



ICTR-98-41-T  
21-03-2007

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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(34596 - 34592)

**TRIAL CHAMBER I**

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

**Registrar:** Adama Dieng

**Date:** 21 March 2007

**THE PROSECUTOR**

v.

**Théoneste BAGOSORA**

**Gratien KABILIGI**

**Aloys NTABAKUZE**

**Anatole NSENGIYUMVA**

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

2007 MAR 21 A JO: 19  
JUDICIAL RECORDS ARCHIVES  
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**DECISION ON BAGOSORA DEFENCE REQUEST  
FOR ADMISSION OF DOCUMENTS**

**The Prosecution**

Barbara Mulvaney  
Drew White  
Christine Graham  
Rashid Rashid  
Gregory Townsend  
Kantik Murukutla

**The Defence**

Raphaël Constant  
Allison Turner  
Paul Skolnik  
Frédéric Hivon  
Peter Erlinder  
Marc Nerenberg  
Kennedy Ogetto  
Gershom 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 "Requête de la Défense de Bagosora visant le dépôt de documents en preuve", filed on 12 December 2006, and the Addendum to its Motion, filed on 27 February 2007;

CONSIDERING the parties' submissions at the status conference on 19 January 2007;

HEREBY DECIDES the motion.

### INTRODUCTION

1. During his testimony from 4 to 9 September 2004, Prosecution Witness ABQ gave evidence about his name and his enrollment at a particular school in northwest Rwanda. The Bagosora Defence seeks to tender documents which, in its view, are both relevant and have probative value because they allegedly show that the witness lied either about his name or his enrollment at the school.<sup>1</sup> The Nsengiyumva Defence joins the Bagosora motion.<sup>2</sup>

2. The Prosecution submits that the documents are not relevant because there is nothing linking them to the witness other than the name of the school. It further asserts that the documents have no probative value because they were never put to Witness ABQ or any other witness.<sup>3</sup>

### DELIBERATIONS

#### (i) Analysis under Rule 89 (C)

3. Rule 89 (C) of the Rules of Procedure and Evidence provides that a Chamber may admit any relevant evidence which it deems to have probative value. When offering a document for admission, the moving party must make a *prima facie* showing that the document is both relevant and has probative value.<sup>4</sup>

4. At the admissibility stage, the Chamber has previously found that a document must bear sufficient indicia of reliability in order to have probative value:

In offering a document for admission as evidence, the moving party must as an initial matter explain what the document is. The moving party must further provide indications that the document is authentic – that is, that the document is actually

<sup>1</sup> Motion, paras. 22-26.

<sup>2</sup> T. 19 January 2007 p. 9.

<sup>3</sup> T. 19 January 2007 pp. 9-11.

<sup>4</sup> *Bagosora et al.*, Decision on Request to Admit United Nations Documents into Evidence Under Rule 89 (C) (TC), 25 May 2006, para. 2; *Bagosora et al.*, Decision on the Prosecutor's Motion for the Admission of Certain Materials under Rule 89 (C) (TC), 14 October 2004, para. 22; *Bagosora et al.*, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole (TC), 13 September 2004, para. 7. See also *Delalic and Delic*, Decision on Application of Defendant Zejnir Delabic for Leave to Appeal against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence (AC), 4 March 1998, paras. 17, 20.

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what the moving party purports it to be. There are no technical rules or preconditions for authentication of a document, but there must be "sufficient indicia of reliability" to justify its admission. Indicia of reliability which have justified admission of documents in the jurisprudence of the *ad hoc* Tribunals include: the place in which the document was seized, in conjunction with testimony describing the chain of custody since the seizure of the document; corroboration of the contents of the document with other evidence; and the nature of the document itself, such as signatures, stamps, or even the form of the handwriting.<sup>5</sup>

5. The purported relevance and probative value of the documents should be assessed in light of Witness ABQ's testimony. He gave his full name and stated that he had been a student at a particular school in Rwanda during the events of April 1994.<sup>6</sup> On cross-examination, the Defence teams extensively questioned Witness ABQ about his name and asked him if he had ever used any other names. The witness insisted that he had given his proper name to the Chamber and that he had always been known under that name.<sup>7</sup> The Defence also asked the witness if he had met with investigators from the Bagosora and Nsengiyumva Defence teams in 2002 and 2003 and if he had given them different names during these alleged meetings. Witness ABQ stated that he had never met with the Defence investigators and that he had never given another name to them.<sup>8</sup>

6. The Defence argues that the documents it seeks to enter into evidence are relevant because they cast doubt on the truthfulness of Witness ABQ's testimony before the Tribunal.<sup>9</sup> The name given by the witness does not appear on the school enrollment list, whereas the name that the witness purportedly gave to the Bagosora Defence investigator is on the list.<sup>10</sup> It further submits that the documents have sufficient indicia of reliability because they were obtained directly by Defence counsel from the Rwandan Ministry of Education, have been in the counsel's possession since that time, and bear markings confirming the source of origin.<sup>11</sup>

7. The Prosecution argues that the documents' relevance has not been established because nothing links them to the witness other than the name of the school.<sup>12</sup> The Prosecution also asserts that the Defence has failed to establish the necessary indicia of reliability, namely the authenticity and completeness of the documents.<sup>13</sup>

8. In the Chamber's view, the documents meet the criteria of Rule 89 (C). Even though there is little to connect the school records to Witness ABQ since his name does not appear on the list of enrolled students, the Chamber nonetheless finds the documents relevant insofar as they contradict certain elements of the witness' testimony as to his whereabouts in April

<sup>5</sup> *Bagosora et al.*, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole (FC), 13 September 2004, para. 8; See also *Bagosora et al.*, Decision on the Request to Admit United Nations Documents into Evidence Under Rule 89 (C) (TC), 25 May 2006, para. 4.

<sup>6</sup> T. 6 September 2004 pp. 1, 3.

<sup>7</sup> T. 7 September 2004 pp. 2, 5-6, 11; T. 8 September 2004 pp. 17, 20, 46; T. 9 September 2004 pp. 32-34.

<sup>8</sup> T. 7 September 2004 pp. 2-6; T. 8 September 2004 pp. 15-17; T. 9 September 2004 pp. 4-5. When the Defence investigators were brought into the courtroom, Witness ABQ stated that he had never seen them before that day.

<sup>9</sup> Motion, paras. 23-25.

<sup>10</sup> *Id.*; T. 19 January 2007 p. 10. See also Annex R-2 to Bagosora Motion.

<sup>11</sup> Motion, paras. 27-30. The Bagosora Defence seeks to reinforce the authenticity of the documents by its Addendum, which consists of a *Note Verbale* from the Rwandan Ministry of Education confirming the status of enrollment records for the school during the relevant time period. *Addendum de la Défense de Bagosora à sa Requête de la défense de Bagosora visant le dépôt de documents en preuve du 12 décembre 2006*, filed on 26 February 2007.

<sup>12</sup> T. 19 January 2007 p. 11.

<sup>13</sup> T. 19 January 2007 pp. 9, 11.

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1994 and/or the name he used at that time. The Chamber also finds sufficient indicia of reliability. The documents were obtained through official means, *i.e.* a written request by the Defence transmitted to the Rwandan government through the Registry, and were turned over directly to Defence counsel for Bagosora, where they have remained since that time.<sup>14</sup> Although there is no official seal or stamp certifying the authenticity of the documents, the documents themselves bear the name of the Rwandan Ministry of Education and the school in question and, on their face, reflect what the Chamber might expect a school roster to look like.<sup>15</sup>

(ii) *Assessment of the Purpose for Which the Evidence is Introduced*

9. Evidence in the form of documents or witness statements is generally tendered for two purposes: impeachment of a witness or providing context to a witness' testimony. The Chamber has recently held in this very case that:

[D]ocuments [for impeachment] must be tendered in connection with the testimony of the witness whose evidence is sought to be discredited, either during his or her original testimony or following recall. Thus, the proper course of action here would have been for the Defence, upon discovery of the statements, to have moved to recall the witnesses who gave statements in order to examine them on any inconsistencies between their prior testimony and their written statements, or in the case of a witness who has not yet testified before the Tribunal, to have moved for variance of the Defence witness list to enable the witness to testify.<sup>16</sup>

10. Here, the Defence does not seek to impeach Witness ABQ's testimony through witness statements but rather through school records. The same analysis still applies. The Defence wrote to the Registry on 6 November 2006, requesting the list of students enrolled at the school from the Rwandan Ministry of Education. The request was transmitted by the Registry to the appropriate Rwandan authorities on 8 November 2006. The Defence obtained the list directly from Rwandan authorities on 22 November 2006, while on mission in Kigali.<sup>17</sup>

11. The Defence has not provided sufficient justification for the more than two year delay in seeking these records. It was clear from the witness' testimony in September 2004 that his attendance at the school would be a credibility issue. The Chamber finds that the Defence should have been more diligent in its efforts to obtain these school records from the Rwandan Ministry of Education. The Defence made its request after the close of the Bagosora Defence case. If the Defence had done so earlier, it could have requested the recall of Witness ABQ and questioned him on the discrepancies. Because the Defence did not do so, the Chamber finds that it cannot admit these documents into evidence at this late stage.

<sup>14</sup> Bagosora Motion, paras. 27-28.

<sup>15</sup> Bagosora Motion, Annex R-1.

<sup>16</sup> *Bagosora et al.*, Decision on Nsengiyumva Motion to Admit Documents as Exhibits (TC), 26 February 2007, para. 8.

<sup>17</sup> Motion, paras. 11-13 and Annex R-1.


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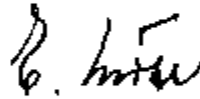
**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the motion.

Arusha, 21 March 2007



Erik Mose  
Presiding Judge



Jai Ram Reddy  
Judge

*J.R.*

[Seal of the Tribunal]



Sergei Aleksceevich Egorov  
Judge



# 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)

<b>To:</b>	<input checked="" type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouamba	<input type="checkbox"/> Trial Chamber III C. K. Homelovu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
<b>From:</b>	<input checked="" type="checkbox"/> Chamber I Judge Mose Judge Reddy Judge Egorov (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
<b>Case Name:</b>	The Prosecutor vs. BAGOSORA ET AL.			<b>Case Number:</b> ICTR-98-41-T
<b>Dates:</b>	Transmitted: 21 MARCH 2007		Document's date: 21 MARCH 2007	
<b>No. of Pages:</b>	5	<b>Original Language:</b>	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
<b>Title of Document:</b>	DECISION ON BAGOSORA DEFENCE REQUEST FOR ADMISSION OF DOCUMENTS			
<b>Classification Level:</b>	<input type="checkbox"/> Strictly Confidential / Under Seal <input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Public			
<b>TRIM Document Type:</b>	<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 particulars <input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities			

### II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

<b>CMS SHALL take necessary action regarding translation.</b> <input checked="" type="checkbox"/> Filing Party hereby submits only the original, and will <b>not submit</b> any translated version. <input type="checkbox"/> Reference material is provided in annex to facilitate translation. Target Language(s): <input type="checkbox"/> English <input checked="" type="checkbox"/> French <input type="checkbox"/> Kinyarwanda				
<b>CMS SHALL NOT take any action regarding translation.</b> <input type="checkbox"/> Filing Party hereby submits <b>BOTH</b> 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		
<b>CMS SHALL NOT take any action regarding translation.</b> <input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s). <input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda				
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<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation, see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:		<input type="checkbox"/> DEFENCE is overseeing translation The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:		

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<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: