

ICTR-98-41-T  
06-11-2006  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

31335  
IVAN

(31335-31333)

ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

**Registrar:** Adama Dieng

**Date:** 6 November 2006

2006 NOV 8 11 A 9 20  
JUDICIAL RECORDS/ARCHIVES  
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THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

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

DECISION ON NSENGIYUMVA REQUEST FOR CERTIFICATION TO APPEAL  
DECISION ON EXCLUSION OF EVIDENCE

**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

8/11

**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 Certification to Appeal the Decision on Nsengiyumva Motion for Exclusion of Evidence”, etc., filed by the Nsengiyumva Defence on 21 September 2006;

**CONSIDERING** the Prosecution Response, filed on 2 October 2006;

**HEREBY DECIDES** the request.

**INTRODUCTION**

1. The Nsengiyumva Defence requests leave to appeal a decision of this Chamber dated 15 September 2006 concerning exclusion of evidence alleged to be outside the scope of the Indictment.<sup>1</sup> On 18 September 2006, the Appeals Chamber decided an interlocutory appeal from a decision concerning one of the other Accused in the present case on the same question.<sup>2</sup> The Appeals Chamber decision, in accordance with the scope of the questions certified, addressed only the legal principles applied by the Trial Chamber, as distinct from their application to specific evidence. The Appeals Chamber largely affirmed those principles, but instructed this Chamber to reconsider its decision on the basis of two additional criteria.<sup>3</sup>

**DELIBERATIONS**

2. Certification may be granted under Rule 73 (B) of the Rules of Procedure and Evidence when a decision “involves an issue that would significantly affect the fair and expeditious conduct of proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings”.

3. The present request for certification was filed after the Appeals Chamber’s decision. To some degree, the request seems to be based on the additional criteria articulated by the Appeals Chamber.<sup>4</sup> Such arguments are more appropriately presented in the form of a motion for reconsideration, rather than certification.

4. In other respects, the present motion recapitulates legal arguments which have already been resolved by the Appeals Chamber, or challenges the Chamber’s application of those legal principles to specific evidence. Certification on these grounds would not, in the Chamber’s view, materially advance the proceedings. No useful purpose would be served by requesting the Appeals Chamber to revisit legal principles which it has only recently affirmed. Nor would certification be appropriate in respect of their application to specific evidence. That assessment, which depends heavily on the nature of the evidence in relation to

<sup>1</sup> *Bagosora et al.*, Decision on Nsengiyumva Motion for Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006.

<sup>2</sup> *Bagosora et al.*, Decision on Aloys Ntabakuze’s Interlocutory Appeal, etc., (AC), 18 September 2006.

<sup>3</sup> *Id.* para. 48.

<sup>4</sup> *E.g.* Motion, para. 10.

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the Indictment and any subsequent timely, clear and consistent clarification of the material facts alleged against the Accused, involves an evaluation of factual questions which are primarily for the trier of fact to weigh.<sup>5</sup>

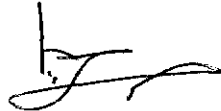
**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the request.

Arusha, 6 November 2006



Erik Møse  
Presiding Judge



Jai Ram Reddy  
Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]



<sup>5</sup> *Bagosora et al.*, Decision on Request for Certification of Decision on Exclusion of Evidence (TC), 14 July 2006, para. 7. See *Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 5 ("It is first and foremost the responsibility of the Trial Chambers, as triers of fact, to determine which evidence to admit during the course of the trial; it is not for the Appeals Chamber to assume this responsibility. As the Appeals Chamber previously underscored, certification of an appeal has to be the absolute exception when deciding on the admissibility of the evidence") (citations omitted); *Bagosora et al.*, Decision on Motion for Reconsideration Concerning Standards for Granting Certification of Interlocutory Appeals (TC), 16 February 2006, para. 5.