



TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 29 March 2007

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. ICTR-98-41-T

2007 MAR 29 A 10:07
JUDICIAL DEPARTMENT

**DECISION ON DEFENCE MOTIONS TO STRIKE EXCLUDED EVIDENCE FROM
THE PROSECUTION CLOSING BRIEF**

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

6/11

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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

BEING SEIZED OF the Kabiligi "Motion to Order the Prosecutor to Amend and Refile the 'Prosecutor's Final Trial Brief'", etc., filed on 15 March 2007;

BEING FURTHER SEIZED OF the Ntabakuze "Motion to Oblige the Prosecutor to Strike All References to Evidence that Has Already Been Excluded", etc., filed on 16 March 2007;

HEREBY DECIDES the motions.

INTRODUCTION

1. The Prosecution filed its Closing Brief on 1 March 2007. It consists of 953 pages. The Chamber thereafter granted leave for the Bagosora Defence to file its Closing Brief by 10 May 2007 and for the three other Defence teams to file their respective briefs by 23 April 2007. Closing arguments are scheduled to take place from 28 May to 1 June 2007.¹ The Kabiligi and Ntabakuze Defence teams now seek to have the Prosecution strike from its Closing Brief all references to evidence that the Chamber has allegedly excluded.²

2. The Kabiligi Defence identifies incriminating testimony by Witnesses Kambanda, XAI, DCH, and XXH. Consequently, a number of paragraphs in the Prosecution Closing Brief have to "be deleted, and withdrawn for all purposes of law".³ The Ntabakuze Defence provides a non-exhaustive list of three portions of testimony that, in its view, were excluded by the Trial Chamber. It asserts that the Defence is now improperly tasked with "doing a massive verification that the Prosecutor should have done in the first place".⁴ The Prosecution filed no response to the Defence motions.

DELIBERATIONS

3. It is obvious that the Chamber will not consider in its judgement evidence which has been excluded. To the extent that the Prosecution Closing Brief contains such material, it will be ignored. The Defence teams may wish to identify purportedly excluded evidence in their respective Closing Briefs. The Chamber's recent decisions granting them an extension of time to file their briefs provides them with additional time to do so.

¹ *Bagosora et al.*, Decision on Bagosora Defence Motion Concerning Scheduling of its Closing Brief (TC), 13 March 2007; *Bagosora et al.*, Decision on Defence Motions for Extension of Time to File Their Closing Briefs (TC), 26 March 2007.

² See, e.g., *Bagosora et al.*, Decision on Admissibility of Proposed Testimony of Witness DBY (TC), 18 September 2003; Decision on Exclusion of Evidence Outside the Scope of the Indictment (TC), 27 September 2005; Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006; Decision on Kabiligi Motion for Exclusion of Evidence (TC), 4 September 2006; Decision on Severance or Exclusion of Evidence Based on Prejudice Arising from Testimony of Jean Kambanda (TC), 11 September 2006.

³ Kabiligi Motion, paras. 5-7, 10-22.

⁴ Ntabakuze Motion, paras. 3-4, 7.

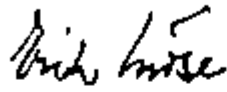
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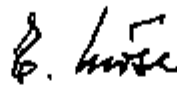
FOR THE ABOVE REASONS, THE CHAMBER

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DENIES the motions.

Arusha, 29 March 2007


Erik Mose
Presiding Judge


Jai Ram Reddy
p.p. Judge
[Seal of the Tribunal]


Sergei Alekseevich 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)

To:	<input checked="" type="checkbox"/> Trial Chamber I N. M. Diallo	<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
	<input type="checkbox"/> Chief, CMS J.-P. Fométe	<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
From:	<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)
Case Name:	The Prosecutor vs. BAGOSORA ET AL.			Case Number: ICTR-98-41-T
Dates:	Transmitted: 29 MARCH 2007		Document's date: 29 MARCH 2007	
No. of Pages:	3	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	DÉCISION ON DEFENCE MOTIONS TO STRIKE EXCLUDED EVIDENCE FROM THE PROSECUTION CLOSING BRIEF			
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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
<input type="checkbox"/> Confidential	<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal	<input type="checkbox"/> Submission from parties
<input checked="" type="checkbox"/> Public	<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)

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.

Target Language(s):

English French Kinyarwanda

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

CMS SHALL NOT take any action regarding translation.

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2007 MAR 29 10:00 AM
 COURT MANAGEMENT SECTION
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III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input checked="" type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: