

**ICTR-98-41-T**  
 International Criminal Tribunal for Rwanda  
 Tribunal pénal international pour le Rwanda  
**03-11-2003**  
**(17016 - 17014)**

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*(van)*

**-0786**

**TRIAL CHAMBER I**

**Before:** Judge Erik Møse  
 Judge Jai Ram Reddy  
 Judge Sergei Alekseevich Egorov

**Registrar:** Adama Dieng

**Date:** 3 November 2003

**THE PROSECUTOR**

v.

**Théoneste BAGOSORA**

**Gratien KABILIGI**

**Aloys NTABAKUZE**

**Anatole NSENGIYUMVA**

*Case No. : ICTR-98-41-T*

2003 NOV -3 A 9:15  
 JUDGE ERIC MOSE  
 JUDGE JAI RAM REDDY  
 JUDGE SERGEI ALEKSEEVICH EGOROV  
*(Signature)*

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**CERTIFICATION OF APPEAL ON ADMISSION OF TESTIMONY OF WITNESS  
 DP CONCERNING PRE-1994 EVENTS**

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**The Office of the Prosecutor**

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 Kennedy Ogetto  
 Gershom Otachi Bw'Omanwa

*(Signature)*

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (“the Tribunal”),

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

**BEING SEIZED OF** the Prosecution “Request for Certification...Regarding the Exclusion of Witness DP’s Evidence on Events at Mimuri and Cyonyo in October 1990”, and its “Request for Certification...Regarding the Exclusion of Witness DP’s Evidence on the Attempted Assassination of Prime Minister Dismas Nsengiyaremye in October 1992”, both filed on 9 October 2003;

**CONSIDERING** the Responses to each motion, filed by the Defence for Ntabakuze on 16 October 2003; the Response to both motions filed by the Defence for Bagosora on 20 October 2003; and the Prosecution Reply to these Responses, filed on 23 October 2003;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. The Prosecution seeks certification under Rule 73 (B) of the Rules for an appeal from two oral decisions ruling inadmissible certain testimony of Witness DP. The first decision, by a majority of the Bench, precluded testimony of the role allegedly played by the Accused Ntabakuze in an attempt to kill the Prime Minister of Rwanda in October 1992.<sup>1</sup> The second decision declared inadmissible a narrative of the acts and orders of the Accused Ntabakuze at a place known as Cyonyo farms, in Mimuri, in October 1990.<sup>2</sup>

2. The background for these oral decisions is the Chamber’s *Decision on Admissibility of Proposed Testimony of Witness DBY*, filed on 18 September 2003, which set out in some detail the test for admissibility of testimony of events occurring prior to 1994.<sup>3</sup> Amongst the events ruled inadmissible in that Decision were alleged orders and actions by the Accused Ntabakuze in 1990 at Cyonyo farms in October 1990. The Chamber also ruled admissible other elements of the witness’s testimony concerning pre-1994 events. On 2 October 2003, the Trial Chamber certified an appeal from that Decision, which is pending.<sup>4</sup>

**DELIBERATIONS**

3. Having considered the arguments of the parties, the Chamber is of the view that certification should be granted in respect of Witness DP’s anticipated testimony concerning the alleged assassination attempt in 1992, but not in respect of the events in 1990. The latter is substantially identical to testimony previously ruled inadmissible and which is now before the Appeals Chamber. As stated orally, the Chamber will follow its own Decision, subject to the need for reconsideration in light of any contrary ruling by the Appeals Chamber.<sup>5</sup> There is no reason to burden the Appeals Chamber with an identical application on the very incident which is currently pending before that Chamber.

<sup>1</sup> T. 2 October 2003, pp. 32-36.

<sup>2</sup> *Id.* pp. 48, 53.

<sup>3</sup> Decision of 18 September 2003.

<sup>4</sup> *Bagosora et al.*, Decision on Prosecution Request for Certification of Appeal on Admission of Evidence of Testimony of Witness DBY, 2 October 2003.

<sup>5</sup> T. 2 October 2003, p. 53.

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4. The account of the assassination attempt, on the other hand, is arguably distinct from the matters addressed by the Chamber in its previous Decision, and offers an additional opportunity to apply and clarify the legal tests which are now before the Appeals Chamber. The more clearly defined the applicable law, the more smoothly and easily such questions can be resolved as they arise in the future. There is little doubt that the issue of admissibility of evidence of pre-1994 events will be raised again during the remainder of the Prosecution case.<sup>6</sup> The admissibility of pre-1994 events is a question which significantly affects the fair and expeditious conduct of proceedings, as required by Rule 73(B). It has a bearing on the nature of the case which the Defence must confront; the range of evidence which the Chamber should hear; and the scope of circumstances relevant to the crimes charged. Further, the Chamber's authority to ensure focused proceedings in the context of criminal charges of broad scope will be materially advanced by an immediate ruling on this additional pre-1994 event.

**FOR THE ABOVE REASONS, THE CHAMBER**

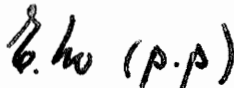
**GRANTS** certification to the Prosecution to appeal the Chamber's oral decision of 2 October 2003 on the admissibility of Witness DP's testimony concerning an alleged attempt to kill the Rwandan Prime Minister in 1992;

**DENIES** certification to appeal the Chamber's oral decision of 2 October 2003 on the admissibility of Witness DP's testimony of events at Cyonyo farms and Mimuri in 1990.

Arusha, 3 November 2003



Erik Møse  
Presiding Judge



Jai Ram Reddy  
Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]



<sup>6</sup> The Prosecution claims that fifteen of its upcoming witnesses have evidence of a similar nature. The issue was the cause of frequent objections during the testimony of the last three Prosecution witnesses in the trial session ending 3 October 2003. *Bagosora et al.*, Request for Certification...Regarding the Exclusion of Witness DP's Evidence on the Attempted Assassination of Prime Minister Dismas Nsengiyaremye in October 1992, 9 October 2003, paras. 11-12.