



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

(31509-31507)

ICTR-98-41-T
15-11-2006

31509
IVAL

ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 15 November 2006

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THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

**DECISION ON BAGOSORA REQUEST FOR CERTIFICATION CONCERNING
ADMISSION OF PROSECUTION EXHIBIT P-417**

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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31508

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", filed by the Bagosora Defence on 5 October 2006;

CONSIDERING the Prosecution Response, filed on 9 October 2006;

HEREBY DECIDES the request.

INTRODUCTION

1. The Bagosora Defence requests leave to appeal the Chamber's oral decision to admit as Exhibit P-417, a single page from a larger document whose most notable feature is a pie-chart purporting to show the percentage of killings in which various groups -- including *Interahamwe*, soldiers, gendarmes -- participated in Kigali-Ville. The page was prepared, disclosed and filed with the Registry as part of an expert report for the Ntabakuze Defence, but which was never tendered as such. The Prosecution first used the pie-chart during the cross-examination of a Defence witness on 25 September 2006. The Chamber denied objections to questions soliciting the witness's comment on the chart, but reserved its position as to whether the single-page document, or the entire report, should be admitted as an exhibit.¹ The Prosecution used the document in a similar way during the cross-examination of a different witness on 28 September 2006, and the Bagosora Defence objected again. The Chamber allowed the questions and ruled that "we will allow page 29411 to be an exhibit in this case. It was used during [cross-]examination".²

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 Appeals Chamber has held that:

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 has previously underscored, certification of an appeal has to be the absolute exception when deciding on the admissibility of evidence.⁴

¹ T. 25 September 2006 pp. 6-9.

² T. 28 September 2006 p. 15.

³ Rule 73 (B), The Rules of Procedure and Evidence; *Bagosora et al.*, Decision on Kabiligi Request for Certification to Appeal Decision on Exclusion of Evidence (TC), 18 October 2006, para. 2; *Bagosora et al.*, Decision on Request for Certification of Decision on Exclusion of Evidence (TC), 14 July 2006, para. 2.

⁴ *Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 5.

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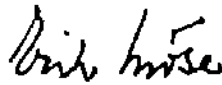
Such an exception could arise where the decision involves a “substantial” or “broad” category of evidence, “or where it determines particularly crucial matters of procedure and evidence”.⁵

3. The Defence has not shown that the decision to admit Exhibit P-417 involves a broad or substantial category of evidence, or that it otherwise raises a crucial matter of procedure or evidence, so as to affect the fair and expeditious conduct of proceedings or the outcome of the trial. The document was used only for the purpose of eliciting comment from the witnesses. No aspect of the document or its use during trial proceedings warrants an interlocutory appeal.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the request.

Arusha, 15 November 2006



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



⁵ *Bagosora et al.*, Certification of an Appeal Concerning Access to Protected Defence Witness Information (TC), 29 July 2005, para. 2; *Bagosora et al.*, Decision on Prosecution Request for Certification of Appeals on Admission of Testimony of Witness DBY (TC), 2 October 2003, para. 4.