

ICTR-98-41-T  
13-10-2004  
(22076-22074)

22076  
Ivan



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER I**

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

**Registrar:** Adama Dieng

**Date:** 13 October 2004

**THE PROSECUTOR**

v.

**Théoneste BAGOSORA  
Gratien KABILIGI  
Aloys NTABAKUZE  
Anatole NSENGIYUMVA**

*Case No. ICTR-98-41-T*

JUDICIAL RECORDS ARCHIVES  
ICTR  
2004 OCT 13 P 2:35

**DECISION ON *AMICUS CURIAE* REQUEST BY THE RWANDAN GOVERNMENT**

**Office of the Prosecutor:**

Barbara Mulvaney  
Drew White  
Segun Jegede  
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

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

**SITTING** as Trial Chamber I, composed of Judge Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

**BEING SEIZED OF** the request by the Rwandan Government to appear as *amicus curiae*, filed on 10 July 1998;

**CONSIDERING** the “Response to the Request by the Government of Rwanda for Leave to Appear as *Amicus Curiae*”, filed by the Bagosora Defence on 18 June 1999; the “Amended Reply to the Government of Rwanda’s Request to Appear as *Amicus Curiae*”, filed by the Bagosora Defence on 10 August 1999; and the “Prosecutor’s Response”, filed on 10 May 2000;

**HEREBY DECIDES** the motion.

**SUBMISSIONS**

1. The Government of Rwanda requests an appearance before the Chamber in order to seek restitution of property and assets removed by or at the disposal of the Accused. These include public records belonging to the Ministry of Defence, movables, funds and other transferable securities. It also requests provisional measures in relation to assets concealed around the world, such as subpoenas and sequestration of the property. The Government seeks the right to participate in the trial and to produce evidence in order to prove the Accused’s culpability.
2. The Bagosora Defence submits that a claim for restitution of property can only be made after a judgement of conviction, according to Rule 105 of the Rules of Procedure and Evidence (“the Rules”). Furthermore, the Rwandan Government has no legal capacity to plead on behalf of individuals. The provisional measures sought are not provided for in the constitutive instruments of the Tribunal and there is no evidence that the Accused misappropriated the property. There cannot be two Prosecutors in the case, and if granted the right to appear as such, the Government would be subject to the same rules of disclosure as the Prosecution.
3. The Prosecution makes no submission on the application and leaves the matter to the Chamber.

**DELIBERATIONS**

4. Pursuant to Rule 74, the Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organization or person to appear as *amicus curiae* before it and make submissions on any issue specified by the Chamber. For leave to be granted, the proposed submissions must be relevant to the case and assist the Chamber in the proper determination of it.<sup>1</sup>

<sup>1</sup> *Musema*, Decision on an Application by African Concern for Leave to Appear as *Amicus Curiae* (TC), 17 March 1999, paras. 2, 13 and 14.

5. With regard to the issue of restitution, the Rules provide a framework within which restitution claims may be granted. If the Chamber finds the Accused guilty of a crime and concludes from the evidence presented that the unlawful taking of property by the Accused was associated with that crime, it shall, pursuant to Rule 88, make a specific finding to that effect in its judgement. In that event, the Chamber shall, pursuant to Rule 105, order the restitution of the property or the proceeds thereof or make such other order as it considers appropriate.

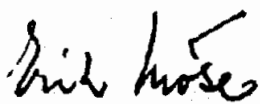
6. As Rule 105 envisions a special hearing on restitution which only takes place after a judgement of conviction that specifically includes findings on the unlawful taking of property, the application is premature at this stage. Moreover, the Indictments do not allege that the Accused unlawfully took property. That being the case, the request does not show how the proposed submissions regarding restitution to victims are relevant to the issues to be decided or how they would assist the proper determination of the case. The general problem of the unlawful taking of property in Rwanda is unrelated to the specific facts at issue in this trial.

7. The two remaining requests for provisional measures and for the right to produce evidence at trial are not provided for in the Rules. Rule 74 envisages that an *amicus curiae* will make submissions on issues relevant to the case. The production of evidence falls within the jurisdiction of the Office of the Prosecutor, as provided for by Article 15 of the Statute and Rules 37 and 38 of the Rules.

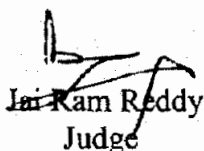
**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the application.

Arusha, 13 October 2004



Erik Møse  
Presiding Judge



Sri Ram Reddy  
Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]

