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ICTR-98-41-T
02-07-2004
(20975-20962)
Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

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S. Muser

IN TRIAL CHAMBER I

Before: Judge Erik MØSE
Judge Jai Ram REDDY
Judge Sergei Aleckseievich EGOROV

Registrar: Mr Adama DIENG

Date of Filing: 2 July 2004

JUDICIAL PROCESS
ICTR
2004 JUL -2 P. 1:38

THE PROSECUTOR

v.

Theoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No.: ICTR-98-41-T

**PROSECUTOR'S WRITTEN SUBMISSIONS REGARDING ORAL
DEFENCE REQUEST FOR ADDITIONAL DISCLOSURE OF
INVESTIGATIVE REPORTS AND STATEMENTS
& CONCERNING THE CROSS-EXAMINATION OF WITNESS DCH**

Prosecution Counsel

Ms Barbara MULVANEY
Mr Drew WHITE
Ms Segun JEGEDE
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Ms Christine GRAHAM
Mr Rashid RASHID

Defence Counsel

Mr Raphael CONSTANT
Mr Paul SKOLNIK
Mr Jean Yaovi DEGLI
Mr Peter ERLINDER
Mr Andre TREMBLAY
Mr Kennedy OGETTO
Mr Gershom Otachi BW'OMANWA

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I. PROSECUTION'S REQUEST

1. The Prosecutor opposes the disclosure of the additional materials requested by Defence and request the Trial Chamber to deny it.
2. In support of this request, the Prosecution submits the following.

II. PROSECUTION'S SUBMISSIONS

A. Factual Background

3. On the morning of 28th of June 2004, counsel for Major Ntabakuze made a request to the Chamber for disclosure of certain materials from the Prosecutor. In his submission, counsel referred to the requested material as ...*The report of Mr Duclos that supports a conclusion...that this witness is not telling the truth with respect to when it is the Ruhanga massacre occurred or who was involved*”...
4. Counsel apparently deduced the existence of such a “report” on the basis of having received and reviewed the Semanza trial transcripts the night before. Prosecution counsel immediately disavowed any knowledge of such a report. Defence counsel then made further reference to issues dealing “*with this report*” and alleged the Prosecution was claiming “*We didn't look at the expert reports from that time*”. Defence counsel for Bagosora then joined the request to provide the “report” ...*“because had we known of this Duclos report, we might have cross-examined about Ruhanga too.*” Prosecution counsel then commented that counsel for Major Ntabakuze had made “*many misrepresentations*”. A brief recess was taken while the Chamber considered the defence Motion for Judicial Notice and the collateral issue of the disclosure request.
5. Upon returning to the Chamber, an oral decision was issued in which it was stated that “*The Chamber is also of the view that the report prepared by Pierre Duclos concerning the Ruhanga massacre should be disclosed to the Defence.*” and ...*“requests the Prosecutor to disclose the report prepared by Pierre Duclos without*

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delay.” Immediately following the oral decision defence counsel for Major Ntabakuze requested whether *“it would be possible for my friends on the Prosecution side to make those reports available so we could examine them over the lunch break”*... Notably, what was at first “the report” was transformed into “those reports”. At that point in the proceedings, prosecution counsel made a request for clarification: *“One of the problems is trying to define what it is that my friend feels is a report. There were a number of materials that were tendered in the Semanza case through Pierre Duclos, and that is what the Prosecution understands has been referred to as the Duclos report in the singular, a collection of materials, including a photographic list and so forth. The Prosecution is not aware of any other form of report, other than what was tendered in the Semanza case and which has been publicly available since the close of that case. We are certainly prepared to go and collect those materials that were previously exhibited and publicly available and provide them to the my friend, but, with respect, unless there is something else, that is what the prosecution understands is the report that my friend has been referring to.”*

6. The cross-examination of the witness then continued, during which time, prior to the luncheon break, the Prosecution delivered in the courtroom a collection of materials to the defence teams for Major Ntabakuze and Colonel Bagosora. Those materials had been publicly exhibited in the Semanza case.
7. Immediately after the lunch break, defence counsel for Colonel Bagosora raised the issue of disclosure again: *“In the pile of documents there are a list of all the witnesses that Mr Duclos interviewed with reference to his investigation in the Semanza case. ... and we would like to receive copies of those statements. Moreover, the rest of what was given to us is just a list of sites that Mr Duclos visited in Rwanda and took photographs at that site, but there are no reports made by Mr Duclos. And I imagine that if he went on an investigation, he must have made some kind of a report stating what was the interrelationship of the witness statements to the evidence and the photographs that he took, and we would like to have that information disclosed to us by the Prosecution. And it may be that they may have to make a deeper search in their database, but I’m sure that such documents exist, because it’s unimaginable to me*

that Duclos went and did all this work for a period of six months and never wrote a report to the Prosecutors stating what was the result of his investigations.”

8. Defence counsel for Major Ntabakuze followed with the comments that “*Pierre Duclos, during that six months, exclusively investigated the massacres in the area that we’re talking about, in Ruhanga and the surrounding area, and catalogued all of them and photographed all of them and made reports on all of them. So with respect to when it was Ruhanga massacre occurred, that information is extremely crucial and I believe is in the possession of the Prosecution, at least at one time was.*” The President of the Chamber then posed the following question: “*Is there a document called the Duclos report ?*”, to which Prosecution counsel responded, “*Your Honours, as stated before lunch, there is no such document called the “Duclos report”. ...We’ve disclosed a series of documents to the defence which were admitted through Mr Duclos in the Semanza trial.... Even if there were such thing called a “Duclos report” which investigator Duclos had prepared for the purposes of trial counsel, such a report is not discloseable. It falls under Rule 70 as an internal memorandum.*” The President then commented that “*We may need to come back to this at a later stage*”.
9. At the end of the day, the President commented further, “*That leaves one outstanding issue about the report of this investigator. Can we really take it any further than we have ? I mean, we made an order that that report should be disclosed, and we are told there is no such report and whatever the Prosecution has it has given all that to the Defence. If you want to take this further, we may have to hear you.*” Defence counsel for Colonel Bagosora then submitted “*I would just like to say that the first item that they list on tis sheet, Exhibit P-1, which is a list of pseudonyms of witnesses interviewed by Mr Pierre Duclos, we would at least like to have that. We would at least like to have that because otherwise the report that we have here is useful because it’s just a list of sites that he went to and some pictures that he took and it doesn’t advance us any further. But we would like to at least have the statements of those witnesses that are mentioned on Exhibit P-1 on the sheet.*”
10. The Prosecution response was to the effect that the Defence had been accommodated to the extent possible, and in any event beyond the obligations of the Rules, and that

unless there was a proper legal basis as to why the Defence should have the various statements of some 48 witnesses in another proceeding, the prosecution could not provide them.

11. On the following day, 30th of June, the issue was broached once more. Counsel for Ntabakuze sought to end his cross-examination conditionally, pending receipt of more material, which was not unequivocally identified; *We also have an issue with respect to disclosures from the Prosecution that causes me to put on the record that our cross-examination can only be complete when we have disclosure of the investigative reports by Duclos that dealt with all of the incidents in the area, of most of the incidents, or as many as he could find in the area that's at issue here with respect to Ruhanga.* (p. 1, lines 29-33).
12. Prosecution counsel objected to the attempt to impose conditions on the conclusion of the cross-examination, indicating that; *... the Prosecution has made it very clear that what was originally asked for was what was referred to in the Semanza transcripts, and the Prosecution doesn't have any particular problem with providing what was in the Semanza transcripts, save and except for the fact that it is all publicly available anyways and ought to have been researched and discovered by my learned friends months ago, but we can do that. ...But what we cannot do now...[is] provide some sort of category of some sort of undefined documents...*
13. The Defence for Ntabakuze then advanced a reason for why the request was being made at the end of the cross-examination; *It is true that as we have learned more and more about the Semanza case, and testimony, and this witness's testimony, and other witness's testimony, it's become clearer and clearer that the Prosecution's original theory of the case, based on all investigations that Duclos did over a relatively long period of time, including photographs, certainly reports of his activities, shed light on the circumstances of the Ruhanga massacre. ...our assertion is that this witness's description of events do not match with the investigation of the OTP which apparently led to – led them to conclude that the events happened on the 10th, and that caused them to lead witnesses that confirmed that it happened on the 10th. Had they not changed their theory of the case with respect to how massacres occurred in Ruhanga from one day to multiple days, from the 10th to 14th through 17th, perhaps the*

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argument would have some merit that we're not entitled to it, but it's those investigations prepared by Duclos and the conclusions, after his speaking with the witnesses, that caused them to originally assert in Semanza that the event happened on the 10th. They since have alleged that there are rolling massacres according to Ms. Mulvaney. If that's the case, the Duclos investigative report should be able to show that. If it's not the case, we are certainly entitled to it to prove up our defence.

14. The Bagosora defence then shifted the request to include a comprehensive collection of all the statements of all the 48 witnesses that were referred to in Semanza exhibit P-1 as having spoken with Investigator Duclos. The Ntabakuze defence then supported the Bagosora defence request; *So we have a list of witnesses that he talked to, but no reports on what they said other than the two witnesses who testified in the Semanza case regarding the April 10th date, and we did receive those in redacted form, and we do appreciate that, but the issue here is whether there were rolling – how many massacres there were in Ruhanga and whether they were rolling massacres, and all of the evidence that Duclos turned up is relevant to showing that the theory that the Prosecution advanced isn't so and, therefore, I think is exculpatory.*
15. It was then clarified that the defence request was in fact concerning investigative material, and not exclusively witness statements; *...and the events in Ruhanga developed by the OTP Prosecutor certainly fall in that category. And it's that investigative information that we seek, Mr. President.*
16. At the conclusion of the various and somewhat conflicting requests, the President of the Chamber put the issue aside to be determined after further consideration; *All right. This particular application raises interesting issues and, probably, any ruling we give may have far reaching implications, both in terms of the disclosure of obligations of the Prosecution, and the rights of the Defence. ... What we propose is to give a ruling on this Friday morning and – after we have consulted the President, at the moment you have an incomplete Bench, so if your application succeeds, then the recall application can be pursued. If it doesn't succeed, well that's the end of the matter for the time being anyway.*

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17. The issue did not lie completely still after the President's comments, and there was additional clarification sought first by the Prosecution; *What does the Defence say that the exculpatory nature of evidence goes back to in a factual sense? Is that Ruhanga?*
18. In response to which the President commented: *As I understand it, and they'll correct me if I'm wrong, the suggestion is that the massacre in Ruhanga took place on the 10th of April and not, as this witness has testified, between the 14th and 17th of April, I think. And if you have witness statements which suggest that that is, indeed, what happened, that would, indeed be the credibility of this witness.*
19. The matter was then put over for consideration: *Unless there's something really spectacular that's going to solve this problem immediately, and I don't think there is. But we'll give out our reasons on Friday morning after we've consulted the President and the three of us will – but for the time being we're finished with this witness, Mr. Erlinder, and I suggest that you put all your exhibits in now.*

B. Factual Submissions

20. The Prosecution submits:
 - a. There is no identifiable document referred to as the "Duclos report".
 - b. There were no "expert reports" as referred to in the Defence submissions.
 - c. Investigator Duclos did not work "exclusively" on the subject matter of the Ruhanga area massacres as referred to in the Defence submissions.
 - d. Investigator Duclos did not work for "six months" on the Ruhanga area massacres as referred to in the Defence submissions.
 - e. Investigator Duclos did not make reports on "all of" the massacres in the area as referred to in the Defence submissions.
21. None of the above representations as made by defence counsel are accurate or correct. In consequence, when making it's oral decision on the morning of June 28th, the Chamber was not fully informed.
22. When it became apparent that no such report existed, the Defence sought to expand the Chamber's order for disclosure, first to include material that was clearly exempted under Rule 70, (internal memorandums and reports) and then later to include demands for a large number of witness statements from another proceeding. (This request despite having recently stated to the Trial Chamber that the defence teams

were overburdened with an excess number of statements and documents from within the trial itself.)

23. Investigator Duclos has participated in investigations for the Office of the Prosecutor for many years. During this period of time he has generated numerous written materials. Those materials range from handwritten notes and messages to typewritten lists, draft witness statements and assessments. All of the materials were made for the purpose of assisting counsel in bringing cases to trial. With the exception of materials Duclos specifically provided to the Chamber in the Semanza trial, all of the materials Duclos has generated are subject to the disclosure exemptions provided for in Rule 70.
24. Investigator Duclos appeared as the first witness in the prosecution of the Semanza case. He was not an eyewitness to the events of 1994. He introduced into evidence a series of demonstrative exhibits, including photographs, videos, a map, a sketch and a list of witness pseudonyms for eyewitnesses who might later be called to testify. The purpose of investigator Duclos' testimony was merely to provide a context, both procedural and geographic, for the eyewitness testimony to follow.

C. Legal Basis: Rules S 68 and 70

25. Rule 68 obliges the Prosecutor to disclose exculpatory evidence. The provision provides that "material which is known to the prosecutor and which is favorable to the accused in the sense that it tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence."¹ In order for Rule 68 to apply, the Prosecution must not only know of the existence of the evidence, but it must also have sufficient knowledge of the material to be able to determine that it tends to exculpate the Accused, or affect the credibility of its evidence. In the absence of possession of the evidence in question, knowledge of the exculpatory character of evidence will seldom be imputed to the Prosecution. Thus, previous decisions have

¹ *Prosecutor v. Delalić et al.*, No IT-96-21, *Decision on the Request of the Accused Pursuant to Rule 68 for Exculpatory Evidence*, (24 June 1997), at para. 12.

equated the "known" criteria to a threshold requirement of actual possession of the evidence.²

26. There is no doubt that the obligation to disclose evidence which might exculpate the accused is the responsibility of the Prosecutor alone, if for no other reasons than the fact that the Prosecutor is the one in possession of the materials. The Prosecutor is obliged to state whether the materials are in her possession, whether they contain exculpatory evidence, and whether she believes that their confidentiality might be protected under any other Rule.³ Once the Defense has established that certain material is in the possession of the Prosecutor, *it must establish a prima facie case which would make probable the exculpatory nature of the materials sought.*⁴
27. In the case at bar, surely the applicable test for determining whether a witness statement is exculpatory and thus affects the credibility of prosecution evidence is not so broad as to include every variation of fact or perception from one witness to another. The test must go to the materiality of the evidence, such as whether an event occurred or did not occur, and not to a question of whether there are descriptive variations between one witness and another. The latter threshold, at its broadest scope, may be a workable disclosure threshold when dealing with single-event, single-crime, limited-witness cases such as those which commonly arise in national jurisdictions. In the context of the cases before this Tribunal, only the former threshold of materiality can be posited pragmatically. If mere descriptive variations between witnesses are permitted to ground exculpatory disclosure claims, then in a case such as Military I, which engages all regions of Rwanda during an extended period, virtually all witness statements ever taken by investigators since the Tribunal formed would be arguably exculpatory. If the test is narrower in scope, as it has been applied thus far, then only those materials which the Defence can *prima facie* demonstrate are probably exculpatory can be demanded.

² *Prosecutor v. Theoneste Bagosora, Gratién Kabiligi, Anatole Nsengiyumva, Aloys Ntabakuze*, No. ICTR-98-41-I, *Decision on the Request for Documents Arising from Judicial Proceedings in Rwanda in Respect of Prosecution Witnesses*, (16 Dec 2003), at para. 4.

³ *Prosecutor v. Blaškić*, No. IT-95-14-PT, *Decision on the Production of Discovery Materials*, (27 Jan 1997), at para. 47.

⁴ *Prosecutor v. Joseph Nzirorera et al*, No. ICTR-98-44-I, *Decision on Defense Motion of Disclosure of Exculpatory Evidence*, (7 Oct 2003), at para. 8.

28. Rule 70 sets out an exception to the disclosure obligation. To the point with the facts presently before this Chamber, Rule 70 holds that notes of investigators, internal reports from expert witnesses, and memoranda prepared “by a party, its assistants, or representatives in connection with the investigation or preparation of the case” fall under Rule 70 and as such are not subject to disclosure.⁵ This court has said as much in *Prosecutor v. Semanza*.⁶
29. Tape recordings and their transcripts of interviews of witnesses by the prosecution can be sought out by the Defense.⁷ In contrast, questionnaires used by the prosecution investigators and specific questions asked to particular prosecution witnesses at the time of the collection of witness statements constitute ‘notes of investigators’ falling under rule 70(A).⁸ In *Niyitegeka*, certain first-made records, or the handwritten notes, of Prosecution’s investigators, taken during interviews with the Prosecution witnesses, were privileged documents falling within Rule 70 and not subject to disclosure. The Chamber reasoned that as Prosecution witness statements were disclosed to the Defence, the Defence, based on these statements, could raise discrepancies and other issues of credibility in cross-examination for the chambers’ consideration.⁹ Similarly, in *Prosecutor v. Nyiramasuhuko and Ntahobali*, the books, articles, and bibliographies of expert witnesses were not subject to disclosure as they belonged to the public domain.¹⁰

D. Review of 48 Witness Statements

⁵ *Prosecutor v. Blaškić*, No IT-95-14, *Decision on Prosecutor’s Request for Authorization to Delay Disclosure of Rule 70 Information* (6 May 1998), at para. 9; *P. v. Imanshimwe et al*, No ICTR-99-46-I, TC III, *Decision on Imanshimwe’s Motions for Amendment of the Indictment and Disclosure* (23 August 2000), at para. 6.

⁶ *Prosecutor v. Semanza*, No ICTR-97-20-I, TC III, *Decision on Semanza’s Motion for Subpoenas, Depositions, and Disclosure* (20 October 2000), at para. 31.

⁷ *Prosecutor v. Kajelijeli*, No ICTR-98-44-I, TCII, *Decision on Defence Motion Seeking to Interview Prosecutor’s Witness or Alternatively to be Provided with a Bill of Particulars* (12 March 2001), at para. 11.

⁸ *Prosecutor v. Ndayambaje*, No ICTR-96-8-T, TC II, *Decision on the Defence Motion for Disclosure* (25 Sep 2001), at para. 16.

⁹ *Prosecutor v. Niyitegeka*, No ICTR-96-14-T, TC I, *Judgment and Sentence* (16 May 2003), at para. 41.

¹⁰ *Prosecutor v. Nyiramasuhuko et al*, No ICTR-97-21-T, TC II, *Decision on Defence Motion for Disclosure of Evidence* (1 November 2000), at para. 51.

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30. Following the allegations of the Defence that the 48 witness statements listed in *Semanza* Exhibit P-1 must contain exculpatory information that diminishes the credibility of witness DCH regarding Ruhanga parish, the Military 1 trial prosecution team reviewed the 48 witness statements. The Prosecution confirms, as already stated in open court on 30 June 2004, that none of these statements contain exculpatory evidence under Rule 68 in the sense that they contain information which "may affect the credibility of prosecution evidence" as provided by witness DCH. On the contrary, the additional four witness statements that contain references to events at Ruhanga corroborate the testimony of witness DCH. In particular, these other four *Semanza* witnesses make it clear that attacks at Ruhanga, and especially at the church, occurred on a number of days beyond the 10th and were multiple, repeated attacks.
31. In relevant parts, the witnesses state the following: [emphasis added]

1. Witness VL: from VL-1 (attack at Ruhanga on April 15)

Q: What happened on 13 April 1994?

A: We were called to a meeting in Kampigika *cellule* by *Conseiller* FUNGAMEZA under the pretext that the war was over and that peace had returned, and we were thus to meet with *Bourgmestre* RUGAMBARARA at 11:00 a.m. RUGAMBARARA brought *Interahamwe* with him in his new, white Toyota Stout 2200. He was armed with a firearm like the others. They immediately began to shoot at us. I was wounded in the right leg by a grenade. Nonetheless, I managed to flee to Ruhanga. In Ruhanga, on 15 April, BISENGIMANA sat on the roof of his vehicle with a microphone and addressed the people who had gathered at the church. He said the following: "This is not a war between parties, it is a war against the Tutsis. The *Inkotanyi* have killed the following Hutus: LIZINDE, KANYARENGINE, BISERUKA, because the war concerns the Tutsis." After the speech, the Hutus separated from us and gunshots were heard. I fled toward the swamp, where I was found by the *Inkotanyi* the morning of the 24th. Before I fled, I saw people who had been shot dead.

....

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After reviewing my statement through the interpreter, H el ene MOENEBACK, who translated it into Kinyarwanda for me, I would like to add the following: on 15 April, when BISENGIMANA spoke to the people from his truck, SEMANZA was present. He had arrived in his truck, which was loaded with *Interahamwe*. He did not speak, however. There were many *Interahamwe* from Bicumbi at that location.

2. Witness VW: from VW-1 (attack in church a few days after 14th)

During the 1994 events, my mother and her children took refuge in Musha church. Around 10 April, SEMANZA had them sent out of the church and taken to our house in a red Toyota hilux pickup belonging to APEGA, escorted by police officers VITA and BISURU. My father and I had remained at home. On their way from Musha to Gahengeri, they came across my paternal uncle and they ordered him to go return to home with his family. Between that day and 14 April,

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police officer VITA guarded our house thus preventing us from escaping. Around 10:30 a.m. on 14 April, a presidential guard in civilian clothes came to discuss with VITA and when my father asked him what the man wanted he said he was giving directions on how to get to Gahengeri. At 3:30 p.m., SEBISOGE's pickup arrived at our house with some *Interahamwe* on board and I went to hide in an animal's burrow in a nearby bush from where I observed and could hear what was going on. The people brought my family out of the house and started taking their watches, then they killed my uncle, hit my father on the head with a hatchet and cut up my mother and my brother. They dumped their bodies in a manure hole. RUGAMBARARA and SEMANZA arrived later in APEGA's pickup driven by BIZURU. SEMANZA then asked our Hutu worker, Eric BAGORA, why he had refused to kill the Tutsis and BIZURU said he could not shed the blood of innocent people especially the blood of the people with whom he had shared everything. Police officer, Vita NSABIMANA killed him. SEMANZA then ordered VITA to search everywhere so that no one would escape.

At night, I fled to Ruhanga and joined several Tutsis in the church there. A few days later, François FUNGAMEZA and SEMANZA, along with PASCAL, MUJINYA's son who was a presidential guard and several *Interahamwe* attacked us in the church. After seeing RWASAMANZI die by my side, I went to hide in a hole dug to store bananas until they became ripe. Bodies were thrown over me but I stayed there until night fell. Then I went to take refuge in Batwas' houses. In my family, only my younger sister who had taken refuge in Rubunga and I survived.

3. Witness VAU: from VAU-1 (multiple attacks at Ruhanga)

I saw BISENGIMANA and SEMANZA again in 1994. The first time [I saw them] they were together. That was in the morning of 7 April while I was somewhere near the ravel of Kamulindi, where my elder sister lived. BISENGIMANA was driving a white vehicle, followed by SEMANZA who was riding in a black vehicle. The two vehicles were followed by a Hilux pick-up truck carrying several soldiers. The two officials pulled up in front of the home of a Tutsi trader, who was an MRND member; he was named NDABUBAHA. BISENGIMANA was NDABUBAHA's good friend. NDABUBAHA's father had offered BISENGIMANA a cow. He advised him to gather his entire family in his house for protection. My elder sister joined them because BISENGIMANA said that he would guarantee protection for his friend's family. I did not join them because my husband did not want us to. He said that we should take refuge in the home of ABASAMUNYIGA instead because they had weapons there. I have since not seen anyone who took refuge in the home of BISENGIMANA's friend. Three days later while taking refuge in Ruhanga, I was told that they had all been killed by *Interahamwe* while NDABUBAHA had gone to see SEMANZA at his [SEMANZA's] personal request.

I saw SEMANZA once again during the genocide of 1994. While on my way to visit with the ABASAMUNYIGA family, I saw him in traveling in his black car. Shortly thereafter, I met a girl I did not know coming from Runyinya. She told me that SEMANZA had set up a roadblock between Runyinya and Rwamashyongoshyo and that the roadblock was manned by the *Interahamwe*. I left the home of the ABASAMUNYIGA on accounts of attacks by the PG and especially because ABASAMUNYIGA advised us to flee, saying that he had run out of ammunition and thus could no longer put up resistance against the Presidential Guard. I fled to Ruhanga church with my husband. We were attacked by the *Interahamwe* two days later but we managed to ward them off. That day, a person I did not know, raveling in a white Hilux pick-up truck, came and harassed us, asking us through a megaphone if we really thought were safe at that location. The next day, the PG returned with powerful weapons and attacked the refugees in Ruhanga, some of whom were at the church and others at the primary school. They started by setting the church on fire and killing the people inside. As I had taken refuge at the primary school, I saw what happened at the church. I managed to escape death thanks to the arrival of a blue vehicle while the PG, the *Interahamwe* and the peasants were going from classroom to classroom eliminating the refugees. One of the vehicle occupants told them through a megaphone that the refugees at Antoine's home were beginning to flee. While they were distracted by the

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arrival of the vehicle, I ran away and escaped. I ran to Kuisumo, where I was taken in by a good Samaritan. A communal policeman name MUTSINZI asked me what I was doing there since my husband had been killed at the church and our house had been burned down. He told me to remain there until he could take me to BISENGIMANA. The Good Samaritan, named Félicien, hid me for two days and then took me to the home of MUKANGATARA, where I remained until the *Inkotanyi* arrived. I then went to Nyagasambu camp and that is where I had my daughter.

4. Witness VAF: from VAF-1 (attacks after April 9)

During the genocide, in April 1994, I was on school break. I was resting at my parents' home in Muyumbu. Starting on 7 April, we did not consider it safe to sleep at home. We would sleep in the bush. Despite that, my parents were killed on 9 April. When my brother went to see *Conseiller* FUNGAMEZA to ask for permission to bury my father, he was sent to the home of a Tutsi named Théodore, who lived in the *secteur*. That is where they were found and killed by the *Interahamwe*. Thereafter, I fled to Ruhanga, where large numbers of Tutsi refugees were converging. I took refuge at the home of one Antoine, while several people took refuge at the school and the church. The PG, assisted by the *Interahamwe*, came and attacked us, beginning with the places with more refugees. When they attacked Antoine's home, a man managed to hit one of the attackers with an arrow. We took advantage of the confusion and fled. I fled to the bush with two children and remained there until the RPF arrived.


E. Conclusion

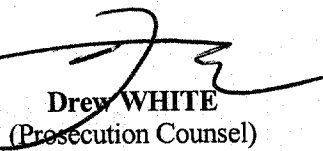
32. The Prosecution respectfully submits that due to misleading characterizations concerning the existence of a "Duclos report", the Chamber erred on the side of caution in ordering the disclosure of such material. Upon receipt of the identifiable material, the Defence re-characterized the disclosure request in the form of a demand for four dozen witness statements from another proceeding. In the face of that re-characterization the Prosecution expended considerable resources to review the allegedly exculpatory material, and promptly reports the results of that review.
33. The Defence submission that the Prosecution has "changed their theory of the case with respect to how massacres occurred in Ruhanga from one day to multiple days, from the 10th to 14th through 17th " is materially incorrect. The Prosecution in the Military 1 case has never advanced a single-massacre theory concerning Ruhanga. The Prosecution in *Semanza* did not advance a single-massacre theory, neither in the evidence in chief, nor in cross-examination, nor in rebuttal, nor in the closing submissions. Witness DCH speaks to the multiple-day-massacre evidence and he was in fact called to testify both in *Semanza* and Military I.

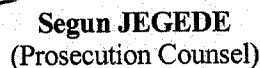
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34. The fact that in *Semanza* the indictment only pleaded a single calendar day for Semanza's appearance at Ruhanga parish church is no indication that the ONLY evidence led in the *Semanza* trial supported that single massacre on that single day, April 10th. In fact, the Prosecution evidence was consistent with massacres on multiple days (as was the evidence led by the Defence). The issue in that particular case was whether that particular accused was present on that particular day. The issue was not whether other killings at Ruhanga may have occurred on other days, which is the primary issue at hand here, *vis a vis* the credibility of the witness DCH.
35. In the end result, the Prosecution respectfully submits that the Defence requests for disclosure of additional materials are not well-founded.

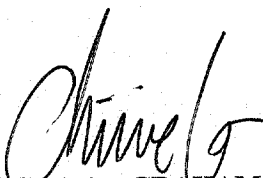
Arusha, 2 July 2004.

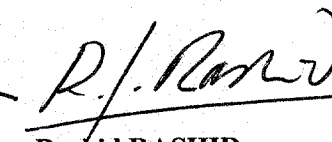

Barbara MULVANEY
(Prosecution Counsel)

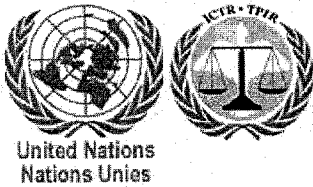

Drew WHITE
(Prosecution Counsel)


Segun JEGEDE
(Prosecution Counsel)

Fatou BENSUDA
(Prosecution Counsel)


Christine GRAHAM
(Prosecution Counsel)


Rashid RASHID
(Prosecution Counsel)



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. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input checked="" type="checkbox"/> Chief, JPU, CMS K. K. A. Afande	<input type="checkbox"/> Appeals Chamber / The Hague R. Burriss
From:	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input checked="" type="checkbox"/> Prosecutor's Office B. Mulvaney (names)	<input checked="" type="checkbox"/> Other: OTP - F. Nyirahamba (names)
Case Name:	The Prosecutor vs. Bagosora & al			Case Number: ICTR-ICTR-98-41-T
Dates:	Transmitted: 02 July 2004		Document's date: 02 July 2004	
No. of Pages:	14	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	Prosecutor's Written Submissions Regarding Oral Defence Request for Additional Disclosure of Investigative Reports and Statements & Concerning the Cross-Examination of Witness DCH in the matter of the Prosecutor v. Théoneste Bagosora, Anatole Nsengiyumva, Gratien Kabiligi and Aloys Ntabakuze			
Classification Level:	TRIM Document Type:			
<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 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 checked="" 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.

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

English French Kinyarwanda

KINDLY FILL IN THE BOXES BELOW

<input type="checkbox"/> The OTP is over-seeing 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 over-seeing 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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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 type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines:



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzania
Tel: 255 57 504207-11 504367-72 or 1 212 963 2850 Fax: 255 57 504000/504373 or 1 212 963 2848/49

**PROOF OF SERVICE – ARUSHA
PREUVE DE NOTIFICATION – ARUSHA**

Date: 04/07/2004	Case Name / Affaire: The Prosecutor vs. Théoneste BAGOSORA Gratien KABILIGI Anatole NSENGIYUMVA Aloys NTABAKUZE																																																																																																																																																																													
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Lattanzi (Karempera et al.)</td> <td align="center">.....</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>E. O'Donnell, SLO</td> <td align="center">.....</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>R. Adjovi, Co-ordinator</td> <td align="center">.....</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>R. Diarra, Co-ordinator (Karempera et al.)</td> <td align="center">.....</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>OTP / BUREAU DU PROCUREUR</td> <td></td> <td></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Trial Attorney in charge of case: B. Mulvaney</td> <td>received by</td> <td><i>[Signature]</i> 06 July 04</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>DEFENSE</td> <td></td> <td></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Accused / Accusé: T. Bagosora, G. Kabiligi, A. Nsengiyumva, A. Ntabakuze</td> <td></td> <td>complete / remplir "CMS4 FORM"</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Lead Counsel / Conseil Principal: R. Constant, J. Y. Degli, K. Ogello, P. Erlinder</td> <td></td> <td><i>[Signature]</i> 5 July 2004 8:47 AM</td> </tr> <tr> <td><input type="checkbox"/></td> <td>In / à Arusha Arusha</td> <td>(signature)</td> <td><input type="checkbox"/> by fax complete / remplir "CMS3bis FORM"</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Co-Counsel / Conseil Adjoint: P. Skolnik, R. Saint-Leger, G. O. Bw'Omanwa, A. Tremblay</td> <td>(signature)</td> <td><input type="checkbox"/> by fax complete / remplir "CMS3bis FORM"</td> </tr> <tr> <td><input type="checkbox"/></td> <td>In / à Arusha Arusha</td> <td>(signature)</td> <td><input type="checkbox"/> by fax complete / remplir "CMS3bis FORM"</td> </tr> <tr> <td colspan="4">All Decisions: <input type="checkbox"/> Appeals Chamber Unit, The Hague <input type="checkbox"/> S. Chenault, Jurist Linguist</td> </tr> <tr> <td colspan="4">All Decisions & Important Public Documents: <input type="checkbox"/> Press & Public Affairs <input type="checkbox"/> Legal Library</td> </tr> <tr> <td style="vertical-align: top;">From: De:</td> <td colspan="3" style="vertical-align: top;"> <input type="checkbox"/> J.-P. Fomété (Chief, CMS) <input checked="" type="checkbox"/> N. Diallo (TC1) <input type="checkbox"/> R. Kouambo (TC2) <input type="checkbox"/> C. Hometowu (TC3) <input type="checkbox"/> F. A. Talon (Appeals) </td> </tr> <tr> <td style="vertical-align: top;">Cc:</td> <td colspan="3" style="vertical-align: top;"> <input type="checkbox"/> A. Dieng <input type="checkbox"/> A. Miller, OLA, NY <input type="checkbox"/> L. G. Munlo <input type="checkbox"/> M. Niang <input type="checkbox"/> S. van Driessche <input type="checkbox"/> WVSS-D <input type="checkbox"/> WVSS-P <input type="checkbox"/> E. O'Donnell <input type="checkbox"/> DCMS <input type="checkbox"/> P. Enow </td> </tr> <tr> <td style="vertical-align: top;">Subject Objet:</td> <td colspan="3" style="vertical-align: top;">Kindly find attached the following document(s) / Veuillez trouver en annexe le(s) document(s) suivant(s):</td> </tr> </table>		<input checked="" type="checkbox"/>	TC1	received by / reçu par:	ALO: received by / reçu par	<input type="checkbox"/>	Judge E. Møse, President	<i>[Signature]</i> 5.7.04	<input type="checkbox"/>	<input type="checkbox"/>	Judge J. R. Reddy	<input type="checkbox"/>	<input type="checkbox"/>	Judge S. A. Egorov	<input type="checkbox"/>	<input type="checkbox"/>	Judge K. R. Khan (Ndindabahizi)	<input type="checkbox"/>	<input type="checkbox"/>	Judge S. B. Bossa (Ndindabahizi)	<input type="checkbox"/>	<input type="checkbox"/>	J. Neuwirth, SLO	<input type="checkbox"/>	<input type="checkbox"/>	E. Nahamya, Co-ordinator	<input type="checkbox"/>	<input type="checkbox"/>	TC2			<input type="checkbox"/>	Judge W. H. Sekule	<input type="checkbox"/>	<input type="checkbox"/>	Judge A. Z. Gunawardana	<input type="checkbox"/>	<input type="checkbox"/>	Judge A. Ramaroson	<input type="checkbox"/>	<input type="checkbox"/>	Judge K. R. Khan (Bizimungu et al.)	<input type="checkbox"/>	<input type="checkbox"/>	Judge L. G. Muthoga (Bizimungu et al.)	<input type="checkbox"/>	<input type="checkbox"/>	Judge S. B. Bossa (Nyiramashuhuku et al.)	<input type="checkbox"/>	<input type="checkbox"/>	C. Eboe-Osuji, SLO	<input type="checkbox"/>	<input type="checkbox"/>	A. Leroy, Co-ordinator	<input type="checkbox"/>	<input type="checkbox"/>	TC3			<input type="checkbox"/>	Judge L. G. Williams	<input type="checkbox"/>	<input type="checkbox"/>	Judge Y. Ostrovsky	<input type="checkbox"/>	<input type="checkbox"/>	Judge P. Dolenc	<input type="checkbox"/>	<input type="checkbox"/>	Judge A. Vaz	<input type="checkbox"/>	<input type="checkbox"/>	Judge J. R. Reddy (Gacumbitsi)	<input type="checkbox"/>	<input type="checkbox"/>	Judge S. 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Talon (Appeals)			Cc:	<input type="checkbox"/> A. Dieng <input type="checkbox"/> A. Miller, OLA, NY <input type="checkbox"/> L. G. Munlo <input type="checkbox"/> M. Niang <input type="checkbox"/> S. van Driessche <input type="checkbox"/> WVSS-D <input type="checkbox"/> WVSS-P <input type="checkbox"/> E. O'Donnell <input type="checkbox"/> DCMS <input type="checkbox"/> P. Enow			Subject Objet:	Kindly find attached the following document(s) / Veuillez trouver en annexe le(s) document(s) suivant(s):		
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Cc:	<input type="checkbox"/> A. Dieng <input type="checkbox"/> A. Miller, OLA, NY <input type="checkbox"/> L. G. Munlo <input type="checkbox"/> M. Niang <input type="checkbox"/> S. van Driessche <input type="checkbox"/> WVSS-D <input type="checkbox"/> WVSS-P <input type="checkbox"/> E. O'Donnell <input type="checkbox"/> DCMS <input type="checkbox"/> P. Enow																																																																																																																																																																													
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**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6015, Arusha, Tanzanie
Tel: 255 57 504207-11 504367-72 or 1 212 963 2850 Fax: 255 57 504000/504373 or 1 212 963 2848/49

**PROOF OF SERVICE TO DETAINEES
PREUVE DE NOTIFICATION D'ACTES AUX DETENUS**

Upon signature of the detainee, please return this sheet to the originator as proof of service.
Formulaire à être renvoyé à l'expéditeur dûment signé par le détenu.

Date: 04/07/2004		Case Name / Affaire: The Prosecutor vs. - Théoneste BAGOSORA - Gratien KABILIGI - Anatole NSENGIYUMVA - Aloys NTABAKUZE		
		Case No / Affaire No: ICTR-98-41-T		
To: A:	Name of detainee / nom du détenu BAGOSORA	TO BE FILLED IN BY THE DETAINEE A COMPLETER PAR LE DETENU I confirm reception of the document(s) listed below. Signature Date, Time / Heure <i>Je confirme réception du/des documents mentionné(s) ci-dessous.</i>		
Via:	Security Officer Commanding Officer, UNDF	Print name / nom S. Guindo	Signature 	Date, Time / Heure 5/7/04
From: De:	<input type="checkbox"/> J.-P. Fomété (Chief, CMS) <input checked="" type="checkbox"/> N. Diallo (TC1) <input type="checkbox"/> R. Kouambo (TC2) <input type="checkbox"/> C. Hometowu (TC3) <input type="checkbox"/> F. A. Talon (Appeals) <input type="checkbox"/> Other / Autre			
Subject Objet:	Kindly find attached the following documents / Veuillez trouver en annexe les documents suivants.			

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DEFENCE REQUEST FOR ADDITIONAL DISCLOSURE OF
INVESTIGATIVE REPORTS AND STATEMENTS & CONCERNING
THE CROSS-EXAMINATION OF WITNESS DCH**

02-07-2004

14

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
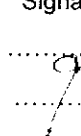
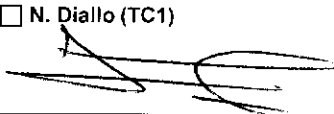


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		Case No / Affaire No: ICTR-98-41-T		
To: A:	Name of detainee / nom du détenu NSENGIYUMVA	TO BE FILLED IN BY THE DETAINEE A COMPLETER PAR LE DETENU		
		I confirm reception of the document(s) listed below. <i>Je confirme réception du/des documents mentionné(s) ci-dessous.</i>	Signature 	Date, Time / Heure 06-07-04
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From: De:	<input type="checkbox"/> J.-P. Fomété (Chief, CMS) <input type="checkbox"/> N. Diallo (TC1) <input type="checkbox"/> R. Kouambo (TC2) <input type="checkbox"/> C. Hometown (TC3) <input type="checkbox"/> F. A. Talon (Appeals)  <input type="checkbox"/> Other / Autre			
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		Case No / Affaire No: ICTR-98-41-T		
To: A:	Name of detainee / nom du détenu KABILIGI	TO BE FILLED IN BY THE DETAINEE A COMPLETER PAR LE DETENU		
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To: A:	Name of detainee / nom du détenu NTABAKUZE	TO BE FILLED IN BY THE DETAINEE A COMPLETER PAR LE DETENU		
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