December 1993
2. Military, Administrative or Personal Files at the Ministry of Defence of Colonel Théoneste Bagosora for the period from January 1992 through July 1994
3. Administrative files of the following persons at the Ministry of Defence for the period January 1992 through July 1994:
 - a. Pierre Celestin RWAGAFILITA (3ème promotion ESM)
 - b. Stanislas MAYUYA (4ème promotion ESM)
 - c. Elie SAGATWA (5ème promotion ESM)
 - d. Léonidas RUSATIRA (6ème promotion ESM)
 - e. Augustin NDINDILYIAMANA (7ème promotion ESM)
 - f. Marcel GATSINZI (9ème promotion ESM)
 - g. Anastase BIZUMUREMUYI (24ème promotion ESM)
4. *Ordres de bataille* and/or *liste nominative des militaires* of the Paracommando Battalion dated or issued on 1 October 1993 and 1 January 1994
5. *Ordres de bataille* and/or *liste nominative des militaires* of the Reconnaissance Battalion dated or issued on 1 January 1994
6. *Ordres de bataille* and/or *liste nominative des militaires* of the Presidential Guard dated or issued on 1 October 1993 and 1 January 1994
7. *Ordres de bataille* and/or *liste nominative des militaires* of the *Gendarmerie Nationale* dated or issued on 1 October 1993, 1 January 1994 and 1 March 1994
9. A directive dated or issued by the Ministry of Defence in late January or early February 1993 limiting the powers of the *chef de cabinet*
10. A letter from Colonel Théoneste Bagosora to the commander of UNAMIR, dated late February or early March 1994, protesting provocative acts against him by Belgian UNAMIR troops
11. Copies of civilian, military and diplomatic passports of Colonel Théoneste Bagosora from January 1992 through July 1994

12. Records of judicial proceedings conducted after July 1994 concerning the following individuals:

- a. Pasteur BIZIMUNGU
- b. Isidore BWANAKWELI
- c. Banzi WELLARS (trial in Gisenyi; President of MRND, Gisenyi)
- d. Faziri HAKIZIMANA (trial in Gisenyi; conseiller du secteur de Gisenyi)
- e. Zainabo MIKUNDUFITE (formerly in charge of the Rubavu Cellule and the daughter of Faziri Hakizimana) (trial in Gisenyi)
- f. 2nd Lt. Eustache DUSABEYEZU (student at St. Fidèle or Mudende University) (trial in Gisenyi)
- g. Father Francois KAYIRANGA (Court of Appeal of Ruhengeri)
- h. Father Edward NTURIYE (Court of Appeal of Ruhengeri)

ANNEX B



Raphaël CONSTANT
Avocat à la Cour

Arusha, le 10 juin 2003

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 97200 FORT DE FRANCE
 MARTINIQUE – F.W.I.
 Tél: 0 (596) 70 64 24
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 E-mail : r.constant@wanadoo.fr

Monsieur Marcel GATSINZI
Ministre de la Défense du Rwanda
 PO Box 23
 Kigali
 RWANDA

Fax: (250) 5 76969

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Avocat à la Cour

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EN ASSOCIATION AVEC
Aïcha CONDE
Avocat à la Cour

Réf. : RC/DP
 BAGOSORA C/ TPIR

Monsieur le Ministre,

Je suis l'avocat principal de Monsieur Théoneste BAGOSORA, Colonel à la retraite des anciennes Forces Armées Rwandaises, actuellement accusé devant le Tribunal Pénal International pour le Rwanda (TPIR) de génocide, crimes contre l'humanité et violations de l'article commun 3 des Conventions de Genève et du Protocole Additionnel.

Il est entre autre reproché à mon client d'avoir joué un rôle central dans la réalisation des massacres qu'a connu le Rwanda d'avril à juillet 1994. De même, l'accusation considère qu'il a dirigé de fait le Rwanda dans la période ayant suivi l'attentat du 6 avril 1994 contre l'avion du Président HABYARIMANA.

De façon à pouvoir assurer une défense adéquate de notre client, il nous est nécessaire de recueillir un certain nombre d'informations ayant trait aux événements qui sont survenus au Rwanda durant la période visée par les actes d'accusation.

Ainsi nous souhaiterions nous entretenir avec vous, si vous y consentez, ainsi qu'avec le Colonel Deogratias NDIBWAMI employé du MINADEF à condition que vous soyez d'accord et lui également.

(Membre d'une association agréée, les paiements par chèques sont acceptés)

Pour ce dossier, je vous remercie de me répondre à mon adresse de FORT DE FRANCE.

Nous souhaiterions également avoir accès à certaines archives de votre ministère afin de prendre connaissance de certains documents importants incluant :

1. Le rapport de la Commission militaire de juin 1987 faisant bilan national en matière de sécurité présidée par le Colonel Bagosora
2. Les dossiers administratifs de :
 - a. BAGOSORA, Théoneste (3^{ème} promotion ESM)
 - b. RWAGAFILITA, Pierre Célestin (3^{ème} promotion ESM)
 - c. MAYUYA, Stanislas (4^{ème} promotion ESM)
 - d. SAGATWA, Élie (5^{ème} promotion ESM)
 - e. RUSATIRA, Léonidas (6^{ème} promotion ESM)
 - f. NDINDILIYIMANA, Augustin (7^{ème} promotion ESM)
 - g. GATSINZY, Marcel (9^{ème} promotion ESM)
3. Les ordres de bataille de l'Armée rwandaise et de la GN arrêtés les 1^{er} octobre 1993 et 1^{er} janvier 1994, ainsi que l'ordre de bataille de la GN arrêté le 1^{er} mars 1994
4. L'arrêté présidentiel portant organisation du Gouvernement NSENGIYAREMYE Dismas en place à partir d'avril 1992. Voir à ce sujet J.O. no 22 et 22 bis du 15 novembre 1992.
5. J.O. de juillet 1992 à décembre 1993
6. Les statuts des officiers des FAR (AR et GN)
7. Le règlement de discipline des FAR (AR et GN)
8. La Directive du Ministre de la Défense limitant les attributions et pouvoirs de son Directeur de Cabinet, fin janvier - début février 1993
9. La lettre de protestation de BAGOSORA adressée au Commandant de la MINUAR, le Général Roméo Dallaire, au nom du MINADEF, fin février - début mars 1994, suite à deux actes de provocation successifs des Casques Bleus belges contre lui.

Au surplus, il serait également important que nous puissions visiter un certain nombre de lieux où se seraient déroulés des événements cités dans l'acte d'accusation. Il s'agit plus précisément des lieux suivants :

À Kigali :

1. Bureaux du MINADEF
 - a) Salle de réunion attenante au bureau du Ministre (à l'époque)
 - b) La grande salle de réunion
 - c) Le bureau du Directeur de Cabinet à l'époque
2. État-major de l'Armée Rwandaise de l'époque
 - a) La grande salle de réunion jouxtant l'ancien bureau du G3
3. État-major de la Gendarmerie Nationale de l'époque
4. Camp Kigali
5. École Supérieure militaire
 - a) Grande salle de réunion jouxtant le bureau du Commandant
6. Camp de la Garde Présidentielle (à l'époque) dans le quartier Kimihurura
7. Camp de la GN à Kacyiru
8. Ancien cantonnement du FPR au CND
9. Brigade de la GN et Station de la GP dans le quartier Remera
10. Brigade de la GN Kicukiro près de l'École Technique Officielle
11. Brigade de la GN dans le quartier Gikondo
12. Camp Kanombe
13. Quartier résidentiel des officiers du Camp Kanombe
14. Aéroport

À Gisenyi :

15. Camp d'entraînement des Commandos à Butotori et Bigogwe
 - a) Parcelle wing amphibie
 - b) Installation d'écoute radio et salles de réunion
16. Camp Ops Gisenyi
 - a) Bureau du commandant Ops de l'époque
 - b) Résidence du commandant Ops de l'époque

Notez bien que la présente vous est envoyée à des fins exploratoires, aucune date précise n'ayant été arrêtée pour notre déplacement au Rwanda.

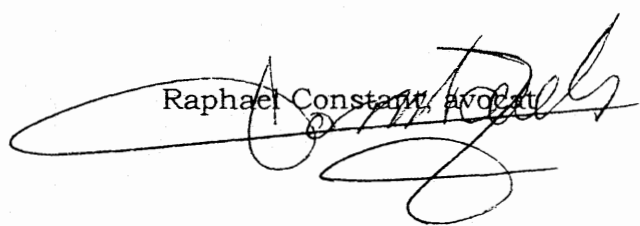
Cependant, dans la mesure où notre équipe se trouve actuellement à Arusha pour une session de procès, j'anvisageais, au cours des premières semaines de juillet 2003, de venir au Rwanda faire une tournée d'approche. Je comprends que le délai est court mais si c'était envisageable, j'en profiterais pour visiter autant de lieux que possible et rencontrer les gens disponibles.

Par ailleurs, afin de compléter les visites de lieux ou les rencontres qui n'auront pu être faites, au vu de leur nombre, j'ai l'intention de refaire un séjour au Rwanda dans un avenir relativement rapproché.

Je vous remercie de l'accueil que vous réserverez à la présente. Par ailleurs, je vous prierais d'adresser votre réponse au soin de Monsieur Adama Dieng, Greffier du Tribunal Pénal International pour le Rwanda, AICC, PO Box 6016, Arusha, Tanzanie.

Recevez, Monsieur le Ministre, l'assurance de mes sentiments respectueux.

Raphaël Constant, avocat



CC : M. Adama Dieng, Greffier du TPIR

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Raphaël CONSTANT

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Arusha, le 10 juin 2003

Docteur Charles MURIGANDE
Ministre des affaires étrangères et de la
coopération régionale
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BAGOSORA C/ TPIR

Monsieur le Ministre,

Je suis l'avocat principal de Monsieur Théoneste BAGOSORA, Colonel à la retraite des anciennes Forces Armées Rwandaises, actuellement accusé devant le Tribunal Pénal International pour le Rwanda (TPIR) de génocide, crimes contre l'humanité et violations de l'article commun 3 des Conventions de Genève et du Protocole Additionnel.

Il est entre autre reproché à mon client d'avoir joué un rôle central dans la réalisation des massacres qu'a connu le Rwanda d'avril à juillet 1994. De même, l'accusation considère qu'il a dirigé de fait le Rwanda dans la période ayant suivi l'attentat du 6 avril 1994 contre l'avion du Président HABYARIMANA.

De façon à pouvoir assurer une défense adéquate de notre client, il m'est nécessaire de recueillir un certain nombre d'informations ayant trait aux événements qui sont survenus au Rwanda durant la période visée par les actes d'accusation.

À cet effet je souhaiterais avoir accès à certains documents archivés par votre ministère, notamment les anciens passeports civils, militaires, de service ou diplomatiques émis à mon client entre 1990 et 1994.

Je vous demande donc par la présente l'autorisation de consulter et prendre copie des documents susmentionnés.

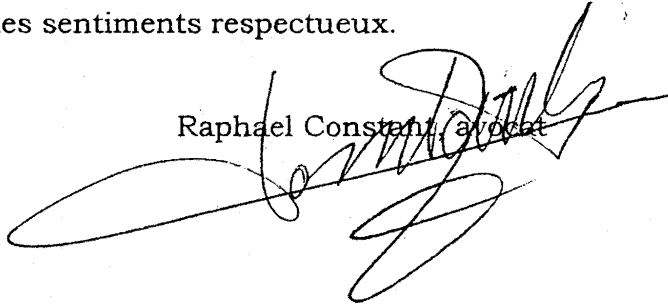
(Membre d'une association agréée, les paiements par chèques sont acceptés)

Pour ce dossier, je vous remercie de me répondre à mon adresse de FORT DE FRANCE.

Je vous remercie de l'accueil que vous réserverez à la présente. Par ailleurs, je vous prierais d'adresser votre réponse au soin de Monsieur Adama Dieng, Greffier du Tribunal Pénal International pour le Rwanda, AICC, PO Box 6016, Arusha, Tanzanie.

Recevez, Monsieur le Ministre, l'assurance de mes sentiments respectueux.

Raphael Constant, avocat



CC :M. Adama Dieng, Greffier du TPIR



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Aïcha CONDE
Avocat à la Cour

Raphaël CONSTANT

Avocat à la Cour

Arusha, le 10 juin 2003

Monsieur GAHINA
Procureur près le Parquet de la
Cour suprême du Rwanda
PO Box 1328
Kigali
RWANDA

Réf. : RC/DP
BAGOSORA C/ TPIR

Monsieur le Procureur,

Je suis l'avocat principal de Monsieur Théoneste BAGOSORA, Colonel à la retraite des anciennes Forces Armées Rwandaises, actuellement accusé devant le Tribunal Pénal International pour le Rwanda (TPIR) de génocide, crimes contre l'humanité et violations de l'article commun 3 des Conventions de Genève et du Protocole Additionnel.

Il est entre autre reproché à mon client d'avoir joué un rôle central dans la réalisation des massacres qu'a connu le Rwanda d'avril à juillet 1994. De même, l'accusation considère qu'il a dirigé de fait le Rwanda dans la période ayant suivi l'attentat du 6 avril 1994 contre l'avion du Président HABYARIMANA.

De façon à pouvoir assurer une défense adéquate de mon client, il m'est nécessaire de recueillir un certain nombre d'informations ayant trait aux événements qui sont survenus au Rwanda durant la période visée par les actes d'accusation.

À cet effet, il nous serait essentiel, à un de mes assistants et à moi-même, de nous entretenir avec un certain nombre d'individus actuellement détenus dans divers établissements pénitentiaires rwandais.

(Membre d'une association agréée, les paiements par chèques sont acceptés)

Pour ce dossier, je vous remercie de me répondre à mon adresse de FORT DE FRANCE.

Les individus en questions sont :

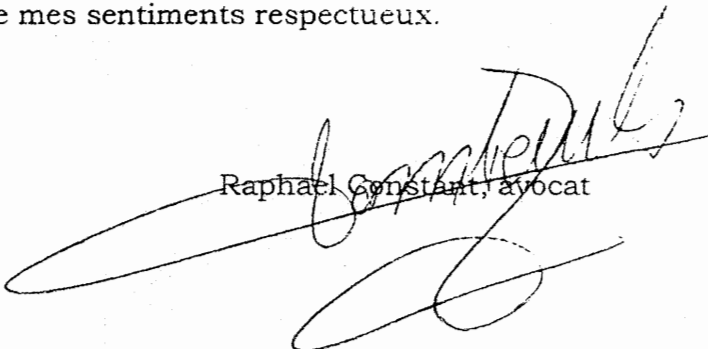
- [REDACTED]
2. BIZIMUNGU, Pasteur (Prison centrale Muhima, Kigali)
 3. BWANAKWELI, Isidore (condamné à mort)

Ma compréhension de la marche à suivre pour rencontrer les individus susmentionnés implique la présentation d'une requête officielle, par votre biais, devant la Cour suprême du Rwanda. Je sou mets donc par la présente une demande pour que la procédure prévue soit enclenchée.

Fort des engagements répétés de collaboration avec le TPIR exprimés par votre pays, nous comprenons que vous ferez le nécessaire pour que ces entretiens puissent avoir lieu, ce dont je vous suis reconnaissant.

Je vous remercie de l'accueil que vous réserverez à la présente. Par ailleurs, je vous prierais d'adresser votre réponse au soin de Monsieur Adama Dieng, Greffier du Tribunal Pénal International pour le Rwanda, AICC, PO Box 6016, Arusha, Tanzanie.

Recevez, Monsieur le Ministre, l'assurance de mes sentiments respectueux.


Raphaël Constant, avocat

CC :M. Adama Dieng, Greffier du TPIR

ICTR-98-41-T
19-12-2003

18876



**ADVOCATES
AND
COMMISSIONERS
FOR OATHS**

HEAD OFFICE
Transnational Plaza (Silopark)
Mama Ngina Street Wing'
4th Floor

P.O. Box 79438 Nairobi, Kenya
Tel 241002, 241004
Fax: 240594
E-mail: kon@form-net.com

Ken N. Ogetto, LLB (Hons.) NRB
CPS (K), Dip Law (KSL)

G. O. Bw'Omanwa, LLB (Hons.) NRB; Dip Law
E. M. Nyarong'i LLB (Hons.) NRB; Dip Law
J. M. Omosa LLB (Hons.) NRB; Dip Law

233/97

Our Ref:

Your Ref:

Date: 19/12/03

President Erik Mõse
Presiding Judge Trial Chamber I
International Criminal
Tribunal for Rwanda
P. O. Box 6016
ARUSHA, TANZANIA



JUDICIAL
19 DEC 19 10:30
K. Omosa

Dear Sir,

RE: Case No; ICTR-98-41-T
The Prosecutor vs Anatole NSENGIYUMVA
CORRESPONDENCE TO AND FROM AUTHORITIES OF THE
REPUBLIC OF RWANDA, REQUESTING FOR DOCUMENTS

Following discussions during the Status Conference held on 17 December 2003 regarding documents requested from the Republic of Rwanda and the request by the Trial Chamber for evidence that the Defence has made an effort to obtain documents from Rwanda, the Defence of Anatole Nsengiyumva forwards herewith the following;

- i) A letter dated 25 October 2001 from the Defence to the Minister of Justice of Rwanda, in English and French, and proof of postage. We did not receive a response to this letter.
- ii) A letter from the Chief Prosecutor of Rwanda Mr. Gerald Gahima dated May 15 2002 in response to a request from the Registry of the ICTR, following a request by the Defence for assistance in obtaining documents from Rwanda.

Yours faithfully,

KENNEDY OGETTO
LEAD COUNSEL FOR ANATOLE NSENGIYUMVA

BRANCH
Kenyatta Lane (Off Kenyatta Avenue)
Spikes Building, 2nd Floor
P.O. Box 15689 NAKURU, KENYA
Tel: 037-211057

18875

TANZANIA POSTS CORPORATION
CERTIFICATE OF POSTING A REGISTERED POSTAL PACKET

P1

SENDER'S NAME AND ADDRESS Cainsele

P.O. BOX PCIR Box 6016
Arusha

Postage Paid SDO

Registration Fee SDO

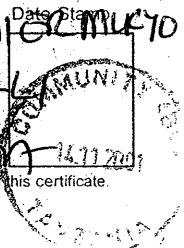
Advice of Delivery 600

Express Delivery Fee 600

REGN. NO. 00087254 Total Amount Prepaid SHS. 1600 CTS

ADDRESSED TO:-

SE. M. JEAN DE DIE
BP 160 KIGALI



Accepting Officer's Initials S RWANDA

IMPORTANT: Please note conditions for compensation at the back side of this certificate.

KENNEDY OGETTO, Lead Counsel

GERSHOM OTACHI BW'OMANWA, Co-Counsel

C/O THE REGISTRY, LAWYERS AND DETENTION FACILITIES MANAGEMENT SECTION, INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, P. O. BOX 6016, ARUSHA, TANZANIA, TEL: 255-27-2504207-11 or 1 212 963 2850 FAX: 255 27 2504000/2504373 or 1 212 963 2848/49

Our ref: 233/97

Arusha, 25 October 2001

Subject: CASE NO. ICTR 98-41-I
"The Prosecutor v. Anatole NSENGIYUMVA"

Request for an Appointment and for Judgments and Decisions delivered in the Trials of Six accused persons in ongoing trials in Rwanda, of persons accused of genocide

Dear Honourable Minister,

We, Kennedy Ogetto and Gershom Otachi Bw'Omanwa, Advocates of the High Court of Kenya are currently assigned by the International Criminal Tribunal for Rwanda (ICTR), to represent Colonel Anatole NSENGIYUMVA, former Commander of the Rwandan Army, in Gisenyi prefecture, who is accused of genocide before the International Criminal Tribunal for Rwanda (ICTR), as Lead Counsel and Co-Counsel.

As we prepare for trial, which is imminent, we wish to request for your cooperation to provide us with copies of judgments and decisions, rendered by the Rwandan courts in six (6) trials of persons accused of genocide during the years 2000 and 2001.

It is necessary for us to examine relevant material in detail and in particular, to study judgments and decisions, which are relevant to certain facts and accusations of which, our client is charged.

H. E. M. Jean de Dieu Mucyo
Minister for Justice and Institutional Relations
P. O. Box: 160
Kigali, RWANDA

The requested judgments and decisions of persons listed hereunder, were delivered in trials in Gisenyi and Kibuye during the years 2000 and 2001.

GISENYI (4 persons)

1. BANZI WELLARS; President of MRND, Gisenyi. Sentenced to death.
2. HAKIZIMANA FAZIRI; Conseiller of Gisenyi Sector. Sentenced to death.
3. MUKUNDUFITE ZAINABO; In charge of Rubavu Cellule and daughter of HAKIZIMANA Faziri. Sentenced to death.
4. 2nd Lt. DUSABEYEZU EUSTACHE; Student at St. Fidele or Mudende University. Sentenced to life imprisonment.

KIBUYE (2 persons)

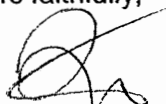
1. FATHER KAYIRANGA FRANCOIS; Tried and sentenced to death. He appealed, and was found not guilty and acquitted.
2. FATHER NTURIYE EDWARD (From Nyundo Seminary); Tried and sentenced to death. He appealed, and was found not guilty and acquitted.

Your Excellency, Counsel for Mr. Nsengiyumva would be honoured if you could grant us an audience in Kigali as soon as practical, to discuss this issue and if possible to obtain the judgments in the said cases as well as practical modalities of any assistance you may provide to enable us to fully discharge our mandate.

In the event your very tight schedule, of which we are fully aware does not permit such an audience, we would be grateful if your esteemed officers could kindly make such documents available to us through the Registry of the ICTR in Arusha.

Counting on your diligent cooperation, please accept, Your Excellency, the assurance of our highest consideration.

Yours faithfully,



KENNEDY OGETTO
LEAD COUNSEL FOR ANATOLE NSENGIYUMVA

cc : **Mr. Adama Dieng**
ICTR Registrar

KENNEDY OGETTO, Lead Counsel

GERSHOM OTACHI BW'OMANWA, Co-Counsel

C/O THE REGISTRY, LAWYERS AND DETENTION FACILITIES MANAGEMENT SECTION, INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, P. O. BOX 6016, ARUSHA, TANZANIA, TEL: 255-27-2504207-11 or 1 212 963 2850 FAX: 255 27 2504000/2504373 or 1 212 963 2848/49

Notre réf: 233/97

Arusha, 25 October 2001

Objet : Affaire No. ICTR 98-41-I : « Le Procureur c. Anatole Nsengiyumva »

Demande d'audience et d'assistance en vue d'obtenir des copies de jugements ou d'arrêts, rendus par les juridictions nationales Rwandaises dans six (6) affaires criminelles dans les procès du génocide.

Monsieur le Ministre,

Nous, Maîtres Kennedy Ogetto et Gershom Otachi Bw'Omanwa, Avocats au Barreau de la Haute Cour du Kenya, sommes commis d'office, en qualité de Conseil principal et co-Conseil de la défense, par le Tribunal Pénal International pour le Rwanda des Nations Unies (TPIR), aux fins de représentation et de défense des intérêts de l'accusé Anatole Nsengiyumva, ancien Colonel de l'Armée Rwandaise, Commandant Militaire de la région de Gisenyi, et qui fait l'objet de mise en examen pour crime de génocide, dans le cadre d'une procédure diligentée par le Procureur devant le TPIR.

En raison de l'imminence de l'ouverture du procès au fond, et dans le cadre de la préparation de la défense de M. Nsengiyumva, nous avons l'honneur de venir, par la présente, solliciter la coopération de votre haute autorité, aux fins de bien vouloir nous faire tenir copies des jugements et arrêts, rendus par vos juridictions en 2000 et 2001, dans six affaires criminelles portant sur la répression du crime de génocide.

S.E.M. Jean de Dieu Mucyo
Ministre de la Justice et des Relations Institutionnelles
B.P 160
Kigali,
Rwanda

L'examen et l'étude de ces décisions nous paraissent absolument indispensables, car ces décisions constituent pour nous, des éléments matériels d'appréciation qui sont en rapport direct avec certains faits et accusations pour lesquels, notre client devra répondre.

Les affaires dont il s'agit, ont été jugées à Gisenyi et à Kibuyé durant l'année passée (2000) et cette année 2001, et impliquent six personnes dont les noms suivent:

GISENYI (4 personnes)

1. **BANZI WELLARS**; Ancien Président de l'ex-parti MRND, Gisenyi, Condamné à mort;
2. **HAKIZIMANA FAZIRI**; Ancien Conseiller du Secteur Gisenyi, Condamné à mort;
3. **MUKUNDUFITE ZAINABO**; Ancienne Responsable de la Cellule de Rubavu, fille de HAKIZIMANA FAZIRI; Condamnée à mort;
4. **Sous-Lieutenant EUSTACHE DUSABEYEZU**; Ancien étudiant à St. Fidèle ou à l'Université Mudende; Condamné à la prison à vie;

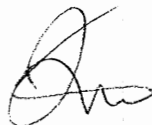
KIBUYE (2 personnes)

1. **Abbé KAYIRANGA FRANÇOIS**; Jugé à Kibuye et condamné à mort, il a interjeté appel et a été déclaré non coupable puis acquitté.
2. **Abbé NTURIYE EDOUARD**; (du petit séminaire de Nyundo), jugé à Kibuyé, condamné à mort en première instance, a relevé appel de sa condamnation, et a été finalement déclaré non coupable et acquitté.

Nous seront hautement honorés si une audience pouvait nous être accordée par votre Excellence, dans les semaines à venir, afin de nous permettre de vous rendre visite à Kigali, et de pouvoir discuter de vive voix, en cas de besoin, avec vos services et vous-mêmes, au sujet des modalités pratiques d'obtention desdites décisions et de toute autre assistance que vos services pourraient nous procurer dans le cadre de l'exécution de leur mandat.

Toutefois, si en raison de votre calendrier, qui selon nous, est extrêmement chargé, vous n'êtes pas en mesure de nous accorder cette audience, nous apprécierons vivement vos efforts en vue de permettre à vos services compétents de nous transmettre les décisions visées dans un délai raisonnable, par le canal du Greffe du Tribunal à Arusha.

Comptant sur votre diligente coopération, nous vous prions de croire, Monsieur le Ministre, en l'expression de notre très haute et déférente considération.



Kennedy Ogetto
Conseil Principal de M. Anatole Nsengiyumva

Copie à: **M. Adama Dieng**
Greffier du TPIR

18869

PARQUET GENERAL
PRES LA COUR SUPREME
B.P. 1328
KIGALI
RWANDA.

No. I/18869/D11/A/Progeca

May 15, 2002.

The Registrar
ICTR
Arusha
Tanzania

Dear Sir,

RE: NSENGIYUMVA ANATOLE - CASE NUMBER ICTR-98-41-I.

I refer to the above matter and your note verbale dated 13 December 2001 addressed to the Minister of Foreign Affairs and Regional Cooperation of the Republic of Rwanda a copy which together with the relevant annexes has been passed on to me by the Minister of Justice and Institutional Affairs for necessary follow-up and advise that I have written to the Minister of Defence requesting for the military documents and the presidents of the courts which rendered the judgments the defence has requested for asking for copies of the same.

I shall revert to you upon receipt of the documents in question.

Sincerely,


Gerald Gahima
PROCUREUR GENERAL.



cc. Minister of Foreign Affairs and Regional Cooperation
Kigali.

Minister of Justice and Institutional Affairs
Kigali.

The Acting Deputy Prosecutor
ICTR
Kigali.

18868

✓ Kennedy Ogeto
Counsel for Nsengiyumva Anatole
C/O The Registry, ICTR, Arusha.