



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-I
24-06-2004
(20779-20777)

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S. MUSA

TRIAL CHAMBER I

Before: Judge Erik Møse

Registrar: Adama Dieng

Date: 24 June 2004

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

2004 JUN 24 P 2:21
S. MUSA

DECISION ON REQUEST FOR SUBPOENA FOR WITNESS BW

The Office of the Prosecutor

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BW

20778

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”),

SITTING as Trial Chamber I, composed of Judge Erik Møse, designated by the Chamber in accordance with Rule 73 (A) of the Rules of Procedure and Evidence;

BEING SEIZED of the Prosecution “Request for a Subpoena Compelling Witness BW to Appear for Testimony”, filed on 17 June 2004;

CONSIDERING the “Réponse” of the Defence for Bagosora, filed on 22 June 2004;

HEREBY DECIDES the motion.

1. The Prosecution requests that a subpoena be issued by the Chamber to Witness BW who refuses to come to Arusha to testify before the Tribunal despite “repeated strenuous” efforts to secure his voluntary appearance. According to the Prosecution, the witness’s refusal is based on a lack of faith in the integrity of the Tribunal. The subpoena requested would compel the witness to appear at the seat of the Tribunal in Arusha for testimony. Though not opposing the issuance of the subpoena as such, the Defence argues that the witnesses for whom the Prosecution has sought subpoenas, in this and other motions, have limited knowledge. Meanwhile, subpoenas have not been requested for other witnesses of much greater significance, and their names have been withdrawn from the witness list without explanation. The Defence alleges that the Prosecution’s purpose in its selection of witnesses to subpoena is to secure the conviction of the Accused, rather than to present all the facts of the case, in violation of the letter and spirit of Security Council Resolution 955.

2. The Chamber recently considered its power to issue subpoenas under the Statute of the Tribunal and its Rules of Procedure and Evidence, and decided to issue seven subpoenas requiring the attendance of witnesses.¹ For the reasons set forth in that decision, the Chamber is competent to issue such subpoenas.

3. The Chamber considers the present request for a subpoena to be justified, based on the Prosecution’s submissions. The individual concerned appears on the Prosecution witness list; the witness’s sworn statement indicates that he has knowledge relevant to the present trial; and, according to the Prosecution, the individual refuses to come to the Tribunal to testify, despite the best efforts of the Prosecution and the Registry. Under these circumstances, the issuance of a subpoena is necessary and appropriate for the conduct of the present trial. The Registry shall prepare a subpoena addressed to Witness BW, ordering his appearance at the Tribunal, at a date and time to be specified by the Registry, to give evidence in the matter of *The Prosecutor v. Bagosora et al.*

4. Although the subpoenas shall be addressed directly to the prospective witness, the Chamber recalls that the notification and assistance of the Government of Switzerland, where the witness is presently located, is desirable. Article 28 of the Statute expressly identifies the service of documents as one of the forms of cooperation which the Tribunal may request of a State. The Chamber requests the Government of Switzerland to effect service on the addressee of the subpoena which is filed in accordance with this decision, and to provide any assistance that may be requested by the Registry to facilitate the attendance of the witness.

¹ *Bagosora et al.*, Decision on Requests for Subpoenas (TC), 10 June 2004.

26/6

20777

5. The witness is scheduled to appear during the ongoing trial session, which is scheduled to end on 14 July 2004. Service of, and prompt compliance with, the subpoena authorized by the present decision is, therefore, a matter of urgency.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the motion;

ORDERS the Registry to prepare a subpoena in accordance with this decision, addressed to the Prosecution witness designated by the pseudonym BW, and to communicate it, with a copy of the present decision, to the Government of Switzerland;

REQUESTS the Government of Switzerland to serve the subpoena on the addressee as soon as possible, and to provide any other assistance that may be requested by the Registry to facilitate his attendance.

Arusha, 24 June 2004



Erik Møse
Judge

[Seal of the Tribunal]

