

ICTR-98-41-T  
22-10-2004  
(22689-22687)

22689  
IVAN



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER I**

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

**Registrar:** Adama Dieng

**Date:** 22 October 2004

JUDICIAL RECORDS ARCHIVES  
ICTR  
2004 OCT 22 A 9 39  
*[Handwritten signature]*

**THE PROSECUTOR**

v.

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

*Case No. ICTR-98-41-T*

**DECISION ON BAGOSORA DEFENCE'S REQUEST FOR A SUBPOENA  
REGARDING MAMADOU KANE**

**Office of the Prosecutor:**

Barbara Mulvaney  
Drew White  
Segun Jegede  
Christine Graham  
Rashid Rashid

**Counsel for the Defence**

Raphaël Constant  
Paul Skolnik  
Jean Yaovi Degli  
Peter Erlinder  
André Tremblay  
Kennedy Ogetto  
Gershom Otachi Bw'omanwa

*[Handwritten signature]*

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

**SITTING** as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

**BEING SEIZED OF** the Ex Parte “Requête de la défense de Bagosora aux fins de délivrance d’une citation à comparaître”, filed on 1 October 2004;

**HEREBY DECIDES** the motion.

**SUBMISSIONS**

1. The Bagosora Defence requests the Chamber to issue a subpoena under Rule 54 of the Rules of Evidence and Procedure (“the Rules”), compelling Mr Mamadou Kane to meet with the Defence. Mr Kane was the Political Adviser to the Special Representative of the Secretary-General in Rwanda and was present in Rwanda from December 1993 to May 1994. The Defence asserts that Mr Kane has information relating to, and wants to discuss with him, the negotiations on the Arusha Accords, the 1994 ceasefire, planning of the massacres in 1994, his knowledge of the Accused Bagosora, political assassinations and his observations on incitement of the population and the difficulty in controlling the military. The Defence has tried unsuccessfully to meet with Mr Kane many times since 1999; Mr Kane has recently expressed a refusal to meet with the Defence.

**DELIBERATIONS**

2. Rule 54 of the Rules provides that “a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial”. In a previous decision, the Chamber held that:

When the Defence is not fully aware of the nature and relevance of the testimony of a prospective witness it is in the interests of justice to allow the Defence to meet the witness and assess his testimony. However, the Defence must first demonstrate that it has made reasonable attempts to obtain the voluntary cooperation of the parties involved and has been unsuccessful. Additionally, the Defence must have a reasonable belief that the prospective witness can materially assist in the preparation of its case. Indeed, subpoenas should not be issued lightly.<sup>1</sup>

3. Mr Kane’s position at the time in Rwanda indicates that he had the opportunity to observe the events at issue and may have information relevant to the case. The Bagosora Defence is asking for Mr Kane’s personal observations, which could not be obtained by other means. In addition, the Bagosora Defence has tried unsuccessfully to meet with Mr Kane since 1999. The Chamber

<sup>1</sup> *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.

also notes that the United Nations has indicated that it has no objections to the Defence interviewing Mr Kane. The requirements for a subpoena have therefore been met.

4. The Bagosora Defence has not specified a particular time and venue for its proposed meeting with Mr Kane. As he works for the United Nations in Ethiopia, the Chamber requests the Registry to communicate the subpoena to the relevant UN authorities in Ethiopia, after which the Bagosora Defence will consult with Mr Kane to fix an appropriate time and venue for the meeting.

**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the motion;

**ORDERS** the Registrar to prepare a subpoena in accordance with this decision, addressed to Mr Mamadou Kane, and to communicate it, with a copy of the present decision, to the UN authorities in Ethiopia.

Arusha, 22 October 2004

Erik Møse  
Presiding Judge

Jai Ram Reddy  
Judge

Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]

