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(20198-20196)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

Before: Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 25 May 2004

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

JUDICIAL RECORD
2004 MAY 25 15:25
[Signature]

DECISION ON THE DEFENCE FOR BAGOSORA'S REQUEST TO OBTAIN THE
COOPERATION OF THE REPUBLIC OF GHANA

The Office of the Prosecutor

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[Signature]

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

SITTING as Judge Sergei Alekseevich Egorov, as designated by Trial Chamber I pursuant 73(A) of the Rules of Procedure and Evidence;

BEING SEIZED OF the “Requête Ex Parte de la Défense de Théoneste Bagosora Visant à Obtenir la Coopération de la République du Ghana pour Faciliter la Rencontre avec un Témoin”, filed on 6 May 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence for Bagosora seeks an order, pursuant to Article 28 of the Statute, requesting the cooperation of the Republic of Ghana in facilitating a meeting with Major General Yaache of the Ghanaian Army who formerly served as a sector commander and military observer in the United Nations Assistance Mission in Rwanda (UNAMIR).

2. On 22 November 2002, the Defence made a request to the Secretary-General for permission to interview Major General Yaache. On 9 January 2003, Ralph Zacklin, Assistant Secretary-General for Legal Affairs, indicated that the United Nations had no objection to such an interview.

SUBMISSIONS

3. The Defence seeks to interview Major General Yaache concerning his observations on a meeting he attended with Bagosora and others which was depicted in Prosecution Exhibit 44.

4. In its submission, the Defence recounts its efforts to obtain an interview with Major General Yaache, which are documented in several annexes to the motion. On 21 January 2003 the Defence sent a letter to Major General Yaache requesting an interview. On 5 February 2003, Major General Yaache indicated that he would not be able to meet with the Defence because his recollection of the details of the meeting had faded with the passage of time.

5. On 13 June 2003, the Defence sent Major General Yaache a copy of Prosecution Exhibit 44 depicting the meeting to refresh his memory concerning the event. On 18 November 2003, the Defence renewed its request for an interview with Major General Yaache. On 19 January 2004, the Registrar requested through diplomatic channels the cooperation of the Republic of Ghana in facilitating a meeting between the Defence for Bagosora and Major General Yaache. The Defence has not received a response to these requests.

DELIBERATIONS

6. 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 party seeking the request by the Trial Chamber must specifically identify to the extent possible the nature and purpose of the

assistance sought from the State, articulate its relevance to the trial, and show that efforts to obtain the assistance have been unsuccessful.¹

7. The Chamber is satisfied that Major General Yaache's observations may have some relevance to the Defence for Bagosora which may lead to the production of relevant evidence or testimony. As described above, the Defence has made several previous unsuccessful efforts to obtain the requested assistance from Major General Yaache, personally, and from the Republic of Ghana. However, the Chamber notes that neither Major General Yaache, after being provided with material to refresh his recollection concerning the events in question, nor the government of the Republic of Ghana has expressly refused the Defence's request for a meeting.

FOR THE ABOVE REASONS, THE CHAMBER

REQUESTS the Republic of Ghana to provide any relevant assistance in facilitating a meeting between the Defence for Bagosora and Major General Yaache, with his voluntary cooperation, at a mutually convenient time with due consideration of the need for prompt cooperation in light of the requirements of the judicial process; and

DIRECTS the Registry to transmit this decision to relevant authorities of the Republic of Ghana; and

DENIES the motion in all other respects.

Arusha, 25 May 2004


Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

¹ *Bagosora, et al*, Request To The Government Of Rwanda For Cooperation And Assistance Pursuant To Article 28 Of The Statute, 10 March 2004, para. 4.