

ICTR-01-76-I
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

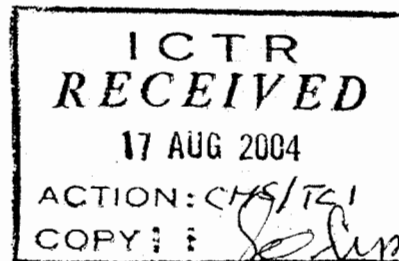
OR: ENG

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Dennis C. M. Byron

Registrar: Adama Dieng

Date: 16 August 2004



THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-I

**DECISION ON PROSECUTOR'S REQUEST FOR CERTIFICATION TO APPEAL
DECISION DATED 14 JULY 2004 DENYING THE ADMISSION OF TESTIMONY OF
AN EXPERT WITNESS**

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 Sergei Alekseevich Egorov, and Judge Dennis C. M. Byron;

BEING SEIZED OF the “Prosecutor’s Request for Certification to Appeal the Trial Chamber I Decision Dated 14 July 2004 Denying the Admission of Testimony of an Expert Witness”, filed on 21 July 2004;

NOTING that the Defence has not responded and the deadline for responses has passed;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Indictment against the Accused was confirmed on 8 January 2002. The amended Indictment was filed on 27 January 2004, and the second amended Indictment was filed on 10 May 2004. The trial is scheduled to commence on 16 August 2004. On 5 April 2004, the Prosecution filed a motion for the admission under Rule 92*bis* of the transcripts and exhibits of Alison Des Forges’s testimony in *Prosecutor v. Akayesu*. On 26 May 2004, the Defence filed a motion for the disqualification of expert witness Alison Des Forges and the exclusion of her report. Both motions were denied on 14 July 2004. The Chamber was then composed of Judges Jai Ram Reddy, Sergei Alekseevich Egorov and Emile Short. Both parties have filed motions for certification to appeal the decisions.

SUBMISSIONS

2. The Prosecution seeks leave to appeal the decision filed on 14 July 2004 on the admission of transcripts and exhibits under Rule 92*bis*, pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“the Rules”). The evidence of the witness, Alison Des Forges, would go towards proving the objective elements of the crimes charged against the Accused, that is, the “widespread” and “systematic” nature of the attacks against the Tutsi. An annex of the relevant paragraphs from the witness’s testimony in *Akayesu* has been provided. The Prosecution submits that the Chamber failed to evaluate the relevance of the evidence. As the trial is about to commence, the Prosecution contends that an immediate resolution of the issue would expedite the proceedings. Arguing that the decision denies the Prosecution the opportunity to rely on the evidence to show the nature of the Accused’s conduct as an international crime at that time in Gikongoro, the Prosecution asserts that this would significantly affect its case, the expeditious conduct of the trial and the outcome of the trial.

DELIBERATIONS

3. Appeals from interlocutory decisions on motions other than preliminary motions are provided for by Rule 73(B), which states as follows:

(B) Decisions rendered on such motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision

involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

4. Interlocutory appeals are not generally available, and the Chamber's discretion to grant the same may be exercised only when the conditions under Rule 73(B) are met.¹ To qualify for certification, the decision must involve an issue: a) that would significantly affect the fair and expeditious conduct of the proceedings *or* the outcome of the trial; *and* b) for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

5. In its request for certification, the Prosecution has asserted that it wishes to call Alison Des Forges with respect to the "widespread" and "systematic" nature of the attacks and in relation to the events in Gikongoro at the time. The motion decided by the Chamber on 14 July 2004 did not specify which parts of the testimony were being sought to prove which elements of the crimes charged against the Accused. Annex A of the previous motion contained all the exhibits and all the transcripts of Des Forges's testimony. The annex to the present request makes more specific references to the parts of the testimony which the Prosecution considers relevant.

6. The Chamber observes that the written expert report of 17 May 2004 contains information relating to the widespread and systematic character of attacks. Furthermore, several Prosecution witnesses will, according to the disclosed information, testify directly to events in Gikongoro and to widespread and systematic attacks. As similar evidence is available through other witnesses, the appeal does not involve an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

Arusha, 16 August 2004



Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Dennis C. M. Byron
Judge

(Seal of the Tribunal)

¹ *Ntahobali et al.*, Decision on Ntahobali's and Nyiramasuhuko's Motions for Certification to Appeal the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (TC), 18 March 2004, paras. 14-15; *Bagosora et al.*, Decision on the Prosecutor's Request for Certification Under Rule 73 With Regard to Trial Chamber's "Decision on Prosecutor's Request for a Suspension of the Time-Limit" (TC), 14 July 2004, para. 7.

