



ICTR-98-41-T
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
26-04-2005
(24575-24573)

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TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 26 April 2005

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

JUDICIAL RECORDS/ARCHIVES
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DECISION ON MOTION REQUESTING SUBPOENAS TO COMPEL THE
ATTENDANCE OF DEFENCE WITNESSES DK 32, DK 39, DK 51, DK 52, DK 311,
AND DM 24

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid

The Defence

Raphaël Constant
Paul Skolnik
René Saint-Léger
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”), 24574

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

BEING SEIZED OF the “Motion Requesting Subpoenas to Compel the Attendance of Defence Witnesses DK 32, DK 39, DK 51, DK 52, DK 311 and DM 24”, filed by the Defence for Ntabakuze on 4 April 2005;

CONSIDERING the Prosecutor’s Response, filed on 4 April 2005;

HEREBY DECIDES the motion.

SUBMISSIONS

1. The Ntabakuze Defence requests the issuance of subpoenas to six of its witnesses who refuse to testify before the Chamber, notwithstanding “serious efforts” to secure their voluntary attendance. Four of the witnesses, DK 32, DK 39, DK 51 and DK 311, are said to fear that testifying would jeopardize their security. Witness DM 24 refuses to testify for the next six months because of work obligations. Witness DK 52 relies upon work and child care obligations in refusing to testify, as well as feelings of trauma.¹ The Defence asserts that the appearance of these witnesses would materially assist the Defence case, and summarizes in detail the testimony expected from each witness.

2. The Prosecution takes no position on the request.

DELIBERATIONS

3. Rule 54 permits the issuance of “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”. A subpoena, which is an order to perform a certain action under threat of penalty, may be issued to compel the attendance of a witness before a Chamber for the purpose of giving testimony.² The party requesting the subpoena must demonstrate that reasonable efforts have been made to secure the witness’s voluntary attendance, and that the testimony is likely to be relevant to the trial.

4. Based on the representations of the Defence, the Chamber is satisfied that reasonable efforts have been made to secure the voluntary attendance of these witnesses, and that they have been unsuccessful. The expected testimony of each witness, as excerpted from the pre-Defence brief, is material and relevant to the facts at issue in the present trial. Accordingly, the issuance of a subpoena ordering the testimony of the witnesses before the Chamber is necessary and appropriate for the conduct of the trial. The Registry shall prepare a subpoena addressed to each of the six persons, ordering their appearance before the Chamber, at a date and time specified by the Registry, to give evidence in the matter *The Prosecutor v. Bagosora et al.*

¹ The Chamber previously denied a request that the witness be permitted to give her testimony by video-link: *Bagosora et al.*, Decision on Ntabakuze Motion to Allow Witness DK 52 to Give Testimony by Video-Conference (TC), 22 February 2005.

² *Bagosora et al.*, Decision on Requests for Subpoena (TC), 10 June 2004, paras. 2-3; *Bagosora et al.*, Decision on Request for Subpoena for Witness BW (TC), 24 June 2004; *Bagosora et al.*, Decision on Prosecutor’s Request for a Subpoena Regarding Witness BT (TC), 25 August 2004.

FOR THE ABOVE REASONS, THE CHAMBER

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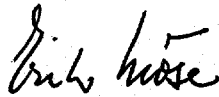
GRANTS the motion;

ORDERS the Registrar to prepare subpoenas in accordance with this decision, addressed to the witnesses designated by the pseudonyms DK 32, DK 39, DK 51, DK 52, DK 311 and DM 24;

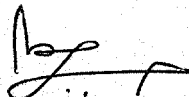
ORDERS the Registrar to communicate the subpoenas to each of the aforementioned witnesses by the most practicable means, which may include communication of the subpoena to the government of the country in which the witness is resident, for the purpose of service on the witness;

REQUESTS each national government that receives a subpoena to serve it on the addressee as soon as practicable, and to provide any other assistance that may be requested by the Registry to facilitate the witness's attendance.

Arusha, 26 April 2005



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

