



ICTR-98-41-T  
16-02-2007  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

(32429-32427)

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**TRIAL CHAMBER I**

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

**Registrar:** Adama Dieng

**Date:** 16 February 2007

**THE PROSECUTOR**

v.

**Théoneste BAGOSORA**

**Gratien KABILIGI**

**Aloys NTABAKUZE**

**Anatole NSENGIYUMVA**

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

2007 FEB 16 11:29  
JUDICIAL RECORDS ARCHIVES  
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**DECISION ON KABILIGI MOTION FOR DISCLOSURE OF THE  
STATEMENTS OF PROSECUTION WITNESS XXQ**

**The Prosecution**

Barbara Mulvaney  
Drew White  
Christine Graham  
Rashid Rashid  
Gregory Townsend

**The Defence**

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

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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 Kabiligi "Motion for Disclosure of the Statements of Prosecution Witness XXQ", filed on 11 December 2006;

**CONSIDERING** the Prosecution Response, filed on 11 December 2006;

**CONSIDERING** the parties' submissions at the Status Conferences on 12 December 2006 and 19 January 2007;

**HEREBY DECIDES** the motion.

### INTRODUCTION

1. The Kabiligi Defence requests the Chamber to order the disclosure of additional statements for Prosecution Witness XXQ, who testified from 11 to 13 October 2004. It argues that the Prosecution had disclosed three statements, referred to as XXQ-1, XXQ-2, and XXQ-3, but asserts that other statements exist and have not been disclosed to the Defence.<sup>1</sup> The Prosecution responds that it has previously filed the requisite disclosures, including statements XXQ-4, XXQ-5, and XXQ-6, but has now also annexed these three statements to its response.<sup>2</sup>

2. On 12 December 2006, the Chamber asked the Kabiligi Defence if the issue had been resolved in light of the Prosecution response. The Defence informed the Chamber that it had not yet seen the response and reserved its right to come back to the issue.<sup>3</sup> The Chamber raised the issue again at a status conference on 19 January 2007. The Defence stated that it had received new statements from the Prosecution but claimed that the issue was not yet resolved. The Chamber requested that the Defence clarify its position in the following week and inform the Chamber in writing, which the Defence agreed to do.<sup>4</sup> The Chamber did not receive any clarification by that time.

### DELIBERATIONS

3. The Defence has not demonstrated that the Prosecution has failed to meet its disclosure obligations under Rule 66 (A) (ii) of the Rules of Procedure and Evidence. The Defence is in possession of six statements of the witness and has not shown that any further statements exist. Its claim, transmitted by an email of 15 February 2007, that disclosures concerning Witness XXQ occurred in the *Military II* case on 12 January 2006 is not substantiated by the trial record. Trial Chamber II did not conduct proceedings on that date, and there are no corresponding disclosures on surrounding dates.

4. The Chamber does not have any basis to find that other statements of Witness XXQ are in existence. Consequently, it cannot grant the Kabiligi Defence request.

<sup>1</sup> Motion, paras. 2-3.

<sup>2</sup> Response, paras. 3-5.

<sup>3</sup> T. 12 December 2006, pp. 17-18.

<sup>4</sup> T. 19 January 2007, p. 1.

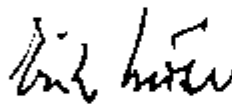
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**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the motion.

Arusha, 16 February 2007



Erik Mose  
Presiding Judge



Jai Ram Reddy  
Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]





# TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION  
(Art. 27 of the Directive for the Registry)

## I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input checked="" type="checkbox"/> Trial Chamber I N. M. Dipto	<input type="checkbox"/> Trial Chamber II R. N. Kourouma	<input type="checkbox"/> Trial Chamber III C. K. Momtawu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Taka
	<input type="checkbox"/> Chief, CMS J.-P. Fomati	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muziga-Morrison K. K. A. Alende
From:	<input checked="" type="checkbox"/> Chamber I Judge Mosa Judge Raddy Judge Egorov (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. BAGOSORA ET AL.			Case Number: ICTR-98-41-Y
Date:	Transmitted 16 FEBRUARY 2007		Document's date: 16 FEBRUARY 2007	
No. of Pages:	3	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	DECISION ON KABILIGI MOTION FOR DISCLOSURE OF THE STATEMENTS OF PROSECUTION WITNESS XXQ			
Classification Level:	<input type="checkbox"/> Strictly Confidential / Under Seal <input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Public			
TRIM Document Type:	<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties <input checked="" type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Submission from parties <input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused's Particulars <input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities			

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CMS SHALL take necessary action regarding translation.

☒ Filing Party hereby submits only the original, and will not submit any translated version.

☐ Reference material is provided in annex to facilitate translation.

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CMS SHALL NOT take any action regarding translation.

☐ Filing Party hereby submits BOTH the original and the translated version for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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☐ Filing Party will be submitting the translated version(s) in due course in the following language(s):

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