



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 14 February 2008

The PROSECUTOR

v.

**Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU**

Case No. ICTR-00-56-T

**DECISION ON BIZIMUNGU'S MOTION TO ADMIT AS EXHIBITS
CERTAIN DOCUMENTS MARKED FOR IDENTIFICATION
DURING THE TESTIMONY OF ALISON DES FORGES**

Office of the Prosecutor:

Mr Alphonse Van
Mr Moussa Sefon
Mr Segun Jegede
Mr Lloyd Strickland
Mr Abubacarr Tambaou
Ms Felistas Mushi
Ms Faria Rekkas
Ms Marlize Keefer

Counsel for the Defence:

Mr Gilles St-Laurent and Mr Ronnie MacDonald for **Augustin Bizimungu**
Mr Christopher Black and Mr Vincent Lurquin for **Augustin Ndindiliyimana**
Mr Charles Taku and Ms Beth Lyons for **François-Xavier Nzuwonemeye**
Mr Fabien Segatwa and Mr Seydou Doumbia for **Innocent Sagahutu**

INTRODUCTION

1. The trial commenced on 20 September 2004. During the Prosecution case, Alison Des Forges testified before the Chamber as an expert witness.¹ On 30 July 2007, the Defence for Bizimungu filed a motion requesting the admission of 27 documents as exhibits, which were previously marked for identification (ID documents) during the testimony of Alison Des Forges.² The Prosecution filed its response on 2 August 2007.³ The Defence for Bizimungu filed its reply on 7 August 2007.⁴

DELIBERATIONS

2. As a preliminary issue, the Chamber notes that neither Party disputes that the document bearing ID number 120 was already admitted as Defence exhibit D.142.⁵ The Chamber will, therefore, focus its discussion on the remaining ID documents.

3. The Defence requests that two categories of documents admitted as ID documents during the testimony of Alison Des Forges be converted into Defence exhibits, namely, documents from the American archives and other documents including correspondences, press communiqués from Rwandan authorities or political parties and documents in the public domain.⁶ The Defence submits that the documents in question provide a context to the testimony and are important to assess the credibility of the witness.⁷ The Defence further submits that the majority of the documents possess *prima facie* proof of their authenticity since they were commented on by Witness Alison Des Forges.⁸ With respect to the documents from the American archives, the Defence additionally submits that they are reports prepared by American public authorities on the situation that prevailed in Rwanda and argues that these documents should be treated in a manner similar to UN documents.⁹

4. Rule 89(C) of the Rules of Procedure and Evidence grants a Trial Chamber broad discretion in assessing the admissibility of evidence. At the admissibility stage, relevance and probative value are threshold standards.¹⁰ Further, at this stage, the beginning of the proof that evidence is reliable, namely, that sufficient indicia of reliability have been established is required for evidence to be admissible.¹¹ It is for the party seeking admission of a document

¹ Witness Alison Des Forges testified on the following days: 18, 19, 20, 21, 22, 25, 26, 27, 28 September 2006 and 5, 6, 9, 10, 11, 12, 13, 16 October 2006.

² Requête de la Défense d'Augustin Bizimungu afin d'admettre les pièces admises sous la côte ID sous une côte D (Pièces produites lors du témoignage de l'expert DesForges), filed on 30 July 2007. (Defence Motion).

³ Prosecutor's Response to "Requête de la Défense d'Augustin Bizimungu afin d'admettre les pièces admises sous la côte ID sous une côte D (Pièces produites lors du témoignage de l'expert DesForges)", filed on 2 August 2007 (Prosecution Response).

⁴ Réplique de la Défense d'Augustin à la procédure intitulée Prosecutor's Response to "Requête de la Défense d'Augustin Bizimungu afin d'admettre les pièces admises sous la côte ID sous une côte D (Pièces produites lors du témoignage de l'expert DesForges)", filed on 7 August 2007 (Defence Reply).

⁵ Defence Motion, para. 18; Prosecution Response, para. 1. See T. 13 September 2006, p. 3.

⁶ Defence Motion, para. 10. Documents belonging to the American archives include documents marked ID-105, ID-106, ID-107, ID-108, ID-111, ID-113, ID-114, ID-115, ID-119, ID-122, ID-123, ID-126, ID-129, ID-130 and ID-131. The other documents include ID-109, ID-110, ID-112, ID-116, ID-117, ID-118, ID-121, ID-124, ID-125, ID-127, ID-128.

⁷ Defence Motion, para. 24; Defence Reply, para. 6.

⁸ Defence Motion, paras. 15, 22, 23.

⁹ Defence Motion, paras. 13, 14; Defence Reply, para. 9.

¹⁰ *Prosecutor v. Théoneste Bagosora*, Case No. ICTR-98-41-T, Decision on Admission of Tab 19 of Binder produced in connection with appearance of Witness Maxwell Nkole (TC), 13 September 2004 (*Bagosora et al.* Decision), para. 7.

¹¹ *Pauline Nyiramasuhuko v. The Prosecutor*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 7.

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to establish that it has sufficient indicia of reliability.¹² The moving party must provide some indication of the document's authenticity such as the nature of the document, its author(s), the provenance of the document and its chain of custody from the time of seizure to its production in court.¹³

5. The Chamber finds that the Defence, as the moving party, has not established that each of the documents marked for identification is sufficiently relevant and reliable to be admitted into evidence. Instead, the Defence has simply made very general references that some of the documents were referred to by Alison Des Forges during her testimony, which do not suffice to discharge the Defence's burden in this case. The Chamber cannot permit a wholesale admission of documents based on generalised arguments. Further, regarding the first category of documents, the Chamber does not consider the mere element of documents belonging to certain American archives to be a sufficient indication of their reliability for their admission into evidence. The Chamber, therefore, denies the Defence request at this stage.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence Motion.

Arusha, 14 February 2008, done in English.		
Asoka de Silva	Taghrid Hikmet	Seon Ki Park
Presiding Judge	Judge	Judge
	[Seal of the Tribunal]	

¹² *Alfred Musema v. The Prosecutor*, Case No. ICTR-96-13-A, Judgement (AC), 16 November 2001, para. 47; *Bagosora et al.* Decision, para. 8.

¹³ *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Decision on the Prosecutor's Motion to Admit Documents tendered during the cross-examination of Defence Witness Augustin Ndindiliyimana (TC), 28 February 2006, para. 13; *Bagosora et al.* Decision, para. 8.

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