



ICTR-98-41-T
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
08-06-2005
(25025 - 25023)

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TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 8 June 2005

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

2005 JUN - 8 P 12: 21
JUDICIAL RECORDS/ARCHIVES
ICTR
[Signature]

DECISION ON DISCLOSURE OF PROSECUTION DATA BASE AND MAP

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid

The Defence

Raphaël Constant
Paul Skolnik
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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

BEING SEIZED OF a "Motion for Disclosure of Prosecution Data Base and Map", filed by the Defence for Ntabakuze on 24 February 2005;

CONSIDERING the Prosecution Response, filed on 2 March 2005; the Prosecution "Written Submissions", filed on 19 May 2005; and the oral submissions of the parties on 16 May 2005;

HEREBY DECIDES the motion.

1. The Defence asks the Chamber to order the Prosecution to disclose a database, said to include 7,000 statements or case files, to two of its expert witnesses for the purpose of furthering their research. The Defence asserts that the database will confirm a statistical analysis by these experts whose conclusions are exculpatory of the Accused and, therefore, subject to disclosure under Rule 68 of the Rules of Procedure and Evidence. The Defence originally requested disclosure of a map which purportedly shows military emplacements in Rwanda, but later did not dispute the Prosecution's claim that the map in question had been entered as Prosecution Exhibit 323.¹

2. The Prosecution states that, in principle, it has no objection to permitting the Defence to review its database of witness statements "subject to certain limitations".² The Defence agrees that access to the database would satisfy its request. Furthermore, it has indicated its willingness to agree to all of the conditions for access set by the Prosecution, except for a request that the Defence waive the right to ask for an adjournment of proceedings based on alleged late disclosure of the material.³

3. The remaining issue in dispute between the parties appears to be the Prosecution's condition that the Defence waive any requests to adjourn the proceedings because the experts may need additional time to analyse the voluminous material before submitting their report. In the Chamber's view, it is not reasonable to require a waiver when the Defence is unaware of the contents of the data. Furthermore, the issue of adjournment may not arise. The two experts are not on the Defence witness list during the trial segment from 20 June to 29 July 2005. The subsequent session runs from 12 October to 12 December 2005. Consequently, considerable time may pass until the experts are called to testify. According to Defence Counsel, there is no reason at present to believe that the analysis of the data will delay the court in any way but the Defence may come back to the Chamber if the problem arises.⁴ At the present stage, the question of adjournment and submissions concerning the timeliness of access to the material are premature. The Chamber does not have sufficient knowledge of the contents of the database to rule on the issue of disclosure obligations. Consequently, the motion is denied but the parties are at liberty to seek a mutually acceptable solution concerning access to the data base.

¹ Response, para. 5 (a); T. 16 May 2005 pp. 19-20.

² Written Submissions, para. 5 (d).

³ T. 16 May 2005 pp. 19-20, Counsel for Ntabakuze: ("The position which we find ourselves, I think, is that we are in agreement with the general principles. There is one position that the OTP has taken, which is that asking for a promise ahead of time that we will agree to waive any delay that might be caused by the analysis, the need to analyse this data ... The question of principle that still remains is the question of waiver, of any delays that analysis of this data might take ... I don't think that we can agree ahead of time to a decision that the Court will need to make ...").

⁴ T. 16 May 2005 p. 20.


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FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

Arusha, 8 June 2005


Erik Møse
Presiding Judge


Jai Ram Reddy
Judge


Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

