



TRIAL CHAMBER I

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

**Registrar:** Adama Dieng

**Date:** 21 May 2004

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**THE PROSECUTOR**  
v.  
**Théoneste BAGOSORA**  
**Gratien KABILIGI**  
**Aloys NTABAKUZE**  
**Anatole NSENGIYUMVA**  
  
*Case No. : ICTR-98-41-T*

**DECISION ON MOTION TO PRECLUDE TESTIMONY OF WITNESS XXN**

**The Office of the Prosecutor**

Barbara Mulvaney  
Drew White  
Segun Jegede  
Fatou Bensouda  
Christine Graham  
Rashid Rashid

**Counsel for the Defence**

Raphaël Constant  
Paul Skolnik  
Jean Yaovi Degli  
Peter Erlinder  
André Tremblay  
Kennedy Ogetto  
Gershom Otachi Bw'Omanwa

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

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

**BEING SEIZED** of the “Motion for the Exclusion of the Anticipated Testimony of Witness XXN”, filed by the Defence for Bagosora on 7 May 2004;

**CONSIDERING** the Prosecution Response, filed on 20 May 2004;

**HEREBY DECIDES** the motion.

1. The Defence for Bagosora claims that the anticipated testimony of Witness XXN, as disclosed in his written statement XXN-1 and in a will-say statement dated 19 April 2004, is not relevant to any allegation in the Indictment and, therefore, that he should be precluded from testifying before the Chamber. In the alternative, it requests exclusion of any testimony based on the will-say statement. It claims that the paragraphs mentioned in the Prosecution’s pre-trial brief as relevant to the witness’s testimony are vague and violate the Accused’s right to be fully informed of the case against him. The Defence considers it clear that the Prosecution intends to lead this inadmissible evidence through this witness and that it would be a waste of Tribunal resources to bring him to Arusha for inadmissible testimony.

2. The Chamber has reviewed the statement XXN-1 and does not consider it entirely or manifestly irrelevant to matters in the Indictment of the Accused so as to deprive it of probative value. Further, the statement concerns not only the Accused Bagosora, but also mentions the names of all three other Accused. In the Chamber’s view, at least some of the evidence described in the statement may have probative value and appears, at this stage, to be properly within the scope of Rule 89(C). Needless to say, this does not foreclose the Defence from presenting arguments at a later stage that the evidence should be disregarded because of vagueness in the paragraphs of the Indictment to which the evidence purportedly relates.

3. In respect of the will-say statement, the Chamber recalls its recent decision concerning Witness XXY, which stated:

The Chamber recalls that a party may choose not to lead evidence on all matters that are mentioned in a witness statement. Therefore, the Defence motion is premature until such time that the Prosecutor attempts to lead evidence of the post-1994 events mentioned in XXY-2 and XXY-3 or to tender these statements as exhibits against the Accused.<sup>1</sup>

The same reasoning applies to the present motion.

<sup>1</sup> *Bagosora et al.*, Decision on Defence Motion to Preclude Portions of the Anticipated Testimony of Prosecution Witness XXY (TC), 30 April 2004, para. 3.

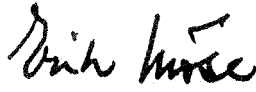
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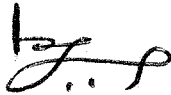
**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the motion.

Arusha, 21 May 2004



Erik Mose  
Presiding Judge



Jai Ram Reddy  
Judge



Sergei Alekseevich Egorov  
Judge

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