

ICTR-2005-86-T  
27-10-2009  
(2612-2455)

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INTERNATIONAL CRIMINAL TRIBUNAL  
FOR RWANDA

Case No. ICTR-2005-86-T

**BEFORE TRIAL CHAMBER III**

Before: Judge Vagn Joensen, Presiding  
Judge Bakhtiyar Tuzmukhamedov  
Judge Gberdao Gustave Kam

Registrar: Adama Dieng

Date filed: 27 October 2009

**PROSECUTOR**

v.

**Michel BAGARAGAZA**

2009 OCT 27 P 5:44  
JUDICIAL RECORDS/ARCHIVES  
RECEIVED

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**PUBLIC**

**DEFENCE MOTION FOR ADMISSION OF WRITTEN EVIDENCE  
WITH CONFIDENTIAL ANNEX**

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**Office of the Prosecutor**

**Wallace Kapaya  
Patrick Gabaake  
Iskander Ismael**

**Defence for Michel Bagaragaza**

**Geert-Jan Alexander Knoops  
Wayne Jordash  
Anne-Marie Verwiel**

1. On 17<sup>th</sup> September 2009 during a public hearing the honourable Trial Chamber accepted the guilty plea of Michel Bagaragaza. On that same day the Trial Chamber also decided that the sentencing hearing would take place in the week commencing on the 2<sup>nd</sup> of November 2009. On 20<sup>th</sup> October 2009 the Trial Chamber issued a scheduling order, establishing the exact dates for the hearing of evidence and submissions by the parties as well as the oral sentencing judgment, and setting a deadline for further filings in relation to the sentencing hearing.<sup>1</sup> The Trial Chamber ordered to the Defence “to file (...) any motion on admission of evidence in written form in lieu of oral testimony no later than 27 October 2009”.<sup>2</sup>
2. The Defence for Michel Bagaragaza herewith files its motion for admission of written evidence in lieu of oral testimony pursuant to Rule 92bis and/or Rule 89(C) of the Rules of Procedure and Evidence (RPE). Rule 89(C) RPE allows for the admission of any relevant evidence which has probative value. Rule 92bis RPE governs the admission of written witness statements in lieu of oral testimony which go to proof of a matter other than the acts and conduct of the accused as charged in the indictment. Factors to be taken into account in favour of admitting evidence in the form of a written statement Rule 92bis include; the circumstances in which the evidence in question relates to issues of the character of the accused or relates to factors to be taken into account in determining sentence (See Rule 92bis (A)(i) under (e) and (f)).<sup>3</sup>
3. The Defence submits that the evidence attached in the confidential annex is relevant to the factors to be taken into account in determining sentence. In particular the witness statements and the proposed exhibits contain evidence which relate to the mitigation of the sentence and includes evidence going to the character of the Accused (including

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<sup>1</sup> *Prosecutor v. Michel Bagaragaza*, ICTR-2005-86-T, Scheduling Order, 20 October 2009.

<sup>2</sup> *Prosecutor v. Michel Bagaragaza*, ICTR-2005-86-T, Scheduling Order, 20 October 2009.

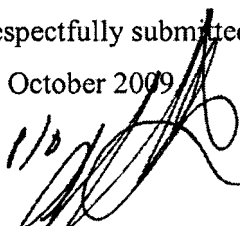
<sup>3</sup> On the admission of written statements see, amongst others, *Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, ICTR-98-41-T, Decision on Prosecutor’s Motion for the Admission of Written Statement Under Rule 92 bis, 9 March 2004; *Prosecutor v. Joseph Nzirorera*, ICTR-98-44-T, Decision on Joseph Nzirorera’s Motions for Admission of Written Statements and Witness Testimony, 15 July 2009.

non-discrimination against Tutsis prior to the genocide), the cooperation of the Accused with the Prosecution and the consequences thereof.

4. The witness statements do not go to proof of the acts and conduct of the Accused as they relate to the indictment.<sup>4</sup> The Defence has not been able to obtain the declaration as set out in Rule 92bis (B) RPE. Nonetheless it is submitted the statements should be accepted. The Prosecution does not dispute the facts contained within the written statements<sup>5</sup> and accepts that the contents therein do not go to the acts and conduct of the Accused.
5. The Defence respectfully requests the honourable Trial Chamber to tender the written statements and other documents attached to this motion as under seal evidence. A Defence Motion for Protective Measures has been filed.<sup>6</sup>

Respectfully submitted,

27 October 2009



Geert-Jan Alexander Knoops

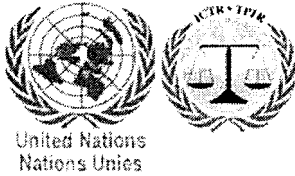
Wayne Jordash

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<sup>4</sup> See *Prosecutor v. Michel Bagaragaza*, ICTR-2005-86-T, Amended Indictment, 17 September 2009.

<sup>5</sup> The Defence has sent the Prosecution all written statements attached to this motion in advance to obtain the consent of the Prosecution, except for the statement by witness D6 which we have only received yesterday.

<sup>6</sup> *Prosecutor v. Michel Bagaragaza*, ICTR-2005-86-T, Defence Motion for Protective Measures, 27 October 2009.



## 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 type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Trial Chamber III A. N'Gum
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Appeals Chamber / Arusha Chamber II F. A. Talon		<input type="checkbox"/> Appeals Chamber / The Hague K. K. A. Afandé R. Muzigo-Morrison
<b>From:</b>	<input type="checkbox"/> Chamber (names)	<input checked="" type="checkbox"/> Defence for Michel Bagaragaza (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
<b>Case Name:</b>	The Prosecutor vs. Michel Bagaragaza		<b>Case Number:</b> ICTR-2005-86-T	
<b>Dates:</b>	Transmitted: 27 October 2009		Document's date: 27 October 2009	
<b>No. of Pages:</b>	3	<b>Original Language:</b> <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda		
<b>Title of Document:</b>	Public Defence Motion for Admision of Written Evidence with Confidential Annex			
<b>Classification Level:</b>		<b>TRIM Document Type:</b>		
<input type="checkbox"/> Ex Parte		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Confidential		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Judgement	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
		<input type="checkbox"/> Submission from non-parties	<input type="checkbox"/> Submission from parties	
		<input type="checkbox"/> Accused particulars		

### 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 checked="" 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

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### III - TRANSLATION PRIORITISATION (For Official use ONLY)

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