



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

Before:

Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 15 October 2004

THE PROSECUTOR

v.

**Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA**

Case No. : ICTR-98-41-T

**DECISION ON THE DEFENSE MOTION TO UNSEAL THE IDENTITY OF
WITNESS XAM**

The Office of the Prosecutor
Barbara Mulvaney
Drew White
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

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 “Bagosora and Ntabakuze Confidential Motion to Have the Trial Chamber Unseal the Identity of Prosecution Witness XAM”, filed on 4 October 2004;

CONSIDERING the Prosecution’s response, filed on 5 October 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. On 29 November 2001, the Chamber issued a witness protection order for all Prosecution witnesses, including Witness XAM.^[1] The witness testified on 29 September 2004. During cross-examination, the Defence raised questions concerning the witness’s need for protection, and he expressed a continued desire to remain protected.^[2]

SUBMISSIONS

2. The Defence motion seeks to remove the witness protection measures previously granted to Witness XAM. The witness should have testified openly given his position and the fact that no evidence suggested that he had a subjective or objective fear of testifying openly without a pseudonym. The Defence also argues that protection measures should cease when they are no longer applicable. Consequently, the Chamber should have questioned the witness *a priori* to determine whether there was any basis for allowing him to testify with a pseudonym or in closed session.

3. The Prosecution argues that the Defence’s motion lacks foundation in either the Rules or Tribunal jurisprudence.

DELIBERATIONS

4. Unsealing the identity of Witness XAM would require the Chamber to review and reverse its initial grant of protection. Only exceptional circumstances would justify such a review, for instance, a finding that the grant of protection was an error in law or an abuse of discretion, or that new circumstances called into question the basis for the initial decision.^[3] The Defence cites no exceptional circumstances that warrant reversing of the Chamber’s initial grant of protection.

5. Witness XAM’s identity was fully disclosed to the Defence well before his testimony. He gave almost the entirety of his testimony in an open session. Based on the existing protection order, however, Witness XAM was allowed to testify with a

pseudonym and to provide identifying information in a brief closed session to protect his identity from public disclosure. It was clear that he wanted to testify under pseudonym. The Defence has not alleged, nor can the Chamber identify, any prejudice flowing from the use of these minimal protective measures during Witness XAM's testimony.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the joint Defence motion.

Arusha, 15 October 2004

Erik Møse	Jai Ram Reddy	Sergei Alekseevich Egorov
Presiding Judge	Judge	Judge

[Seal of the Tribunal]

[\[1\]](#) *Bagosora et al.*, Decision on the Prosecution Motion for the Harmonisation and Modification of Protective Measures for Witnesses (TC), 29 November 2001.

[\[2\]](#) T. 29 September 2004 pp. 8-9.

[\[3\]](#) *Bagosora et al.*, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73 *bis* (e)" (TC), 15 June (2004), paras. 7-9, citing *Bagosora et al.*, Decision on Reconsideration of order to Reduce Witness List and on Motion for Contempt for Violation of that Order (TC), 1 March 2004, para. 11.