



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 31 October 2006

THE PROSECUTOR

v.

**Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA**

Case No.: ICTR-98-41-T

**DECISION ON KABILIGI MOTION FOR COOPERATION OF THE
GOVERNMENT OF FRANCE AND SUBPOENA OF FORMER OFFICERS**

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

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 “Motion for Cooperation from the Government of France Pursuant to Article 28 of the Statute of the ICTR and Issuance of Subpoenas Pursuant to Rule 54 of the Rules of Procedure and Evidence”, filed by the Kabiligi Defence on 4 October 2006;

CONSIDERING the Registrar’s Submissions, filed on 10 October 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Kabiligi Defence asks the Chamber to issue a request to the Government of France to authorize interviews with four retired military officers, with a view to calling them as witnesses. In accordance with procedures previously insisted upon by the French authorities in respect of current or former officials, the Defence requests assistance and authorization for the officers to provide answers to a written questionnaire, and then to attend informal interviews and formal hearings during which pre-determined questions are posed to the prospective witnesses. Citing lengthy delays and the imminent deadline for the close of the trial, the Defence asks the Chamber to set a specific date for the interviews prior to the start of the next trial session on 6 November 2006, and to issue subpoenas commanding the appearance of the officers before the Chamber.

DELIBERATIONS

2. Article 28 of the Statute imposes an obligation on States to “cooperate with the International Criminal Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violation of international humanitarian law”. The “investigation and prosecution of persons” encompasses not only Prosecution investigations, but the entire trial process, including the right of the Accused in Article 20 (4)(e) to “obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her”.¹ Article 28 (2) requires more particularly that States act “without undue delay” to respond to requests for “the taking of testimony and the production of evidence”.

3. On 16 March 2006, a Defence request for assistance in facilitating and authorizing the completion of written questionnaires by four former military officers was conveyed by the Registrar to the Government of France.² Additional requests were relayed on 2 June and 12 July 2006.³ On 16 August 2006, the French authorities undertook to assist the Defence in its inquiries by communicating the answers to the written questionnaires “*dans les meilleurs délais possibles*” and by facilitating the interviews and hearings of the four witnesses, which are prescribed by French law as a pre-condition for the appearance of the individuals as witnesses in trial proceedings. It doubted, however, that both the informal interviews and

¹ *Bagosora et al.*, Decision on the Bagosora Defence Request for Subpoena of Ambassador Mpungwe and Cooperation of the United Republic of Tanzania, (TC), 29 August 2006, para. 2.

² *Note verbale*, Ref. ICTR/IOR/ERSPS/03/06/38-RD, 16 March 2006.

³ *Note verbale*, Ref. ICTR/RO/06/06/262-sw, 2 June 2006; *Note verbale*, Ref. ICTR/IOR/ERSPS/07/06/83-RD, 12 July 2006.

formal hearings of all four prospective witnesses could be scheduled during a single Defence visit to France.

3. This trial is scheduled to close on 13 December 2006. Under these circumstances, the need for the Government of France to expeditiously fulfil its commitment to provide written answers to the questionnaires, and to permit interviews with the witnesses, is urgent and immediate.

4. Issuance of subpoenas requiring testimony of the four prospective witnesses is premature. Although the Kabiligi Defence has provided a general indication as to the nature of the expected testimony of the witnesses, the Chamber cannot at this stage evaluate its relevance to the trial, or whether it is necessary for its fair conduct.⁴ Nor does the Chamber consider it necessary or appropriate to establish specific dates for the informal interviews and formal hearings. Despite the delays that have followed the first Defence request on 16 March 2006, the Chamber has no reason to doubt that the Government of France will now act expeditiously to ensure that the requested information is produced in a timely manner, and with due regard to the urgency of the trial calendar.

FOR THE ABOVE REASONS, THE CHAMBER

REQUESTS the Government of France to comply immediately with its commitment to provide written answers to the questionnaires to each of the four prospective witnesses;

REQUESTS the Government of France to complete the procedures prescribed by its own law as expeditiously as possible, in light of the calendar described in the present decision.

DENIES the request for subpoenas and a specific hearing schedule as premature.

Arusha, 31 October 2006

Erik Møse
Presiding Judge

Jai Ram Reddy
Judge

Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

⁴ *Bagosora et al.*, Decision on Request for Subpoenas of United Nations Officials (TC), 6 October 2006, para. 3 (the prospective testimony must be “necessary and appropriate for the conduct and fairness of the trial” for the issuance of a subpoena); *Bagosora et al.*, Decision on Bagosora Request for the Government of France to Authorize the Appearance of a Witness (TC), 20 October 2006, para. 5 (issuance of subpoena denied on the basis that the expected testimony was not “necessary and appropriate for the conduct and fairness of the trial”).