



International Criminal Tribunal for Rwanda
Tribunal pénal International pour le Rwanda

(34678-34676)

ICTR-98-41-T
03-04-2007

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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

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**DECISION ON BAGOSORA MOTION TO TENDER
STATEMENT OF WITNESS B-06**

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 Bw'Omanwa

John

34677

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 Defence "Strictly Confidential Motion to Tender Witness Statement Pursuant to Rule 92 *bis*", filed on 6 March 2007;

CONSIDERING the Prosecution Response, filed on 8 March 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence asks the Chamber to admit a written statement of Witness B-06 pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence. It was obtained in February 2007 in connection with a Defence mission to Kigali to gather the statement of another witness.

2. According to the Defence, B-06's statement is important as it describes the Accused's efforts to save Tutsi in April 1994.¹ The Prosecution objects to its admission at this late stage. It argues that the statement cannot be tested through cross-examination and is inadmissible under Rule 92 *bis* because it contains information that relates to the acts and conduct of the Accused.²

DELIBERATIONS

3. Pursuant to Rule 92 *bis*, a statement of a witness on certain conditions may be admitted in lieu of oral testimony. The present statement has been taken in accordance with the formal requirements of Rule 92 *bis*. The parties disagree whether it concerns a matter other than the "acts and conduct of the accused as charged in the indictment". The Chamber need not decide this issue.

4. The Bagosora Defence was expected to call its last witness by 13 October 2006. Since then, the Chamber has denied two Defence requests to call Witness B-06, finding that his testimony was not of sufficient importance to justify his appearance at that late stage of the proceedings.³ The Defence now seeks to tender Witness B-06's written statement, over two months after the last day of the hearings on 18 January 2007, and even after the submission of the Prosecution Closing Brief. Admission of evidence at this stage of the trial can only be allowed in exceptional circumstances. The Defence has not offered any explanation for its late request. The Chamber observes that it is not sufficient that the Defence managed to persuade Witness B-06 to give a statement in the same period as a presiding officer was available to take the statement of another witness under Rule 92 *bis*.⁴

¹ Motion, para. 10. The motion was filed on 2 and 6 March 2007, with a redacted and unredacted version of Witness B-06's statement, respectively.

² Response, paras. 19-22.

³ *Bagosora et al.*, Decision on Bagosora Motion to Present Additional Witnesses and Vary Its Witness List (TC), 17 November 2006, para. 13; *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. 2.

⁴ *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 Statement(s) (TC), 20 February 2007. In that decision, which concerned Witness G-10, the Chamber denied a request to take the statement of Witness AZ (para. 7).

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FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion

Arusha, 3 April 2007



Erik Mose
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



whereas the motion did not mention Witness B-06. See also *Bagosora et al.*, Decision on Bagosora Motion to Tender Statement of Witness G-10 (TC), 3 April 2007.



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I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

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	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input checked="" type="checkbox"/> Chamber I Judge Mose Judge Reddy Judge Egorov (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other (names)
Case Name:	The Prosecutor vs. BAGOSORA ET AL.			Case Number: ICTR-98-41-T
Dates:	Transmitted: 3 April 2007		Document's date: 3 April 2007	
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