



ICTR-98-41-T
06-10-2006
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
(30183-30180)

30183
1294

ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 6 October 2006

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 REQUEST FOR COOPERATION OF
THE GOVERNMENT OF FRANCE

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

6/11

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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 Egorov;

BEING SEIZED OF the “Motion for Request of Cooperation from the Government of France Pursuant to Article 28 of the Statute”, filed by the Ntabakuze Defence on 28 April 2006;

CONSIDERING the Prosecution Response, filed on 28 April 2006; and the Ntabakuze Reply, filed on 2 May 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Ntabakuze Defence asks the Chamber to issue a request to the Government of France, pursuant to Article 28 of the Statute, for the disclosure of a report concerning the attack on President Habyarimana’s airplane on the night of 6 April 1994. The so-called “Bruguière Report”, which allegedly blames the RPF for the attack, is said to be “indispensable” to the Defence.

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 violations of international humanitarian law”. A request to a Chamber to make an order under Article 28 must set forth the nature of the information sought; its relevance to the trial; and the efforts that have been made to obtain it. The type of assistance sought should also be defined with particularity.¹

3. The key question in the present application is whether the report, as described by the Defence, is relevant to this trial. Paragraph 6.1 of the Indictment states that: “On 6 April 1994 at about 8:30 p.m., the plane carrying, among other passengers, the President of the Republic, Juvénal Habyarimana, was shot down on its approach to Kigali Airport, Rwanda.” This event is characterized as the trigger for the alleged crimes which followed, but nowhere does the Indictment or the Pre-Trial Brief suggest that the Accused or any of his alleged conspirators were involved, directly or indirectly. Indeed, the Prosecution has declared unequivocally that the Accused is not charged with any involvement whatsoever in the former President’s death.²

4. This Chamber has previously addressed the extent to which the assassination of President Habyarimana may be relevant to the present trial in the context of a request for disclosure of exculpatory material. It held that “[i]nformation concerning the assassination of President Habyarimana may also assist the Chamber in understanding the background to

¹ *Bagosora et al.*, Decision on Request to the Kingdom of The Netherlands for Cooperation and Assistance (TC), 7 February 2005, para. 5; *Bagosora et al.*, Decision on Request for Subpoena of Major General Yaache and Cooperation of the Republic of Ghana (TC), 23 June 2004, para. 4.

² *Bagosora et al.*, Prosecution Response to “Bagosora Defence Urgent Motion for Investigation and Production of (Additional) Evidence ...”, etc., filed on 19 December 2005.

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events in April 1994”.³ In a subsequent decision, however, the Chamber explained that “although the fact of the shooting down of the plane is relevant to the case as providing context or background, the Defence has not shown that detailed information concerning the responsibility of any particular person is relevant to the charges against the Accused”.⁴ The scope of relevance has been described by another Trial Chamber as meaning that “questions relating to the responsibility for the shooting down of the plane may be put to a witness provided that this line of questioning does not go into great detail”.⁵ The approach adopted in these decisions may be summarized as follows: the fact of the shooting down of the plane is relevant to the case as providing context or background, but detailed information concerning the responsibility of any particular person is not.⁶

5. The Defence argues that the existence of an RPF plot to shoot down the Presidential plane, if proven, could be probative of a broader plan to unleash an armed conflict with government forces, an inevitable consequence of which was “widespread killings”.⁷ The implication, it seems, is that criminal responsibility for the whole course of events between April and July 1994 could, by virtue of this information, be shifted from the Accused to other persons.

6. As discussed in another decision of this Chamber decided today, the applicant for a request under Article 28 must indicate how the information is relevant to an issue before the Judge or Trial Chamber and necessary for a fair determination of that issue.⁸ The Defence has failed to discharge its burden of showing by specific references how the information in the alleged report is relevant to disproving elements of the Prosecution case. The identity of the

³ *Bagosora et al.*, Decision on Disclosure of Defence Witness Statements in Possession of the Prosecution Pursuant to Rule 68 (A) (TC), 8 March 2006, para. 6.

⁴ *Bagosora et al.*, Decision on Ntabakuze Motion for Disclosure of Prosecution Files (TC), 3 October 2006, para. 5.

⁵ *Bizimungu et al.*, Reconsideration of Oral Ruling of June 2005 on Evidence Relating to the Crash of the Plane Carrying President Habyarimana (TC), 23 February 2006, para. 11.

⁶ This approach is confirmed in numerous decisions in relation to identically or similarly worded indictments: *Kayishema*, Decision (AC), 28 September 2000, p. 3 (“CONSIDERANT qu’au soutien de sa demande le Requéant affirme que le Mémorandum Hourigan donne des indications sur les auteurs présumés de l’attentat contre l’avion du Président rwandais; que le Procureur du Tribunal de l’époque a cru devoir arrêter les enquêtes menées à ce sujet par M. Hourigan; que ces faits, qui n’étaient pas connus lors du process du Requéant, rouvriraient le débat sur la question de la culpabilité de celui ci; CONSIDERANT que le Mémorandum Hourigan n’était bien entendu pas disponible lors du procès en première instance, mais que sa teneur, que le Requéant cite, ne pouvait avoir un rapport avec les questions relatives au genocide sur lesquelles la Chambre de première instance devait se prononcer; qu’il n’est pas dès lors dans l’intérêt de la justice de l’admettre comme moyen de preuve supplémentaire en appel”); *Bizimungu et al.*, Reconsideration of Oral Ruling of 1 June 2005 on Evidence Relating to the Crash of the Plane Carrying President Habyarimana (TC), 23 February 2006, paras. 10-11 (“The potential involvement or responsibility of the RPF or other forces not associated with the government of Rwanda cannot relieve the Accused of responsibility for the crimes they have been charged with. The Chamber is of the opinion that evidence as to who is responsible for the crash of the President’s plane would not assist the Chamber in its decision as to the guilt or innocence of the Accused ... the jurisprudence of the Tribunal shows that questions relating to the responsibility of the shooting down of the plane may be put to a witness provided that this line of questioning does not go into great detail”); *Karemera et al.*, Decision on the Defence Motion for Disclosure of Exculpatory Evidence (TC), 7 October 2003, para. 14 (“The Defence has not shown how such materials, if they exist, could suggest the innocence of the Accused, who is not charged with taking part in the assassination, or how such materials could tend to mitigate the Accused’s personal guilt or affect the credibility of the prosecution evidence”).

⁷ *Bagosora et al.*, Ntabakuze Defence Motion for the Disclosure of Exculpatory Evidence, filed on 7 November 2005, fn. 11.

⁸ *Bagosora et al.*, Decision on Ntabakuze Motion for Information From the UNHCR and a Meeting With One of Its Officials (TC), para. 7.


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killers of President Habyarimana is undoubtedly a matter of contextual significance for the events described in the Indictment against the Accused. On this basis, the Chamber has admitted some evidence concerning this event. On the other hand, the Chamber must exercise its discretion under Rule 89 (C) to ensure that the focus of the present trial is maintained. Even if the report attributed responsibility for the attack on the Presidential plane to persons other than the Accused or their alleged co-conspirators, it is not clear to the Chamber how this would tend to disprove elements of the Prosecution case in this trial.⁹ The admission of detailed evidence on what is, essentially, a matter of collateral and indirect relevance would not assist the Chamber in determining the core issues of this trial.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

Arusha, 6 October 2006


Erik Møse
Presiding Judge


Jai Ram Reddy
Judge


Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



⁹ Previous requests for assistance in obtaining the Bruguière report have also been denied by other Chambers: *Bizimungu et al.*, Decision on Casimir Bizimungu's Requests for Disclosure of the Bruguière Report and the Cooperation of France (TC), 25 September 2006, para. 27; *Karemera et al.*, Décision Relative à la Requête de Joseph Nzirorera aux fins d'Obtenir la Coopération du Gouvernement Français (TC), 23 February 2005, para. 11 ("La Chambre rappelle que, par la suite, la jurisprudence a établi que la responsabilité éventuelle du FPR ou de ses agents dans l'assassinat du Président Habyarimana n'avait aucune incidence sur l'imputation des actes criminels commis en 1994 au Rwanda"); *Kabiligi*, Decision on the Defence Motion Seeking Supplementary Investigations (TC), 1 June 2000, para. 19 ("Defence Counsel failed to establish any causal link between the requested investigation into the responsibility for the plane crash and the acts and omissions which form the basis of the charges against Kabiligi in the Indictment").



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Dates:	Transmitted: 6.10.06		Document's date: 6.10.06	
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