

ICTR-98-41-T
21-05-2004
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

(20151-20149)

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Ivan

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 21 May 2004

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

2004 MAY 21 A 10:49
JUDICIAL RECORDS
ICTR

**DECISION ON MOTION TO COMPEL THE PROSECUTION TO COMPLY WITH
THE CHAMBER'S DECISION OF 1 MARCH 2004**

The Office of the Prosecutor

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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 “Motion to Compel the Prosecutor to Immediately Comply With the Chamber’s Decision of 1 March 2004”, etc., filed by the Defence for Ntabakuze on 5 April 2004;

CONSIDERING the Prosecution “Response”, filed on 5 May 2004; the “Reply”, filed by the Defence for Ntabakuze on 17 May 2004; the Prosecution “Second Response”, filed on 20 May 2004; and the oral submissions of the parties on 6 May 2004;

HEREBY DECIDES the motion.

1. On 8 April 2003, Trial Chamber III, then seized of this case, ordered the Prosecution to “to file a revised and final list, not exceeding one hundred witnesses whom she intends to call”.¹ In its decision of 1 March 2004, Trial Chamber I ordered the Prosecution “to comply with [the 8 April Order] by filing a list of all its witnesses, not to exceed one hundred in number, not later than 12 March 2004”.²
2. On 12 March 2004 the Prosecution filed an eight-page document which, in addition to listing one hundred “witnesses”, also listed seven “Rule 92bis witnesses”. The Prosecution argues that it does not “intend to call” its Rule 92bis witnesses, as the admission of their statements and attendance for cross-examination is dictated by court order, not the intention of the Prosecution. Therefore, they were properly excluded from the list of one hundred witnesses, in accordance with the language of the 8 April Order.
3. The Chamber considers it clear that the Prosecution’s list is in conformity with neither the wording nor the spirit of the 1 March 2004 order, which requires the Prosecution to file “a list of all its witnesses, not to exceed one hundred in number”. The Prosecution itself refers to these individuals as “92bis witnesses” in its filing of 12 March 2004, and Rule 92bis confirms that a person whose statement is admitted thereunder is, indeed, a “witness”.³
4. The words “all” and “witnesses” are not ambiguous. The Prosecution has violated the order in the decision of 1 March 2004, and the Chamber considers this violation to be obvious.

¹ *Bagosora et al.*, Order for Reduction of Prosecutor’s Witness List (TC), 8 April 2003, p. 3.

² *Bagosora et al.*, Decision on Reconsideration of Order to Reduce Witness List and on Motion for Contempt for Violation of that Order (TC), 1 March 2004, p. 5.

³ Rule 92bis(A) reads: “A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement...”.

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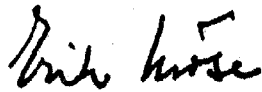
FOR THE ABOVE REASONS, THE CHAMBER

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GRANTS the motion;

ORDERS the Prosecution to comply with the Chamber's order of 1 March 2004 by filing a list of all its witnesses, not to exceed one hundred in number, by 28 May 2004.

Arusha, 21 May 2004



Erik Mose
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

