



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
26-10-2006
(31193-31185)

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S. MUSA

ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 26 October 2006

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

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FURTHER REQUEST TO THE GOVERNMENT OF RWANDA
FOR COOPERATION AND ASSISTANCE

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

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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 the "Requête de la Défense de Bagosora visant la collaboration de l'Etat du Rwanda", filed by the Defence on 28 March 2006;

CONSIDERING the correspondence filed *ex parte* by the Bagosora Defence on 4 October 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. In its Decision of 10 March 2004, following a request by the Bagosora Defence, the Chamber asked the Government of Rwanda to determine whether it possessed any of the documents listed in Annex A of its Decision and, if so, to transmit them to the Registry as soon as possible for disclosure to the Defence.¹ The Defence submits that the Rwandan authorities have not provided a complete response. Furthermore, the Defence has attempted in vain to obtain additional information necessary for the Accused to prepare his defence.² As a result, the Defence requests the Chamber to ensure the cooperation of the Government of Rwanda.

2. Since the present motion was filed, the Rwandan Ministry of Foreign Affairs has provided additional information regarding two of the documents that the Defence had requested.³ Moreover, in its 4 October 2006 filing, the Defence advised the Chamber that it has received additional communications from the Rwandan Government.⁴

DISCUSSION

3. 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". A request to a Chamber to make an order 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. Requests for assistance under Article 28 should also identify the nature of the assistance required with particularity.⁵

¹ *Prosecutor v. Bagosora et al.*, Request to the Government of Rwanda for Cooperation and Assistance Pursuant to Article 28 of the Statute (TC), 10 March 2004 (the "10 March 2004 Decision").

² Motion, paras. 9-10.

³ *Note Verbale*, 10 July 2006, from the Rwandan Ministry of Foreign Affairs and Cooperation to the Registry of the Tribunal (regarding the Defence request for copies of civilian, military and diplomatic passports of Colonel Bagosora between 1990 and 1994, and the list and duration of his missions from June 1992 to July 1994).

⁴ The filing noted that the Defence had received information as to lists of students from 1993-1994 EFOTEC classes and as to telephone files from Rwandatel-Terracom.

⁵ *Bagosora et al.*, Decision on Request to the Kingdom of The Netherlands for Cooperation and Assistance (TC), 7 February 2005, para. 5; *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.

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(i) *Documents Already Covered by the Chamber's 10 March 2004 Decision*

4. The Chamber has already found that the documents referenced in its 10 March 2004 Decision were properly sought by the Bagosora Defence. The Defence has obtained information as to some of these documents.⁶ The Chamber is persuaded that a response from the Government of Rwanda as to the remaining documents, listed in Annex A to this Decision, is appropriate, and emphasizes the need for a response as soon as possible.

(ii) *Additional Documents*

5. The remaining documents requested by the Defence are as follows:

- a. A copy of the judicial file established in 1996 by the *Parquet Général de Kigali* supporting the request for extradition of Bagosora made to the Cameroonian authorities;
- b. The complete copy of the 1993 agenda of Bagosora;
- c. The declaration of Mr. Jean-Bosco Nkulikiyinka, made at the *Auditorat Militaire* in 1998, on the subject of a roadblock in Kigali;
- d. The list and composition of the class for 3rd year "A" of *électromécanique* at the school called EFOTEC for the school year 1993-1994;
- e. The school records with the different classes attended by three particular students;
- f. An interview with Mr. Faustin Twagiramungu, from June 1992, giving his point of view on the attack of the RPF made in the same period;
- g. The speech given by Mr. Froduald Karamira in October 1993, after the assassination of the president of Burundi, Melchior Ndadaye; and
- h. The speech given by Mr. Félicien Gatabazi, made in January or February 1994 during a meeting of his party, the PSD.

6. The Chamber finds that the Defence adequately sets forth the nature of the documents sought. The Defence has provided detailed descriptions and documentation showing its efforts to procure these documents.

7. The Chamber considers that documents relating directly to Bagosora (categories a-b, above) are clearly relevant to the proceedings against him. In addition, the two categories (d and e) relating to the EFOTEC school may be relevant to the trial. The declaration of Mr. Nkulikiyinka (category c) is also likely relevant, as it apparently addresses a subject (a certain roadblock said to have been set up in Kigali in April 1994) about which testimony has been given during trial.⁷ As noted in the Chamber's 10 March 2004 Decision, evidence has been admitted at trial of events in 1992 which the Prosecution says is probative of an ongoing conspiracy through 1994.⁸ The Chamber finds that the interview with Mr. Twagiramungu (category f) and the speeches made by Mr. Karamira and Mr. Gatabazi (categories g and h,

⁶ See footnotes 3 and 4 above.

⁷ T. 17 September 2003 pp. 15-16; T. 19 September 2003 pp. 56-57; T. 11 November 2003 pp. 11, 14.

⁸ 10 March 2004 Decision, para. 10.

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respectively) may also be relevant to that question.⁹ These documents are listed in Annex B to this Decision.

FOR THE ABOVE REASONS, THE CHAMBER

REMINDS the Government of Rwanda of its obligation to cooperate with the Tribunal, pursuant to Article 28 of the Statute;

REQUESTS the Government of Rwanda to provide as soon as possible a response to the Request for Cooperation and Assistance of 10 March 2004 as to documents listed in Annex A of this Decision;


FURTHER REQUESTS the Government of Rwanda to determine whether it possesses any of the documents listed in Annex B of this Decision, and if so, to transmit them to the Registry as soon as possible for disclosure to the Defence;

DIRECTS the Registrar to contact the relevant authorities of the Government of Rwanda forthwith, to continue dealing with the matter until a response to the Request for Cooperation and Assistance of 10 March 2004 is received, and to report thereon to the Chamber; and

DENIES the Motion in all other respects.

Arusha, 26 October 2006


Erik Møse
Presiding Judge


Jai Ram Reddy
P.A. Judge


Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



⁹ For example, the Prosecution has provided expert witness testimony regarding the impact in Kigali of the assassination of President Ndadaye; the testimony specifically describes the speech made by Froduald Karamira and its alleged role in rallying the forces that led to the so-called "Hutu power" movement. T. 18 September 2002 pp. 8-12.

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ANNEX A

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**List of Remaining Documents Requested From the Government of Rwanda
in Accordance With the Decision of 10 March 2004 of Trial Chamber I of the
International Criminal Tribunal for Rwanda**

1. *Journaux Officiels* from July 1993 through December 1993
2. Military, Administrative or Personal Files at the Ministry of Defence of Colonel Théoneste Bagosora for the period from January 1992 through July 1994
3. Administrative files of the following persons at the Ministry of Defence for the period January 1992 through July 1994:
 - a. Pierre Celestin RWAGAFILITA (3rd promotion ESM)
 - b. Stanislas MAYUYA (4th promotion ESM)
 - c. Elie SAGATWA (5th promotion ESM)
 - d. Léonidas RUSATIRA (6th promotion ESM)
 - e. Augustin NDINDILIYIAMANA (7th promotion ESM)
 - f. Marcel GATSINZI (9th promotion ESM)
 - g. Anastase BIZUMUREMUYI (24th promotion ESM)
3. *Ordres de bataille* and/or *liste nominative des militaires* of the Paracommando Battalion dated or issued on 1 October 1993 and 1 January 1994
4. *Ordres de bataille* and/or *liste nominative des militaires* of the Reconnaissance Battalion dated or issued on 1 January 1994
5. *Ordres de bataille* and/or *liste nominative des militaires* of the Presidential Guard dated or issued on 1 October 1993 and 1 January 1994
6. *Ordres de bataille* and/or *liste nominative des militaires* of the Gendarmerie Nationale dated or issued on 1 October 1993, 1 January 1994 and 1 March 1994
7. A directive dated or issued by the Ministry of Defence in late January or early February 1993 limiting the powers of the *chef de cabinet*
8. A letter from Colonel Théoneste Bagosora to the commander of UNAMIR, dated late February or early March 1994, protesting provocative acts against him by Belgian UNAMIR troops
9. Records of judicial proceedings conducted after July 1994 concerning the following individuals:
 - a. Pasteur BIZIMUNGU
 - b. Isidore BWANAKWELI
 - c. Banzi WELLARS (trial in Gisenyi; President of MRND, Gisenyi)
 - d. Faziri HAKIZIMANA (trial in Gisenyi; conseiller du secteur de Gisenyi)
 - e. Zainabo MIKUNDUFITE (formerly in charge of the Rubavu Cellule and the daughter of Faziri Hakizimana) (trial in Gisenyi)

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- f. 2nd Lt. Eustache DUSABEYEZU (student at St. Fidèle or Mudende University) (trial in Gisenyi)
- g. Father Francois KAYIRANGA (Court of Appeal of Ruhengeri)
- h. Father Edward NTURIYE (Court of Appeal of Ruhengeri)

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ANNEX B

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List of Documents Requested From the Government of Rwanda
in Accordance With the Decision of 26 October 2006 of Trial Chamber I of the
International Criminal Tribunal for Rwanda

1. A copy of the judicial file established in 1996 by the *Parquet Général de Kigali* supporting the request for extradition of Bagosora made to the Cameroonian authorities
2. The complete copy of the 1993 agenda of Bagosora
3. The declaration of Mr. Jean-Bosco Nkulikiyinka, made at the *Auditorat Militaire* in 1998, on the subject of a roadblock in Kigali
4. The list and composition of the class for 3rd year "A" of *électromécanique* at the school called EFOTEC for the school year 1993-1994
5. The school records for EFOTEC with the different classes attended by the students named below:
 - a. François-Régis RENZAHO
 - b. Théogène SIBOMANA
 - c. Lucien TELIMBERE
6. An interview with Mr. Faustin Twagiramungu, from June 1992, giving his point of view on the attack of the RPF made in the same period
7. The speech given by Mr. Froduald Karamira in October 1993, after the assassination of the president of Burundi, Melchior Ndadaye
8. The speech given by Mr. Félicien Gatabazi, made in January or February 1994 during a meeting of his party, the PSD

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