



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

(31891-31889)

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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

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**DECISION ON BAGOSORA MOTION TO VARY ITS WITNESS LIST AND
TENDER A WITNESS STATEMENT UNDER RULE 92 bis**

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 "Request for Reconsideration, Motion to Vary the Witness List and Motion to Tender a Witness Statement", etc., and the Strictly Confidential and *Ex Parte* Annex thereto, filed by the Bagosora Defence on 4 December 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. The deadline for the presentation of evidence by the Bagosora Defence was 13 October 2006. On 17 November 2006, the Chamber granted leave to hear the testimony of four Bagosora witnesses after that date, but denied the request to hear seven others.¹ The Bagosora Defence now asks the Chamber to reconsider its decision in respect of one of the witnesses whom it declined to hear, Witness B-06. It also requests permission to present an additional witness, Witness G-10, or, in the alternative, to tender her statement under Rule 92 *bis*.²

DELIBERATIONS

(i) *Witness B-06*

2. The Chamber previously held in respect of Witness B-06 that "[t]he reason for his unavailability during the entire course of the Defence case prior to 13 October 2006 is unclear, and the Chamber is not persuaded that his testimony is of sufficient importance to justify his appearance at this stage".³ The Chamber has again considered the prospective testimony of Witness B-06 and sees no basis to reconsider its previous decision. The fact that Witness B-06, a Tutsi who was not personally acquainted with Bagosora, may have been saved by the Accused in April 1994, is not a matter of such importance to the case as to justify his appearance at this late stage.⁴ Although the Chamber appreciates the difficulties faced by the Defence in convincing this particular witness to testify, this reticence over a long period of time cannot dictate the trial schedule.

(ii) *Witness G-10*

3. Witness G-10 is ostensibly able to contradict the testimony of Prosecution Witness DAS concerning a roadblock where Tutsi civilians were allegedly killed in the presence of the Accused in Kigali in late June 1994. To be precise, Witness G-10 is said to be able to deny that her relative, who is identified by Witness DAS as having been present at the roadblock and speaking publicly to the *Interahamwe*, could have been present.⁵ Witness G-10

¹ *Bagosora et al.*, Decision on Bagosora Motion to Present Additional Witnesses and Vary Its Witness List (TC), 17 November 2006.

² The Chamber previously indicated orally that the present motion would be denied: T. 8 December 2006 p. 2.

³ *Id.*, para. 13.

⁴ Confidential Annex, para. 7.

⁵ Motion, para. 27.

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was not an eyewitness to the event, but the Defence suggests that her testimony would generally undermine the credibility of Witness DAS's description of the event.

4. The Defence first met Witness G-10 in November 2006, after an effort to secure similar testimony from another relative. The motion indicates that the Defence has been aware of the need to find members of this family as early as April 2005.⁶ No specific showing has been made that Witness G-10 could not have been discovered or contacted before November 2006. As the witness's testimony is not a direct observation of the event or of the Accused, and as the Chamber is not in a position to determine whether the witness could have been contacted earlier, the request for the appearance of the witness beyond the close of the Bagosora Defence case is not justified.

5. Witness G-10's written declaration does not satisfy the formalities prescribed by Rule 92 *bis* (B). The statement is not witnessed by a person "authorised to witness such a declaration in accordance with the law and procedure of a State", nor by any "Presiding Officer appointed by the Registrar of the Tribunal". In the absence of such formalities, the document is not admissible, unless a showing is made that the declarant has died or is otherwise unavailable, under Rule 92 *bis* (C). These formal obligations cannot be relieved by the efforts described in the motion to secure a duly authorized witness.⁷

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]



⁶ Motion, para. 13.

⁷ Motion, paras. 31-33.