



ICTR-98-41-T
25-08-2004
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
(21534-21532)

21534
100m

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 25 August 2004

THE PROSECUTOR

v.

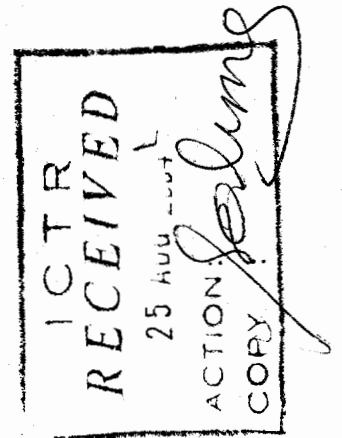
Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T



**DECISION ON DEFENCE REQUEST FOR ADDITIONAL DISCLOSURE OF
INVESTIGATIVE REPORTS AND STATEMENTS**

The Office of the Prosecutor

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Drew White
Segun Jegede
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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 oral Defence request for disclosure of witness statements of all the individuals interviewed by ICTR investigator Pierre Duclos in relation to the Semanza case, as well as any investigative reports prepared by him in connection with the Ruhanga massacre, made on 29 and 30 June 2004;

CONSIDERING the "Prosecutor's Written Submissions Regarding Oral Defence Request for Additional Disclosure of Investigative Reports and Statements & Concerning the Cross-examination of Witness DCH", filed on 2 July 2004; and the Ntabakuze Defence Response, filed on 8 July 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. On 29 and 30 June 2004, the Defences for Ntabakuze and Bagosora requested the Chamber to order the Prosecution to disclose the witness statements of all of the individuals interviewed by ICTR investigator Pierre Duclos in relation to the case against Laurent Semanza. The Defence further requested disclosure of any investigative reports prepared by Duclos in connection with the Ruhanga massacre.

SUBMISSIONS

2. The Defence submits that the testimony of Pierre Duclos during the *Semanza* trial supports the inference that reports dealing with the Ruhanga massacre exist and are in the possession of the Prosecutor. The Defence contends that these reports and the requested witness statements may suggest that para-commandos were not present at Ruhanga and that the massacre occurred as a single event on 10 April 1994, rather than as a series of rolling massacres between 14 and 17 April 1994, as alleged by Witness DCH. The Defence argues that this material is exculpatory and may affect the credibility of a Prosecution witness. The Prosecution is thus obliged to disclose it to the Defence under Rule 68 (A) of the Rules of Procedure and Evidence (“the Rules”).

3. The Prosecution asserts that there is no identifiable document referred to as the Duclos report dealing with the Ruhanga massacre. Investigator Duclos worked extensively on the preparation of various aspects of the *Semanza* case, and the Prosecution argues that the materials submitted by him are largely subject to the disclosure exemptions provided for in Rule 70 of the Rules. Moreover, the Prosecution submits that it has examined the material requested by the Defence and is satisfied that all exculpatory material on this issue has already been disclosed.

DELIBERATIONS

4. The Chamber agrees that material indicating that para-commandos did not participate in the Ruhanga massacre, or suggesting that the massacre occurred solely on 10 April 1994, may be exculpatory or have some impact on the credibility of a Prosecution witness and should be disclosed.

5. Rule 68 of the Rules provides that "The Prosecutor shall, as soon as practicable, disclose to the Defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of the prosecution evidence." Under Rule 68, the Prosecutor is responsible for making the initial determination about the exculpatory nature of the evidence.¹

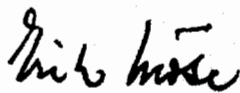
6. The Prosecution has repeatedly stated that there is no identifiable report by Pierre Duclos concerning the Ruhanga massacre. Additionally, the Prosecution asserts that it has reviewed the material requested by the Defence and submits that all exculpatory material has already been disclosed. The Chamber accepts these representations and has no reason to dispute the Prosecution's submissions, notwithstanding general references to an unspecified report in Duclos's testimony in the Semanza case. There are no indications that the Prosecution did not properly exercise its discretion in determining what evidence falls under Rule 68.

7. The Defence points to the testimony of Pierre Duclos, dealing with the scope of his investigation, and to a list of more than forty witnesses that he interviewed in connection with the Semanza case. However, the Ruhanga massacre was merely one element of a larger case against Semanza involving several massacres at different locations. Given the broad scope of the Semanza case, the Chamber has no reason to conclude from the evidence of his investigation, a general reference to an unspecified report, or the existence of the witness list that such material, other than that already disclosed to the Defence, deals with the Ruhanga massacre in an exculpatory manner.

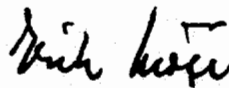
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence request.

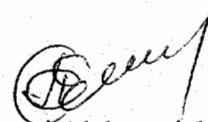
Arusha, 25 August 2004



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



¹ *Nzirorera*, Decision on the Defence Motion for Disclosure of Exculpatory Evidence (TC), 7 October 2003, para 10.