



ICTR-98-41-T
20-02-2007
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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(32444 — 32441)

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 20 February 2007

THE PROSECUTOR

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No.: ICTR-98-41-T

JUDICIAL
RECORDS/ARCHIVES
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**DECISION ON BAGOSORA DEFENCE REQUEST FOR COURT
TO DIRECT ICTR REGISTRAR TO ATTEND KIGALI ON MISSION TO
WITNESS SIGNING OF DEFENCE WITNESS STATEMENT(S)**

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid
Gregory Townsend

The Defence

Raphaël Constant
Allison Turner
Paul Skolnik
Frédéric Hivon
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

[Signature]

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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 Igorov;

BEING SEIZED OF the Bagosora "Request for Court to Direct ICTR Registrar to Attend Kigali on Mission to Witness Signing of Defence Witness Statement(s)", filed on 12 January 2007;

CONSIDERING the Prosecution submissions during the status conference on 19 January 2007;

HEREBY DECIDES the request.

INTRODUCTION

1. The Chamber has previously denied the Bagosora Defence request to add Witness G-10 to its witness list because the Defence had failed to establish a sufficient justification for the appearance of the witness beyond the close of the Bagosora Defence case on 13 October 2006. The Chamber also denied the Defence request to admit the written statement of Witness G-10 because it did not satisfy the formalities prescribed by Rule 92 *bis* (B) of the Rules of Procedure and Evidence.¹

2. The Defence now asks the Chamber to direct the Registry to send a "Presiding Officer" within the terms of Rule 92 *bis* (B) to Kigali on mission to witness the signing of declarations by Witness G-10 and possibly Witness AZ, or in the alternative, to grant the Defence additional time to comply with the formalities of the Rule. According to the Defence, it has made "all reasonable efforts" to comply with the requirements of Rule 92 *bis*, but the Registry has not facilitated its attempt to obtain the statement of Witness G-10.² The Prosecution has no response to the request.³

DELIBERATIONS

3. Rule 92 *bis* provides in relevant part:

- (B) A written statement under this Rule shall be admissible if it attaches a declaration by the person making the written statement that the contents of the statement are true and correct to the best of that person's knowledge and belief and
- (i) the declaration is witnessed by:
 - (a) a person authorised to witness such a declaration in accordance with the law and procedure of a State; or
 - (b) a Presiding Officer appointed by the Registrar of the Tribunal for that purpose; and
 - (ii) the person witnessing the declaration verifies in writing:

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. 1, 4-5.

² Motion, paras. 8-9.

³ T. 19 January 2007 p. 5.

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- (a) that the person making the statement is the person identified in the said statement;
- (b) that the person making the statement stated that the contents of the written statement are, to the best of that person's knowledge and belief, true and correct;
- (c) that the person making the statement was informed that if the content of the written statement is not true then he or she may be subject to proceedings for giving false testimony; and
- (d) the date and place of the declaration.

The declaration shall be attached to the written statement presented to the Trial Chamber.

4. In its decision of 12 December 2006, the Chamber denied the Defence request to admit Witness G-10's written statement because it failed to comply with the requirements of Rule 92 *bis* (B). The Chamber stated that these formal requirements cannot be relieved "by the efforts described in the motion".⁴

5. The Defence has explained that, in November 2006, it sought advice on the appropriate person to witness the signing of the statements from the Witness and Victim Support Section in Kigali.⁵ According to the Defence, it was advised that there was no "Presiding Officer" in Kigali and that the ICTR did not know who was legally authorized to witness the signing of statements in Rwanda.⁶ It then requested information from the Prosecution Team in early January 2007 and from the Registry by means of an official written request on 12 January 2007.⁷ The Defence now asks the Chamber to direct the Registry to send a "Presiding Officer" to Kigali to witness the signing of Witness G-10's statement.

6. Although the presentation of evidence was concluded on 18 January 2007, the Chamber finds that the present circumstances warrant additional time for the Defence to collect the statement of Witness G-10. The Defence made reasonable efforts to inform itself of how to comply with the formalities under Rule 92 *bis* but did not receive sufficient information to be able to finalize the statement in a manner that allowed it to be entered into evidence. Therefore, the Chamber will grant the Defence request for a Presiding Officer, who must carry out his or her tasks as soon as reasonably practicable so that the Defence may tender the statement for admission into evidence before it submits its closing brief on 2 April 2007.

7. With regard to Witness AZ, the Bagosora Defence has failed to set forth the basis for its request in any detail other than to say that this witness "remains the subject of a request for cooperation from the Rwandan authorities".⁸ Accordingly, the Chamber cannot grant the request.

⁴ 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. 5.

⁵ Bagosora Defence Request for Reconsideration, Motion to Vary the Witness List and Motion to Tender a Witness Statement Pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence, filed on 4 December 2006, paras. 31-32.

⁶ *Id.*; Motion, para. 9.

⁷ Motion, paras. 7-8.

⁸ Motion, para. 11.

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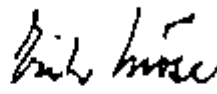
FOR THE ABOVE REASONS, THE CHAMBER

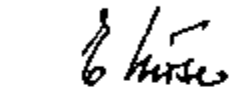
GRANTS the request concerning Witness G-10;

DIRECTS the Registry to make all necessary arrangements for a "Presiding Officer" to witness the signing of a statement by Witness G-10 before 2 April 2007; and

DENIES the request concerning Witness AZ.

Arusha, 20 February 2007


Erik Mose
Presiding Judge


Jai Ram Reddy
p.p. Judge


Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



