

ICTR-98-41-T
21-03-2007

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
(34599 - 34597)

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 21 March 2007

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 ADMIT DOCUMENTS

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
Marc Nerenberg
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 Bagosora, "Motion to Tender Documents into Evidence Pursuant to Rule 89 (C)", etc., filed on 28 February 2007;

CONSIDERING the Prosecution Response, filed on 8 March 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. Following a request by the Bagosora Defence, the Chamber on 26 October 2006 asked the Government of Rwanda to confirm whether it possessed certain documents and, if so, to transmit them to the Registry for disclosure to the Defence.¹ One of the documents was the judicial file supporting the arrest warrant for Colonel Bagosora, issued on 15 March 1996 in Rwanda.² Subsequently, the ICTR Registry issued three *Notes Verbales* in support of the Chamber's Decision.³ The Defence received a response from the Rwandan authorities which confirmed the existence of an arrest warrant but which did not address the issue of an arrest warrant file.⁴ The Defence requests that the correspondence between the ICTR Registry and the Government of Rwanda be admitted into evidence under 89 (C) of the Rules of Procedure and Evidence.

2. The Defence submits that the Rwandan Government's failure to respond to its request indicates that no such judicial file exists. The absence of any documentation in the Rwandan Government supporting the arrest warrant is relevant and highly probative because the Rwandan Government would possess such documents if the Accused was guilty of international crimes. Therefore the correspondence should be admitted into evidence. It is further argued that the motion is timely because it was filed soon after receiving the correspondence from the Rwandan Government.⁵

3. The Prosecution does not agree that the documents have "high probative value", as the Defence is asking the Chamber to make inferences based on correspondence which the

¹ *Bagosora et al.*, Further Request to the Government of Rwanda for Cooperation and Assistance (TC), 26 October 2006.

² The arrest warrant was issued by Charles Kamanzi, the Prosecutor-General for the Court of Appeals in Kigali. It accompanied the request for extradition of Bagosora made to the Cameroonian authorities, where the Accused Bagosora was originally arrested.

³ *Note Verbale*, 30 October 2006, from the ICTR Registry to the Rwandan Ministry of Foreign Affairs and Cooperation (transmitting the Decision rendered by the Chamber on 26 October 2006 and asking for confirmation from the Rwandan Government as to whether it possessed certain documents and information, including the judicial file relating to the arrest warrant); *Note Verbale*, 12 December 2006, from the Registry to the Rwandan Ministry (requesting the transfer of certain documents, including the arrest warrant file, or confirmation from the Rwandan Government that it does not possess this file); *Note Verbale*, 31 January 2007, from the Registry to the Rwandan Ministry (requesting confirmation of the existence of the arrest warrant file and outlining the proposed inferences to be drawn by the Defence if it did not receive an official reply).

⁴ *Note Verbale*, 12 February 2007, from the Ministry of Foreign Affairs and Cooperation to the ICTR Registry (transmitting a letter from the Prosecutor-General in Kigali, confirming the existence of the arrest warrant).

⁵ Motion, paras. 15-20.

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Defence deems incomplete and inadequate. Tendering documents after the close of trial is also "antithetical to predictable and certain closure of proceedings".⁶

DELIBERATIONS

4. In determining the admission of evidence pursuant to Rule 89 (C), the Chamber "may admit any relevant evidence which it deems to have probative value". Thus, the Chamber has wide discretion in determining the admissibility of evidence. The Chamber has previously clarified that for a document to meet the standards of relevance and probative value:

First the evidence must be in some way relevant to an element of a crime with which the Accused is charged. Second, the evidence must have some value in proving [or disproving] the elements of the crime with which an Accused is charged.⁷

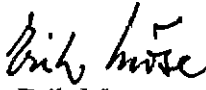
5. Although the Chamber has previously held that the Rwandan judicial file concerning the arrest warrant relates directly to Colonel Bagosora and is relevant to the proceedings against him, it declines at the present stage to admit the correspondence between the Registry and the Rwandan authorities.⁸ Despite the fact that the Defence moved to tender the correspondence into evidence within days of receiving it, the motion was filed more than four months after the close of the Bagosora case, and more than one month after the close of the evidentiary phase of the entire trial on 18 January 2007.

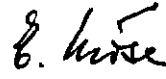
6. The inferences that the Defence asks the Chamber to draw from the absence of a response from the Rwandan government do not directly disprove an element of a crime with which the Accused is charged, and they are of a tenuous nature. The Chamber disagrees with the Defence assertion that the only logical conclusion to be inferred from the Rwandan Government's failure to respond to its request for the judicial file is that no such file exists. It simply notes that the Government has not given a response as to the existence or non-existence of the judicial file relating to the arrest warrant. In view of the marginal significance, if any, of the correspondence, the Chamber, in its discretion, decides not to admit it at this late stage.


FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

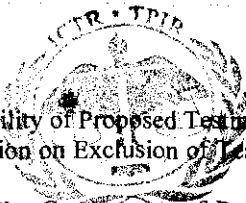
Arusha, 21 March 2007


Erik Møse
Presiding Judge


Jai Ram Reddy
P. N. Judge


Sergei Alekseevich Egorov
Judge

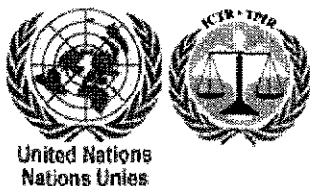
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⁶ Response, para. 12.

⁷ *Bagosora et al.*, Decision on Admissibility of Proposed Testimony of Witness DBY (TC), 18 September 2003, para. 4; *See also Bagosora et al.*, Decision on Exclusion of Testimony Outside the Scope of the Indictment, 27 September 2005, para. 2.

⁸ *Bagosora et al.*, Further Request to the Government of Rwanda for Cooperation and Assistance (TC), 26 October 2006, para. 7.



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