



ICTR-98-41-T  
22-05-2006  
(27530-27528)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

27530  
Ivan

**TRIAL CHAMBER I**

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

**Registrar:** Adama Dieng

**Date:** 22 May 2006

**THE PROSECUTOR**

v.

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

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



**DECISION ON CERTIFICATION OF REQUEST FOR  
SEVERANCE OF THREE ACCUSED**

**The Prosecution**

Barbara Mulvaney  
Drew White  
Christine Graham  
Rashid Rashid

**The Defence**

Raphaël Constant  
Allison Turner  
Paul Skolnik  
Frédéric Hivon  
Peter Erlinder  
André Tremblay  
Kennedy Ogetto  
Gershom Otachi Bw'Omanwa

## THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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

**BEING SEIZED OF** the Joint “Motion for Certification of the ‘Decision on Request for Severance of Three Accused’”, etc., filed by the Defences of Kabiligi, Nsengiyumva and Ntabakuze on 3 April 2006;

**CONSIDERING** the oral submissions of the Prosecution on 4 April 2006, opposing the motion;

**HEREBY DECIDES** the motion.

### INTRODUCTION

1. The Accused Kabiligi, Nsengiyumva and Ntabakuze request leave to file an interlocutory appeal from the Chamber’s oral decision of 22 March 2006, denying severance of the Accused Kabiligi, Nsengiyumva, and Ntabakuze from the present trial.<sup>1</sup>

### DELIBERATIONS

2. Leave to file an interlocutory appeal of a decision “may” be granted under Rule 73 (B) where it significantly affects the “fair and expeditious conduct of proceedings or the outcome of the trial” and where “immediate resolution may materially advance the proceedings or the outcome of the trial”.

#### *(i) Fair and Expeditious Proceedings*

3. In denying the severance motion from which leave to appeal is now requested, the Chamber considered, as required by Rule 82 (B), whether the testimony of the two witnesses “might cause serious prejudice to an accused”. The Chamber is now confronted with a similar issue in deciding whether to grant leave to appeal under Rule 73 (B): whether permitting these two witnesses to testify is a decision which would significantly affect the “fair and expeditious conduct of proceedings”.

4. The motion argues that the testimony of Jean Kambanda and Marcel Gatsinzi will be highly prejudicial to the three Accused, thus rendering the trial unfair, and possibly affecting the outcome of the trial. Two specific areas of testimony are identified as damaging. Kambanda, according to a will-say statement issued by the Bagosora Defence, will testify that there was a genocide in Rwanda between April and July 1994, a view which is contested by the Accused.<sup>2</sup> Gatsinzi will testify, according to media reports, that “Colonel Théoneste Bagosora is a criminal”, and that “Bagosora and other former military officials planned and supervised the genocide”.<sup>3</sup> Though called by the Accused Bagosora, these witnesses will, in effect, present new Prosecution evidence against the Accused, which would not be heard but for the fact that the Accused are being tried jointly. Cross-examination is said to be

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<sup>1</sup> ~~Reasons for that decision were issued~~ five days later: *Bagosora et al*, Decision on Request for Severance of Three Accused (TC), 27 March 2006.  
Certification Motion, para. 10.  
Certification Motion, para. 12.

insufficient to remedy the unfairness arising from this testimony. Furthermore, proceedings will be substantially lengthened by the need of the three co-Accused to call witnesses in rebuttal.

5. The Chamber does not see that the fair and expeditious conduct of proceedings, or the outcome of the trial, will be affected by permitting Jean Kambanda to testify that there was a genocide in Rwanda between April and July 1994. This is a general proposition on which the Chamber has already heard considerable testimony. The addition of Kambanda's evidence on this subject will not render the proceedings unfair, nor does it foreseeably justify rebuttal evidence of any significant scope by the three co-Accused, if at all. Gatsinzi's prospective testimony is, at present, far from clear. The Bagosora pre-Defence brief says only that he will testify on "his military career; his activity in GOMN; his activity as acting deputy chief of staff; his activities from April to July 1994".<sup>4</sup> The media reports about Gatsinzi's opinions are an inadequate foundation upon which to rule that the testimony would impair the "fair conduct of proceedings", just as they were inadequate to establish that the testimony could cause "serious prejudice" to the co-Accused.

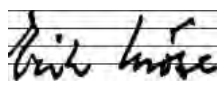
(ii) *Materially Advance the Proceedings*

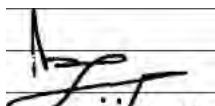
6. Having found that the first criterion for certification is not met, the Chamber need not determine whether certification would materially advance the proceedings.

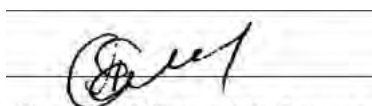
**FOR THE ABOVE REASONS, THE CHAMBER**

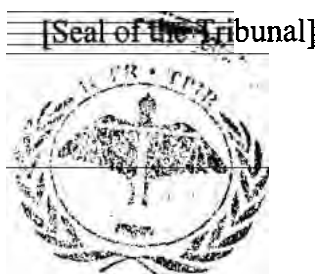
**DENIES** the motion.

Arusha, 22 May 2006

  
Erik Møse  
Presiding Judge

  
Jai Ram Reddy  
Judge

  
Sergei Alekseevich Egorov  
Judge



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<sup>4</sup> "List of Colonel Bagosora Defence Witnesses", 4 May 2005, p. 7.