

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-98-41-T  
29-08-2006  
(29217 - 29215)

29217

S. Musa

TRIAL CHAMBER I

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

**Registrar:** Adama Dieng

**Date:** 29 August 2006

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

2006 AUG 29 P 2:18  
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**DECISION ON THE BAGOSORA DEFENCE REQUEST FOR SUBPOENA OF  
AMBASSADOR MPUNGWE AND COOPERATION OF THE UNITED REPUBLIC  
OF TANZANIA**

**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

oh

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

29216

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

BEING SEIZED OF the “Bagosora Defence Amended Strictly Confidential and Ex Parte Request for Subpoena of Ambassador Mpungwe and Cooperation of the United Republic of Tanzania”, filed on 7 July 2006, and the “Bagosora Defence Further Request for Timely Decision on Bagosora Defence Amended Motion Filed 7 July 2006”, filed on 24 August 2006;

HEREBY DECIDES the motion.

1. The Bagosora Defence wishes to interview Ambassador Ami R. Mpungwe, a former official of the Tanzanian government who is said to have acted as a facilitator in the negotiations leading to the Arusha Accords. The Bagosora Defence submits that it has reasonable grounds to believe that Ambassador Mpungwe may have information concerning Colonel Bagosora’s attitude at the peace talks, which has been the object of potentially incriminating testimony by Prosecution witnesses. The motion details extensive efforts dating back to 28 April 2005 by both the Defence and the Registrar to arrange a meeting with Ambassador Mpungwe.<sup>1</sup> The remedy sought is a request to the Government of Tanzania to facilitate a meeting with the Ambassador and, “if necessary”, the issuance of a subpoena to compel his attendance. The most recent information communicated to the Chamber is that the Ambassador is willing to meet with the Bagosora Defence, but believes that he must receive prior authorization from government authorities to do so.<sup>2</sup>

2. Article 28 of the Statute imposes an obligation on States to “cooperate with the International Criminal Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violation of international humanitarian law”. This obligation extends not only to efforts by the Prosecution to obtain inculpatory evidence, but also efforts by the Defence to obtain exculpatory information. A request to a Chamber to make a request under Article 28 must set forth the nature of the information sought, its relevance to the trial, and the efforts that have been made to obtain it. The type of assistance requested should also be defined with particularity.<sup>3</sup>

3. The conditions for issuance of a request under Article 28 are satisfied. Both the Defence and the Registry have undertaken significant efforts to arrange the meeting requested. A sufficient basis has been established to suggest that Mr. Mpungwe may have information concerning the conduct of Colonel Bagosora during the Arusha negotiations, on which this Chamber has heard direct and potentially incriminating evidence. Further, the evidence relates to a specific allegation in paragraph 5.10 of the Indictment that the Accused “openly manifested his opposition to the concessions made by the Government representative ... to the point of leaving the negotiation table. Colonel Théoneste Bagosora left Arusha saying that he was returning to Rwanda to ‘prepare the apocalypse’”. The Defence has a reasonable basis to believe that Ambassador Mpungwe may have information which could be material to these allegations.

<sup>1</sup> Motion, paras. 13-43; Further Request, para. 4.

<sup>2</sup> Further Request, para. 4.

<sup>3</sup> *Bagosora et al.*, Decision on Request to the Republic of Togo for Assistance Pursuant to Article 28 of the Statute (TC), 31 October 2005, para. 2.

29215

4. The Chamber does not consider it necessary, at this stage, to issue a subpoena addressed to Ambassador Mpungwe. It appears that he is willing to attend a meeting voluntarily, provided that he is given authorization to do so by the Tanzanian government. The Chamber observes, however, that the meeting must be held expeditiously. The trial is in its closing stages, and the Defence must be given a reasonable opportunity to ascertain the nature of the witness's knowledge and, if necessary, to call him as a witness.

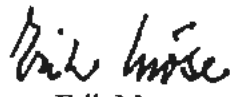
**FOR THE ABOVE REASONS, THE CHAMBER**

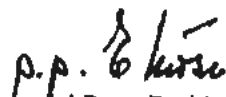
**GRANTS** the motion in part;

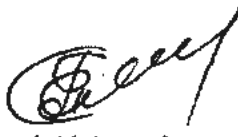
**RESPECTFULLY REQUESTS** the United Republic of Tanzania to give its permission to allow Ambassador Mpungwe to meet with the Bagosora Defence, and to otherwise provide any relevant assistance that may reasonably be required to facilitate this meeting as soon as possible;

**DIRECTS** the Registry to transmit this decision to the relevant authorities of the United Republic of Tanzania.

Arusha, 29 August 2006

  
Erik Møse  
Presiding Judge

  
Sai Ram Reddy  
Judge

  
Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]

