



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-1
19-10-2006
(31098-31095)

31098
S. Muna

ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 19 October 2006

THE PROSECUTOR

v.

Théoneste BAGOSORA
Gatien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No.: ICTR-98-41-T

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DECISION ON REQUEST FOR SUBPOENA OF AMI R. MPUNGWE

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid
Gregory Townsend

The Defence

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

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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 "Request for Trial Chamber to Order the Government of Tanzania to Cooperate and For Subpoena for Ambassador Mpungwe", filed by the Bagosora Defence on 29 September 2006;

CONSIDERING the "Submissions in Support", filed by the Bagosora Defence on 12 October 2006;

HEREBY DECIDES the motion.

1. The Bagosora Defence requests that a subpoena be issued to Ami R. Mpungwe, requiring his appearance before this Chamber to give testimony. Mr. Mpungwe, a former official of the Government of Tanzania, acted as a facilitator during the negotiation of the Arusha Accords in 1992 and 1993.

2. The applicant for a subpoena compelling the appearance of a person as a witness must show that three conditions are satisfied: (i) reasonable attempts have been made to obtain the voluntary cooperation of the witness; (ii) the prospective witness has information which can materially assist the applicant in respect of clearly identified issues relevant to the trial; and (iii) the witness's testimony must be necessary and appropriate for the conduct and fairness of the trial.¹

3. This Chamber previously considered a request, filed on 7 July 2006, for a subpoena requiring Mr. Mpungwe to meet with the Defence, and for the assistance of the Government of Tanzania in facilitating such a meeting. In a decision of 29 August 2006, the Chamber held that the second and third conditions for the issuance of a subpoena were satisfied:

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.²

¹ *Prosecutor v. Krstic*, Case No. IT-98-33-A, Decision on Application for Subpoenas (AC), 1 July 2003, para. 10; *Prosecutor v. Halilovic*, Case No. IT-01-48-AR73, Decision on the Issuance of Subpoenas (AC), 21 June 2004, para. 7; *Bagosora et al.*, Decision on Request for Subpoenas of United Nations Officials (TC), 6 October 2006, para. 3; *Bagosora et al.*, Decision on Request for a Subpoena (TC), 11 September 2006, para. 5; *Karemera et al.*, Decision on Defence Motion for Issuance of Subpoena to Witness T (TC), 8 February 2006, para. 4.

² *Bagosora et al.*, Decision on the Bagosora Defence Request for Subpoena of Ambassador Mpungwe and Cooperation of the United Republic of Tanzania (TC), 29 August 2006, para. 3.

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4. The request for a subpoena was, nonetheless, denied on the basis that reasonable efforts to obtain the witness's cooperation had not yet been exhausted. Although the Defence, in conjunction with the Registry, had been trying to arrange a meeting with Mr. Mpungwe since 28 April 2006,³ the impasse appeared attributable to the witness's good faith belief that official authorization was required before he could meet with the Defence:

It appears that [Mr. Mpungwe] 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.⁴

5. Despite the Chamber's instruction that the "meeting must be held expeditiously" and "as soon as possible", five more weeks elapsed before a meeting was finally held on 5 October 2006.⁵ On 11 October 2006, after a Defence request for answers to additional written questions, Mr. Mpungwe's lawyer advised the Defence that no further responses would be forthcoming. The following day, the Defence requested, through Mr. Mpungwe's lawyer, the witness's immediate appearance before the Chamber, and filed the present motion.⁶ According to the trial schedule, the deadline for the close of the Bagosora Defence case was 13 October 2006, and the close of the trial is scheduled for 13 December 2006.

6. The Chamber considers that the Defence has made reasonable efforts to obtain the witness's voluntary cooperation, and that a subpoena is now required to ensure his timely appearance. The lengthy delays cannot be attributed to the Defence, which appears to have acted in a diligent manner to secure the witness's testimony before the scheduled close of its case. In light of the imminent completion of the present trial, and the history of delays described above, a subpoena is now required to ensure that Mr. Mpungwe appears during the next trial session.

³ *Bagosora et al.*, Decision on the Bagosora Defence Request for Subpoena of Ambassador Mpungwe and Cooperation of the United Republic of Tanzania (TC), 29 August 2006, para. 1.

⁴ *Id.* para. 4.

⁵ *Id.* p. 3.

⁶ Submissions, paras. 6-7.

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FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the motion;

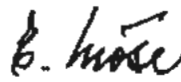
ORDERS the Registrar to prepare a subpoena in accordance with this decision, addressed to Ami R. Mpungwe, requiring his appearance before this Chamber to give testimony in the present case;

DIRECTS the Registry to communicate the subpoena to Mr. Mpungwe through appropriate diplomatic channels, accompanied by a copy of this Decision.

Arusha, 19 October 2006



Erik Møse
Presiding Judge



Jai Ram Reddy
P.P. Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

