



ICTR-98-41-T  
26-03-2007  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
(34642-34639)

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Ivan

**TRIAL CHAMBER I**

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

**Registrar:** Adama Dieng

**Date:** 26 March 2007

**THE PROSECUTOR**

v.

**Théoneste BAGOSORA**

**Gratien KABILIGI**

**Aloys NTABAKUZE**

**Anatole NSENGIYUMVA**

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

2007 MAR 26 P 5:13  
JUDICIAL RECORDS/RECEIVED

**DECISION ON DEFENCE MOTIONS FOR  
EXTENSION OF TIME TO FILE THEIR CLOSING BRIEFS**

**The Prosecution**

Barbara Mulvaney  
Drew White  
Christine Graham  
Rashid Rashid  
Gregory Townsend  
Kartik 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 Ntabakuze Defence "Extremely Urgent Motion for an Enlargement of Time in Which to File its Closing Brief", etc., filed on 15 March 2007;

**CONSIDERING** the Prosecution Response, filed on 16 March 2007, and the Ntabakuze Defence Reply, filed on 21 March 2007;

**BEING FURTHER SEIZED OF** the Nsengiyumva Defence "Extremely Urgent Motion for the Rescheduling of Filing of its Closing Brief", filed on 16 March 2007;

**CONSIDERING** the Prosecution Response thereto, filed on 20 March 2007, and the Nsengiyumva Reply, filed on 21 March 2007;

**BEING FURTHER SEIZED OF** the Kabiligi Defence "Extremely Urgent Motion to Extend the 2 April 2007 Deadline to File a Defence Final Trial Brief to 30 April 2007", filed on 23 March 2007, and a corrected version on 26 March 2007;

**CONSIDERING** the Prosecution Response thereto, filed on 26 March 2007,

**HEREBY DECIDES** the motions.

**INTRODUCTION**

1. The Prosecution closed its case on 14 October 2004. The Defence commenced its case on 11 April 2005 and finished on 18 January 2007, at which time the evidentiary phase of the trial was completed. At the status conference on 19 January 2007, the Chamber set deadlines for the Prosecution to file its Closing Brief by 2 March and the Defence to file their respective briefs by 2 April 2007.<sup>1</sup> The Chamber also informed the parties that closing arguments would take place in early May 2007.

2. The Prosecution filed its Closing Brief on 1 March 2007.<sup>2</sup> The Chamber then granted leave for the Bagosora Defence to file its Closing Brief by 10 May 2007 in light of the fact that the French translation of the Prosecution brief will not be available until 16 April. The oral presentation of closing arguments was scheduled from 28 May to 1 June 2007.<sup>3</sup>

**SUBMISSIONS**

3. The Ntabakuze Defence seeks to extend the deadline for its Closing Brief to 30 April 2007 or thirty days following the disposition of all Defence exclusion motions, whichever date is later. The crux of its argument is that the Chamber's failure to render a decision reconsidering the Ntabakuze exclusion motion has prevented the Accused from having a clear understanding of the specific allegations against him. In addition, the Defence challenges the

<sup>1</sup> T. 19 January 2007 p. 16.

<sup>2</sup> Prosecutor's Final Trial Brief, filed on 1 March 2007.

<sup>3</sup> *Bagosora et al.*, Decision on Bagosora Defence Motion Concerning Scheduling of its Closing Brief (TC), 13 March 2007.

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Prosecution Final Brief, alleging that references were made to pieces of evidence that the Chamber has already excluded and that these inaccuracies require time and effort to verify before the Defence can submit its Closing Brief.<sup>4</sup> Finally, it asserts that the recent change in the composition of the Ntabakuze Defence team and the extension of time afforded to the Bagosora Defence provide justification for extending the filing date.<sup>5</sup>

4. The Prosecution opposes the extension. The Defence's recent conduct, including the filing of numerous motions after the close of the evidentiary phase of trial, reveals that it has sufficient time to prepare its Closing Brief. It further submits that the Defence can file its brief without a decision on the outstanding exclusion issues on the same basis as the Prosecution did: so far no evidence has been excluded.<sup>6</sup>

5. The Nsengiyumva Defence also seeks an extension of time for its Closing Brief, requesting either the date of 30 April 2007 or a reasonable time after the delivery of decisions on pending motions. It argues that the length of the Prosecution brief and references therein to evidence which has already been excluded by the Chamber require additional time for the Defence to prepare its own Closing Brief. The Nsengiyumva Defence acknowledges that it has a clear understanding of the case but asserts that the extension of time is necessary because of the magnitude and complexity of the issues. It also notes that the Accused was ill from November 2006 until the end of the year, which hindered the preparation of its brief.<sup>7</sup>

6. The Prosecution refutes the Defence's claims. It argues that the Defence does not need any additional time to complete its Closing Brief and that, under the Rules of Procedure and Evidence, closing briefs are not designed to be responsive to that of the Prosecution.<sup>8</sup>

7. The Kabiligi Defence seeks an extension of time until 30 April 2007 or such other date as the Chamber deems appropriate. It makes many of the same arguments as the other two Defence teams, particularly with regard to length of the Prosecution Closing Brief and the exclusion decisions pending before the Chamber. However, it points out that, unlike the other Defence teams which closed their respective cases on 13 October 2006, the Kabiligi Defence did not close its case until 18 January 2007 with the final witnesses and therefore deserves additional time to prepare its Closing Brief.<sup>9</sup>

8. The Prosecution submits that the Defence position is not unique and that it has had ample time to prepare its Closing Brief. The Prosecution evidence closed in October 2004. The Defence has been aware of the deadline for filing since September 2006, a date which they previously confirmed as appropriate. In addition, an extension from 1 March until 2 April 2007 was given to the Defence on 19 January 2007, and to grant another would cause prejudice to the Prosecution by denying them sufficient time to analyse the final written submissions before the closing arguments.<sup>10</sup>

<sup>4</sup> The Kabiligi and Ntabakuze Defence teams have filed separate motions, on 15 and 16 March 2007 respectively, seeking an order that the Prosecution be required to strike all references to excluded evidence and to refile its brief.

<sup>5</sup> Ntabakuze Motion, paras. 4-6, 13-16.

<sup>6</sup> Prosecution Response, paras. 8, 12-17.

<sup>7</sup> Nsengiyumva Motion, paras. 3-4, 8-11, 13-14.

<sup>8</sup> Prosecution Response, paras. 7-14.

<sup>9</sup> Kabiligi Motion, para. 2.

<sup>10</sup> Response, para. 8-9, 13.

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## DELIBERATIONS

9. Since the evidentiary phase of this case was concluded on 18 January 2007, the Chamber has received nineteen Defence motions. This plethora of motions relates to a variety of issues, including the recall of witnesses, the tendering of evidence and the suspension of proceedings. The Ntabakuze, Nsengiyumva, and Kabiligi Defence teams now make a variety of arguments in support of their requests for additional time.

10. The Chamber considers the Prosecution Closing Brief to be quite long (953 pages). Giving the Defence some more time at this stage will facilitate the work of the Chamber during judgement writing. The particular situation of the Kabiligi Defence, which closed its case later than the other teams, may also require an extension of the deadline, even though that team originally thought that it had sufficient time. As for the pending exclusion decisions, the Chamber reiterates that evidence remains before the Chamber unless and until it is specifically excluded.<sup>11</sup> Any later exclusion of evidence will reduce the number of arguments to be considered by the Chamber. In filing its Closing Brief, the Prosecution has abided by this principle.

11. The Chamber finds that that the deadline for filing the briefs should be extended. On the other hand, the Prosecution will need sufficient time to digest the Defence briefs before the oral submissions from 28 May to 1 June 2007. The Chamber extends the deadline for the three Closing Briefs from Monday 2 April to Monday 23 April 2007.

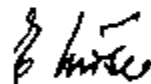
## FOR THE ABOVE REASONS, THE CHAMBER

**ORDERS** that the Ntabakuze, Nsengiyumva, and Kabiligi Defence teams file their respective Closing Briefs no later than 23 April 2007.

Arusha, 26 March 2007



Erik Mose  
Presiding Judge



Jai Ram Reddy  
P.A. Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]



<sup>11</sup> See, e.g., T. 7 April 2006 p. 5; T. 19 January 2007 p. 14.



## 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. Dialo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
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<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: 26 MARCH 2007		Document's date: 26 MARCH 2007	
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<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence	<input type="checkbox"/> Submission from non-parties
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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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English                                     French                                     Kinyarwanda

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**CMS SHALL NOT take any action regarding translation.**

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