



ICTR-98-41-T
03-04-2007
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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(34675 - 34673)

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 3 April 2007

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. ICTR-98-41-T

2007 APR -3 P 3:25
JUDICIAL RECORDS ARCHIVES
RECEIVED

DECISION ON BAGOSORA MOTION TO TENDER
STATEMENT OF WITNESS G-10

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
Gershon Otachi Dw'Omanwa

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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

BEING SEIZED OF the "Bagosora Motion to Tender Witness Statement Pursuant to Rule 92 *bis*", etc., filed on 22 February 2007;

CONSIDERING the Prosecution Response, filed on 8 March 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. In its decision of 12 December 2006, the Chamber denied the Bagosora Defence request to admit a written statement of Witness G-10 into evidence because the document did not satisfy the formalities prescribed by Rule 92 *bis* of the Rules of Procedure and Evidence.¹ The Defence subsequently requested an order for the appointment of a "Presiding Officer" under Rule 92 *bis* (B). The Chamber granted the request.² On 19 February 2007, Witness G-10 signed a statement in the presence of a representative appointed by the Registry.

2. The Defence requests the Chamber to reconsider its previous refusal to admit Witness G-10's statement, because Rule 92 *bis* has now been complied with.³ The Prosecution objects to the admission of the statement at this late stage. It also argues that the evidence cannot be tested by cross-examination and that the ability of the witness to observe remains unanswered. Furthermore, the statement is equivocal and has therefore little, if any, probative value.⁴

DELIBERATIONS

3. The Chamber is satisfied that Witness G-10's statement of 19 February 2007 has been taken in the presence of a "Presiding Officer" in conformity with Rule 92 *bis* (B). The only remaining question is whether it should be admitted into evidence at this late stage. The trial closed on 18 January 2007, and the Prosecution filed its Closing Brief on 1 March 2007. The admission of evidence at the present stage can only be allowed in exceptional circumstances.

4. The Chamber has previously found that the Defence made reasonable efforts to inform itself of how to comply with the formalities under Rule 92 *bis*, and that its failure to do so was due to insufficient information.⁵ The importance of G-10's statement to the Defence case has also been recognised:

¹ *Bagosora et al.*, Decision on Bagosora Motion to Vary its Witness List and Tender a Witness Statement Under Rule 92 *bis* (TC), 12 December 2006, paras. 3-5.

² *Bagosora et al.*, Decision on Bagosora Defence Request for Court to Direct Registrar to Attend Kigali on Mission to Witness Signing of Defence Witness Statement (TC), 20 February 2007. At a previous status conference, the Chamber had indicated its inclination to grant the request. T. 19 January 2007 p. 5.

³ Motion, para. 7.

⁴ Response, paras. 9-11.

⁵ *Bagosora et al.*, Decision on Bagosora Defence Request for Court to Direct ICTR Registrar to Attend Kigali on Mission to Witness Signing of Defence Witness Statements (TC), 20 February 2007, para. 6.

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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. Witness G-10 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.⁶

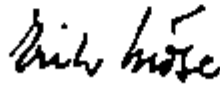
5. Under these circumstances, the Chamber grants, on an exceptional basis, the Defence request. Should the Prosecution wish to supplement its Closing Brief in view of the admission of Witness G-10's statement it may do so orally during the closing arguments from 28 May to 1 June 2007.

FOR THE ABOVE REASONS, THE CHAMBER

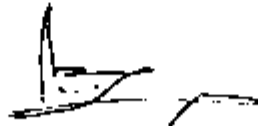
GRANTS the motion to admit Witness G-10's statement;

INSTRUCTS the Registry to mark the document as an exhibit for the Bagosora Defence.

Arusha, 3 April 2007



Erik Mose
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Igorov
Judge

[Seal of the Tribunal]



⁶ *Bagosora et al.*, Decision on Bagosora Motion to Vary its Witness List and Tender a Witness Statement Under Rule 92 bis (TC), 12 December 2006, para. 3.



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