



ICTR-98-41-T
12-12-2006

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

(31880 - 31879)

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ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 12 December 2006

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

2006 DEC 12 7 A M: 19
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**DECISION ON REQUEST FOR CERTIFICATION OF APPEAL ON DISCLOSURE
AND INVESTIGATIONS CONCERNING THE ASSASSINATION OF PRESIDENT
HABYARIMANA**

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid
Gregory Townsend
Kartik Murukutla

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 Certification of a Decision of 17 October 2006”, filed by the Bagosora Defence on 25 October 2006;

CONSIDERING the Prosecutor’s Response, filed on 26 October 2006; and the Bagosora Reply, filed on 30 October 2006;

HEREBY DECIDES the request.

INTRODUCTION

1. The Bagosora Defence requests leave to appeal the Chamber’s Decision of 17 October 2006, declining to issue an order requiring the Prosecution to disclose evidence or information arising from any investigations into the assassination of President Habyarimana on 6 April, and declining to issue an order requiring the Prosecution to undertake such investigations.¹ The Defence argues that the Chamber abused its discretion by failing to recognize the relevance of information concerning the identity of those responsible for assassinating President Habyarimana on 6 April 1994.²

DELIBERATIONS

2. Certification may be granted under Rule 73 (B) 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. Whether an interlocutory appeal would materially advance the proceedings includes consideration of whether:

a showing has been made that the appeal could succeed. That threshold would be met, for example, by showing some basis to believe that the Chamber committed an error as to the applicable law; that it made a patently incorrect conclusion of fact; or that it was so unfair or unreasonable as to constitute an abuse of the Trial Chamber’s discretion.³

In respect of determinations of relevance, the Appeals Chamber has underlined 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

¹ *Bagosora et al.*, Decision on Requests for Disclosure and Investigations Concerning the Assassination of President Habyarimana (TC), 17 October 2006.

² Reply, paras. 22-24.

³ *Bagosora et al.*, Decision on Motion for Reconsideration Concerning Standards for Granting Certification of Interlocutory Appeal (TC), 16 February 2006, para. 4.

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

4. A proper evaluation of the significance of the information requested involves a detailed understanding of the totality of evidence heard by the Chamber and, in particular, the scope of the Prosecution case against the Accused. Sufficient evidence concerning the shooting down of the Presidential airplane has been entered into evidence to provide the Chamber with the requisite context for events that followed. The Chamber has repeatedly stressed that there is no need for detailed evidence on matters of collateral and indirect relevance to the Indictments against the Accused. Certification of an interlocutory appeal on these matters would not materially advance the proceedings; on the contrary, it would draw the Appeals Chamber into an unwarranted and premature review of the evidence, which is best reserved for the appeal from the final judgement.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the request.

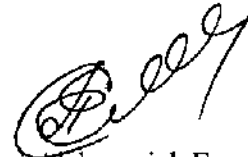
Arusha, 12 December 2006



Erik Mose
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



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