

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda IC IR -98-44 - 7 IH- D2-2407 (324/2-314/0)

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## TRIAL CHAMBER I

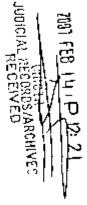
Before:	Judge Erik Møse, presiding
	Judge Jai Ram Reddy
	Judge Sergei Aleksecvich Egorov

Registral: Adama Dieng

Date: 14 February 2007

THE PROSECUTOR v. Théoneste BAGOSORA Gratien KABILIGI Aloys NTABAKUZE Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T



#### DECI: ION ON BAGOSORA REQUEST FOR CERTIFICATION CONCERNING ADMISSION OF STATEMENT OF WITNESS LG-1/U-03

The Prosecution

Barb: ra Mulvaney Drew White Chris ine Graham Rash d Rashid Greg ry Townsend

#### The Defence

Raphaël Constant Allison Tuther Paul Skoln & Frédéric Hivon Peter Erlinder André Trertblay Kennedy Ogetto Gershom Otachi Bw'Omanwa

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#### THE IN TERNATIONAL CRIMINAL TRIBUNAL FOR RWARDA

SITTINC: as Trial Chamber 1, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, at d Judge Sergei Alekseevich Egorov;

**BEING SEIZED OF** the "Requête de la Défense de Bagosora visant la certification de l'appel" : f the Decision on Defence Motion for Admission of Statement of Witness LG-1/U-03 Under Rule 92 *bis*, filed on 14 December 2006";

HEREB / DECIDES the request.

#### INTROPUCTION

1. The Bagosora Defence requests leave to appeal the Chamber's written decision of 11 December 2006, which declined to admit the statement of Witness  $\Box G-1/U-03$  under Rule 92 bis.<sup>1</sup> The witness was scheduled to testify before the Tribunal in the summer of 2005 but ultimatel did not due to scheduling difficulties. After becoming if thereafter, he provided a written's atement to the Nsengiyumva Defence. The witness died on 10 February 2006. The Chamber denied admission of four paragraphs of the witness statement because they concerned the acts and conduct of the Accused, which is not admissible under Rule 92 bis (A).<sup>2</sup>

2. It its request for certification, the Bagosora Defence argues that denying admission of the state nent of Witness LG-1/U-03 in its entirety deprives the Defense of its right to respond o evidence presented through Prosecution Witnesses DA HN, and ZF.<sup>3</sup> Of the four excluded paragraphs, two paragraphs contain only references to the Rwandan Armed Forces and the transmission center and do not specifically mention either Bagosora or Nsengiy mva.<sup>4</sup> The remaining two paragraphs do not describe actual conduct of the Accused and mer ly explain that the witness was aware of all incoming and outgoing communications and that if either Accused had sent a message or made a telephone communication as alleged by the P osecution, the witness would have known about it.<sup>5</sup>

#### DELIB) (RATIONS)

3. 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 the 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 material y advance the proceedings".

4. The Appeals Chamber has previously held that the Trial Chamber, as trier of fact, bears the primary responsibility for admission of evidence and that cortification must be "the

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<sup>&</sup>lt;sup>3</sup> Bagoso, a et al., Decision on Defence Motion for Admission of Statement of Witness LG-1/U-03 Under Rule 92 bis (T ?), 11 December 2006. The Chamber admitted paragraphs 1 to 19 at 1 24 to 25 but found paragraphs 20 to 23 () be inadmissible.

<sup>&</sup>lt;sup>2</sup> Decisio, paras. 1, 9. Rule 92 bis (A) provides: A Trial Chamber may admit, in whole or in part, the evidence of a with ss in the form of a written statement in lieu of oral testimony which goes to proof of a matter other than the s its and conduct of the accused as charged in the indictment.

<sup>&</sup>lt;sup>3</sup> Request para 8.

<sup>\*</sup> Request para, 29.

<sup>&</sup>lt;sup>5</sup> Request paras. 12, 15.

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absolute exception when deciding on the admissibility of evidence.".<sup>6</sup> According to Rule 92 *bis* (A), *i* witness statement may be admitted in lieu of oral testimony so long as the evidence contained in the statement does not go to "the acts and conduct of the accused as charged in the indic ment". The Chamber applied this rule to the statement of Witness LG-1/U-03 and found that four paragraphs concern the acts and conduct of the Accused and are consequently inadmiss ble. Given the straightforward application of Rule 92 *bis* (A), the Chamber does not believe t at a decision by the Appeals Chamber would affect the fair and expeditious conduct of the proceedings or the outcome of trial.

5. The parties completed the presentation of evidence on 12 December 2006, with the exception of three French Officers who testified from 15 to 18 Jar uary 2007. Otherwise, the parties bave closed their respective cases. Only final briefs and closing arguments remain. Thus, contification would not materially advance the proceedings.

## FOR THE ABOVE REASONS, THE CHAMBER

**DENIES** the request for certification.

Arusha, 4 January 2007

Erik Møse Presiding Judge

Jai Ram Reddy

[Seal of the Tribunal]



Sergei Alekseevich Egorov Judge



<sup>&</sup>lt;sup>6</sup> Nyirama uhuko et al., Decision on Pauline Nyiramasuhuko's Appeal on the A: missibility of Evidence (AC), 4 October 2 )04, para. 5. See also Bagosora et al., Decision on Bagosora Request for Certification Concerning Admissio of Prosecution Exhibit P-417 (TC), 15 November 2006, para. 2.



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