

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
10-06-2004
(20608-20606)

20608
S. MUSA

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 10 June 2004

THE PROSECUTOR
v.
Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA
Case No. : ICTR-98-41-T

2004 JUN 10 A 11:52
ICTR
JUDICIAL RECORDS

DECISION ON REQUESTS FOR SUBPOENAS

The Office of the Prosecutor

Barbara Mulvaney
Drew White
Segun Jegede
Fatou Bensouda
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

gh

20607

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 Prosecution “Request for a subpoena compelling Witnesses BA, CW and DH to appear for testimony”, filed on 3 June 2004; the Prosecution “Request for a subpoena compelling Witness AI to appear for testimony”, filed on 7 June 2004; the Prosecution “Request for a subpoena compelling Witnesses HV and OP to appear for testimony”, filed on 7 June 2004; and the Prosecution “Request for a subpoena compelling Witness DBO to appear for testimony”, filed on 8 June 2004;

HEREBY DECIDES the motions.

1. The Prosecution has submitted four motions, requesting that subpoenas be issued by the Chamber to a total of seven Prosecution witnesses whom it submits refuse to come to Arusha to testify before the Tribunal despite “repeated strenuous” efforts to secure their voluntary attendance. The reasons for refusal vary. The Prosecution represents that Witnesses BA and CW are dissatisfied with practical arrangements of the Registry of the Tribunal for appearance before the Tribunal; Witness HV is concerned about his security and lacks confidence in the judicial system; Witnesses OP and DBO feel that their security will be jeopardized by testifying; Witness AI, who is detained, fears that testimony before the Tribunal will cause friction with his fellow inmates and jeopardize his security there, despite the suggestion of the Registry that he could be transferred to another prison after his testimony; and Witness DH objects to matters seemingly unrelated to the arrangements for his testimony or his security.

2. The Chamber’s authority to order the attendance of individuals to appear before it as witnesses is derived from the Statute of the Tribunal. In affirming that such orders were within the competence of a Trial Chamber of the International Criminal Tribunal for Yugoslavia, the Appeals Chamber stated:

The spirit and purpose of the Statute, as well as the aforementioned provisions, confer on the International Tribunal an incidental or ancillary jurisdiction over individuals other than those whom the International Tribunal may prosecute and try. These are individuals who may be of assistance in the task of dispensing criminal justice entrusted to the International Tribunal.¹

3. Rule 54 of the Rules of Procedure and Evidence sets forth more specifically the devices available to a Judge or Trial Chamber in the conduct of proceedings:

¹ *Prosecutor v. Blaskic*, Case No. IT-95-14, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997 (AC), 29 October 1997, para. 48. The nature of the orders that may be issued to individuals who are state officials, which was in issue in *Blaskic*, does not appear to be relevant to the present application. See also *Prosecutor v. Niyitegeka*, Case No. IT-96-14, Decision on the Defence ex parte Motion for the Issuing of a Subpoena to a Defence Witness and Request for an Order to be Issued to the Republic of Rwanda (TC), 5 November 2002; *Prosecutor v. Kamuhanda*, Case No. IT-99-54A, Decision on the Extremely Urgent Motion to Summon a Witness Pursuant to Rule 54 (TC), 20 August 2002; *Prosecutor v. Akayesu*, Case No. 96-4, Decision on the Motion to Subpoena a Witness (TC), 19 November 1997; *Prosecutor v. Delalic*, Case No. IT-96-21, Order on the Motion of the Defence for Hazim Delic for the Issuance of Subpoenas (TC), 25 June 1998.

blu

At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

20606

The Chamber observes that the Prosecution has requested a "subpoena", which is an order commanding the attendance of a witness, under threat of penalty to the addressee for non-compliance.

4. Based upon the representations of the Prosecution, the Chamber considers the present requests for subpoenas to be justified. All of the individuals for whom subpoenas are requested appear on the Prosecution's witness list; their sworn witness statements indicate that they have knowledge of events that are relevant to the present trial; and, according to the Prosecution, the individuals in question are refusing to come to the Tribunal to provide the evidence within their knowledge, despite the best efforts of the Prosecution and the Registry to accommodate their concerns. Under these circumstances, the issuance of subpoenas is necessary and appropriate for the conduct of the present trial. The Registry shall prepare a subpoena addressed to each of the seven persons, ordering their appearance at the Tribunal at a date and time to be specified by the Registry to give evidence in the matter of *The Prosecutor v. Bagosora et al.*

5. Although the subpoenas shall be addressed directly to the prospective witness, the Chamber recalls that the notification and assistance of the Government of Rwanda is desirable. Article 28 of the Statute expressly identifies the service of documents as one of the forms of cooperation which the Tribunal may request of a State. The Chamber requests the Government of Rwanda to effect service on the addressees of the subpoenas which are filed in accordance with this decision, and to provide any assistance that may be requested by the Registry to facilitate the attendance of the witnesses.

6. These seven witnesses are scheduled to appear during the ongoing trial session. Service of, and prompt compliance with, the subpoenas authorized by the present decision is, therefore, a matter of urgency.

FOR THE ABOVE REASONS, THE CHAMBER


GRANTS the motions;


ORDERS the Registry to prepare subpoenas in accordance with this decision, addressed to the Prosecution witnesses designated by the pseudonyms AI, BA, CW, DBO, DH, HV and OP, and to communicate them, with a copy of the present decision, to the Government of Rwanda;

REQUESTS the Government of Rwanda to serve the subpoenas on the addressees as soon as possible, and to provide any other assistance that may be requested by the Registry to facilitate their attendance.

Arusha, 10 June 2004


Erik Møse
Presiding Judge


Jai Ram Reddy
Judge


Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

