



ICTR-01-62-I  
9-10-2002  
(1882-1879)

1882  
MONT

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER II**

Before: Judge Winston C. Matanzima Maqutu, Presiding  
Judge William H. Sekule  
Judge Arlette Ramaroson

Registrar: Adama Dieng

Date: 8 October 2002

JUDICIAL RECORDS AND DOCUMENTS  
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ICTR

**The PROSECUTOR**

v.

**Samuel MUSABYIMANA**

**Case No. ICTR-2001-62-T**

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**DECISION ON MUSABYIMANA'S MOTION TO EXCLUDE WITNESS  
STATEMENTS DUE TO UNDUE DELAY AND LACK OF PROBATIVE VALUE**

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**The Office of the Prosecutor:**

Silvana Arbia  
Jonathan Moses  
Faria Rekkas

**Defence Counsel for the Accused:**

Gerardus Knoops

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal")**

**SITTING** as Trial Chamber II, composed of Judges Winston C. Matanzima Maqutu, Presiding, William H. Sekule and Arlette Ramaroson (the "Chamber");

**BEING SEIZED** of:

- (i) the "Motion to Exclude Witness Statements Due to Undue Delay and Lack of Probative Value (Article 20(4) jo. Rule 89 (C))", filed 18 July 2002 (the "Motion");
- (ii) the "Response by the Prosecutor to the Motion to Exclude Witness Statements Due to Undue Delay and Lack of Probative Value" filed on 30 July 2002 (the "Prosecutor's Response");
- (iii) the "Reply to the Response by the Prosecutor to the Motion to Exclude Witness Statements Due to Undue Delay and Lack of Probative Value (Article 20(4) jo. Rule 89 (C))", filed on 12 August 2002 (the "Defence Reply");
- (iv) the "Additional Reply to the Response by the Prosecutor to the Motion to Exclude Witness Statements Due to Undue Delay and Lack of Probative Value (Article 20(4) jo. Rule 89 (C))", filed on 9 September 2002 (the "Additional Reply");

**CONSIDERING** the Statute of the Tribunal (the "Statute"), specifically Article 20(4) and the Rules of Procedure and Evidence (the "Rules"), in particular Rule 89 (C) of the Rules;

**NOW DECIDES** the Motion Pursuant to Rule 73(A) of the Rules on the basis of the written briefs only, as filed by the Parties.

**SUBMISSIONS OF THE PARTIES**

*Defence Submissions*

1. The Defence requests, pursuant to Rule 89(C) of the Rules and Article 20(4) of the Statute that the Chamber orders the exclusion of the Prosecutor's witness statements.
2. Essentially, the Defence submits that nine out of the 21 redacted witness statements, disclosed to it following the confirmation of the Indictment do not mention the Accused and bear no specific factual evidence with regard to the Indictment.
3. The Defence further submits that three out of the 21 redacted witness statements, were obtained more than four years ago. The Defence argues that if the witness statements are used at trial, the Accused right to a fair trial and one without undue delay will be infringed upon because of the extreme time interval between when the events occurred and when the said statements of the witnesses were taken.
4. In making their submissions, the Defence calls upon the provisions of Rule 89 (D) of the International Criminal Tribunal for the Former Yugoslavia (the "ICTY"), and the resultant jurisprudence as well as the jurisprudence of the European Court of Human Rights (the "ECHR") and that of the Supreme Court of the Netherlands.



5. The Defence thus requests the Tribunal to relieve it from an infringement of its rights by excluding the statements of Prosecution witnesses; CSC, CSD, CSA, CAM, CSE, CSB, CSF, CSG and NNZ as evidence in the case against the Accused.

*Prosecutor's Submissions*

6. In objection to the Motion, the Prosecution submits that the Motion is premature, pointing out that she has not made a final decision as to which witnesses will testify at trial. The Prosecution submits that all the witnesses she intends to rely upon will testify *viva voce* subject to Rule 92 *bis* of the Rules so that the statements made by the witnesses will not be produced as evidence.

7. Furthermore, the Prosecution submits that since the jurisdiction of the Tribunal is to try persons accused of crimes that were committed during the period between 1 January and 31 December 1994, all the witnesses will be testifying in respect of matters that took place more than seven years ago. The Prosecution argues that nowhere in the Motion does the Defence support her argument that witnesses should be prevented from giving testimony in respect to matters, which took place at this time.

8. The Prosecution thus prays that the Motion be dismissed.

*The Reply by the Defence*

9. The Defence argues that the Motion is not premature given the fact that it is obliged, even at this stage of the proceedings, to challenge the Prosecution with regard to the possibility that the above-mentioned statements as obtained and filed, cannot sustain a *prima facie* case according to principles of fair trial.

10. The Defence although agreeing with the Prosecution that the jurisdiction of the Tribunal is focused on the period from 1 January to 31 December 1994, argues that such an argument bears no judicial relevance when the judicial authorities fail to comply with the notion and right to prompt adjudication as envisioned by Article 6(1) of the ECHR.

**HAVING DELIBERATED**

11. In the Motion the Defence seeks the exclusion of some of the Prosecutor's witness statements because they do not mention the Accused. Similarly, the Defence seeks the exclusion of other statements because the extreme time lapse between when the statements were taken and the events of 1994 infringes upon the Accused right to a trial without undue delay.

12. The Chamber notes that the statements sought to be excluded are the statements produced in support of the Indictment during the confirmation procedure. During that procedure, Judge Gunawardana, the confirming judge, reviewed the evidence in support of Indictment and on the basis of said evidence found in the Decision on the "Confirmation of the Indictment and Order for Non-Disclosure," of 13 March 2001 that a *prima facie* case existed with respect to the charges against the Accused. This Decision to confirm the Indictment cannot be appealed or reviewed.<sup>1</sup>

<sup>1</sup> See "Decision on Samuel Musabyimana's Motion to Exclude Anonymous Prosecutorial Witness Statements and to Review the Decision on Confirmation of the Indictment," of 9 September 2002 in this case



13. Furthermore, the Chamber, recalls the provisions of Rule 90 of the Rules which state: "Witnesses shall, in principle, be heard directly by the Chambers unless a Chamber has ordered that the witness be heard by means of a deposition as provided for in Rule 71." The Chamber reminds the Parties that, when the oral testimony of a witness is adduced at trial it is then admitted into evidence. The statements of witnesses are not evidence *per se*, rather, they may be used by the Parties, particularly during cross-examination.

14. The Chamber further notes that it is being asked through statements given by witnesses to determine the involvement of the Accused in the crimes he is charged with. It is the Chamber's opinion that such an assessment is premature because such an evaluation can only be made at trial on the basis of the testimony of the witnesses heard.


15. The Defence further argues that the Accused right to a trial without undue delay has been infringed upon because of the extreme time lapse between the time when the statements were taken and the events of 1994. The Chamber does not agree with this contention because the veracity, reliability and recollection of events by a witness can be tested during cross-examination at trial.


16. Accordingly, the Chamber finds that the Defence has not provided sufficient grounds to warrant the exclusion of the statements of the witnesses. The Chamber therefore, dismisses the Motion in its entirety.


**FOR THE ABOVE REASONS, THE TRIBUNAL:**

**DISMISSES** the Motion in its entirety.

Arusha, 8 October 2002

  
Winston C. Matanzima Maqutu  
Presiding Judge

  
William H. Sekule  
Judge

  
Arlette Ramaroson  
Judge

[Seal of the Tribunal]

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<b>Case Name:</b>	The Prosecutor vs. SAMUEL MUSABYIMANA			<b>Case Number:</b> ICTR-2001-62-I	
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The PROSECUTOR

v.

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Case No. ICTR-2001-62-T

**DECISION ON MUSABYIMANA'S MOTION TO EXCLUDE WITNESS  
STATEMENTS DUE TO UNDUE DELAY AND LACK OF PROBATIVE VALUE**

The Office of the Prosecutor:



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

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	<b>Case No / Affaire Nr.:</b> ICTR-01-62-I		
<b>To:</b> <b>A:</b>	<input type="checkbox"/> TC1	received by / reçu par:	<b>ALO:</b> received by / reçu par
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<input type="checkbox"/> Trial Attorney in charge of case: SILVANA ARBIA		received by	<i>9/10/02</i>
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