ICTR-98-41-T
(20-10-2006)
31105
31105– 31102)

UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 20 October 2006

2006 OCT 20 A 8:50
UNICTR RECORDS/ARCHIVES
RECEIVED

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No.: ICTR-98-41-T

DECISION ON BAGOSORA REQUEST FOR THE GOVERNMENT OF FRANCE TO AUTHORIZE THE APPEARANCE OF A WITNESS

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
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 "Requête ... en vue d'obtenir la Coopération de la République Française", etc., filed by the Bagosora Defence on 13 December 2005;

CONSIDERING "Submissions" and the "Mémoire Additionel", filed by the Bagosora Defence on 21 September and 16 October 2006, respectively;

HEREBY DECIDES the motion

INTRODUCTION

1. The Bagosora Defence wishes to call as a witness a French military officer who was present in Rwanda during some of the events described in the Indictment. The Defence asks the Chamber to issue a request to the Government of France to permit the witness to testify. Since the filing of the motion at the end of 2005, the Defence has twice interviewed the officer, with the consent and cooperation of the French authorities. France has also expressed its willingness to allow the officer to appear as a witness on certain conditions, some of which have been rejected by the Bagosora Defence.[1]

DELIBERATIONS

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 violations of international humanitarian law". The issuance of such a request is subject to three conditions: (i) identification of the nature of the information sought with a reasonable degree of specificity; (ii) a showing that the information is relevant to the trial; and (iii) evidence that reasonable efforts have been undertaken to obtain the information without the intervention of the Chamber.[2] The second condition requires the applicant to show that the information is relevant to any matter in issue before the Judge or Trial Chamber and that it is necessary for a fair determination of that matter.[3] A similar

[1] Mémoire additionel, para. 35.

[2] *Bagosora et al.*, Request to the Government of Rwanda for Cooperation and Assistance Pursuant to Article 28 of the Statute (TC), 10 March 2004.

[3] Relevance has not always been formulated in exactly the same words from one case to another. Some decisions, particularly where the relevance of the information is obvious, say no more than that the applicant must articulate its "relevance to the trial". *Ndindiliyimana et al.*, Decision on Nzuwonemeye's Motion Requesting Cooperation From the Government of Ghana Pursuant to Article 28 of the Statute (TC), 13 February 2006, para. 6; *Bagosora et al.*, Request to the Republic of France for Cooperation and Assistance Pursuant to Article 28 of the Statute (TC), 22 October 2004, para. 3. Where relevance is contested, however, it has also been required that the information be "relevant to any matter in issue before the Judge or Trial Chamber", and that the information be "necessary for a fair determination" of that matter. *Karemera et al.*, Decision on Joseph Nzirorera's Motion for a Request for Governmental Cooperation (TC), 19 April 2005, para. 8. This language mirrors the standard codified in Rule 54 *bis* of the ICTY Rules which deals specifically with the conditions and modalities for issuing orders to States under Article 29 of the ICTY Statute. The Chamber considers this to be the appropriate standard. The limitation that the information be "necessary for a fair determination" of a question before the Chamber reflects a sensible concern that States and international organization not be burdened with numerous requests for information based on relevance alone, a standard which could potentially

condition applies to the issuance of a subpoena and, in that context, Chambers have considered "whether the information can be obtained other than through the prospective witness".[4]

3. The Defence asserts that the prospective witness can give testimony as to his knowledge of the Rwandan Armed Forces and events in Kigali in 1994. In particular, he is said to have been present at the *état major* on the night of 6 to 7 April 1994.[5]

4. As mentioned above, the prospective witness has met with the Defence on two occasions and, as a result of one of those meetings, produced written answers to questions posed by the Defence. Those answers, which have been communicated to the Chamber and to the Defence, demonstrate that the prospective witness has only limited knowledge concerning the Accused.[6] He appears to have met the Accused on two unremarkable occasions in 1992 and 1993. On the night of 6 April 1994, he saw Bagosora at the *état major*, but apparently did not hear him say anything of substance. He met Bagosora again during two short meetings, one on 7 April in the presence of another French official, and then finally on 9 April 1994. The witness recalls the nature of the requests made by him and his colleague during those two meetings, but apparently has little or no recollection of Colonel Bagosora's response or his attitude.[7]

5. The prospective witness's written answers reflect a general knowledge of the Rwandan Armed Forces and of events in Kigali between 7 and 14 April 1994. The Chamber does not, however, consider that the witness's testimony on these matters is necessary and appropriate for the conduct and fairness of the trial. The Chamber has already heard extensive testimony from both Defence and Prosecution witnesses on these general issues. Further, statements which do not concern the acts and conduct of the Accused may be placed before the Chamber without necessarily requiring the witness's appearance, in appropriate circumstances.[8] Considering the general nature of the evidence, its duplicative character in relation to evidence already heard, and the alternative mechanisms by which it might be admitted, the Chamber cannot conclude that a request for the appearance of the witness is necessary and appropriate for the conduct of the trial.

---

cast an unduly broad net. In addition, this is an area where a common standard amongst the international tribunals is desirable.

[4] *Bagosora et al.*, Decision on Request for Subpoenas of United Nations Officials (TC), 6 October 2006, para. 3.

[5] *Requête*, paras. 20-23.

[6] Interoffice Memorandum, 10 July 2006, from Registry to Lead Counsel for Bagosora, Ref: ICTR/IOR/ERSPS/07/06/82-RD.

[7] Answers to questions 3 and 53.

[8] Rule 92 *bis* of the Rules of Procedure and Evidence.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion

Arusha, 20 October 2006

Erik Møse
Presiding Judge

Jai Ram Reddy
Judge

Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]