



ICTR-98-41-T
12-12-2006
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

(31888 - 31885)

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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 1 A.M. 19
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**DECISION ON NTABAKUZE MOTION FOR RECONSIDERATION OF DENIAL
OF ISSUANCE OF SUBPOENA TO A UNITED NATIONS OFFICIAL**

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

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the “Motion for Reconsideration of the Trial Chamber’s ‘Decision on Request for Subpoenas of United Nations Officials’ of 6 October 2006”, filed by the Ntabakuze Defence on 6 December 2006;

CONSIDERING the Prosecution Response, filed on 7 December 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Ntabakuze Defence asks for reconsideration of the Trial Chamber’s decision of 6 December 2006 (“the Subpoena Decision”) to the extent that it denied the issuance of a subpoena to Mr. Iqbal Riza, a former official of the Department of Peacekeeping Operations (“DPKO”) of the United Nations in New York in 1994.¹ The Defence submits that the United Nations Office of Legal Affairs has ceased its cooperation in procuring a written declaration from Mr. Riza, which is said to have been one of the grounds upon which the Chamber denied the issuance of a subpoena.

DELIBERATIONS

2. A Chamber has inherent jurisdiction to reverse or revise a previous decision where new material circumstances have arisen that did not exist at the time of the decision, or when convinced that the decision was erroneous and has caused prejudice or injustice to a party.² The Defence does not contest the legal principles applied in the Subpoena Decision, where the Chamber articulated three requirements for the issuance of a subpoena: “(i) reasonable attempts have been made to obtain the voluntary cooperation of the witness; (ii) the prospective witness has information which can materially assist the applicant in respect of clearly identified issues relevant to the trial; and (iii) the witness’s testimony must be necessary and appropriate for the conduct and fairness of the trial.”³

3. The Chamber expressly relied upon the absence of the first requirement to deny the issuance of a subpoena to Mr. Riza:

The perspective of the DPKO, as the central repository of UNAMIR documents, may have a distinct value in one respect. The Defence wishes the DPKO witnesses to confirm that they had no basis to believe that there was a conspiracy or plan to commit genocide leading up to April 1994. To a large extent, however, the documents already disclosed by the DPKO to the Defence, many of which have been entered as exhibits without any dispute as to authenticity, provide a more direct indication as to the information available to the DPKO over time. To the extent that any further

¹ *Bagosora et al.*, Decision on Request for Subpoenas of United Nations Officials (TC), 6 October 2006 (“the Subpoena Decision”).

² *Bagosora et al.*, Decision on Motion to Harmonize and Amend Witness Protection Measures (TC), 3 June 2005, para. 3; *Ndindiliyimana et al.*, Decision on Bizimungu’s Motion in Opposition to the Admissibility of the Testimonies of Witnesses LMC, DX/ANM, BB, GS, CJ/ANL and GFO and for Reconsideration of the Chamber’s Decision of 13 May 2005 (TC), 24 November 2005.

³ Subpoena Decision, para. 3.

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confirmation is required from witnesses, the Office of Legal Affairs has offered to continue to cooperate with the Ntabakuze Defence in the preparation of a statement in lieu of oral testimony.⁴ In light of this ongoing cooperation, and the nature of the information sought, the Chamber does not consider that the first condition for the issuance of a subpoena – the exhaustion of reasonable attempts to obtain the voluntary cooperation of the witness – is satisfied. Accordingly, there is no need to further consider whether the information is sufficiently important to satisfy the second and third conditions for a subpoena.

Under these circumstances, the Chamber shall not order that a subpoena be issued to either Mr. Annan or Mr. Riza.⁵

Based on the Defence submissions, it now appears that the first requirement for the issuance of a subpoena is satisfied.

4. The Chamber based its reasoning not only on the failure to exhaust efforts to obtain voluntary cooperation, but also on the “nature of the information sought”. Indeed, the Subpoena Decision discusses at length whether the information sought is sufficiently important to justify a subpoena:

The directness of a witness’s observation of events is an important criterion in determining whether a subpoena should be issued. Every witness to whom a subpoena has been issued in the present case was an eyewitness to the conduct of the Accused or their subordinates. Although the Defence attempts to characterize Mr. Annan and Mr. Riza as “eye-witnesses or participants in the events”, their prospective testimony concerns information sent to them by UNAMIR officials in Rwanda, and possibly other sources. They are said to be “the only persons who can explain the circumstances described” in the various memos, faxes and code cables exchanged between UNAMIR and the DPKO in New York.

The Chamber disagrees that Mr. Annan and Mr. Riza are eyewitnesses. The Defence has not shown that either of them can draw on any personal observation of events for their testimony. Although Mr. Riza did apparently visit Rwanda in May or June 1994, the Defence does not suggest that it wishes to question him about this visit.⁶ By contrast, this Chamber has heard from numerous members of UNAMIR who were on the ground in Rwanda: Jacques Roger Booh-Booh, General Dallaire, Major Beardsley, Lt. Colonel Frank Claeys, Colonel Joseph Dewez, Major Donald MacNeil, Colonel Aouilli Tchami Tchami, Major Petrus Maggen, Major Robert Van Putten, and Lieutenant Colonel Babacar El Hadj Faye. Indeed, the code cables to United Nations Headquarters in New York City were based on the direct eyewitness observation of these individuals and other UNAMIR officials posted in Rwanda at the time. The impressions of the recipients of those reports in United Nations Headquarters would be of limited weight in comparison to this direct and primary testimony, and does not constitute information which is necessary and appropriate for the conduct and fairness of the trial.⁷

5. The Defence motion for reconsideration raises no grounds to suggest that new material circumstances have arisen in respect of these observations, or that the Chamber’s conclusion is erroneous. Mr. Riza was not an eyewitness of events in Rwanda; his knowledge

⁴ Submissions, p. 4.

⁵ Subpoena Decision, paras. 7-8.

⁶ Motion, Annex 4, p. 9.

⁷ Subpoena Decision, paras. 5-6.

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is limited to the receipt of communications by United Nations Headquarters from UNAMIR personnel, many of whom have personally testified before the Chamber; and the Defence has had an extensive opportunity to review, and seek admission of, United Nations documents in order to directly demonstrate the content of those communications. In the absence of any reason to believe that its previous conclusions are incorrect or were based on circumstances which have now changed, the Chamber reaffirms that the third requirement for the issuance of a subpoena – that the information sought be necessary and appropriate for the conduct and fairness of the trial – is not met.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

Arusha, 12 December 2006



Erik Mose
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

