



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CHAMBER 1 - CHAMBRE 1

Before:

Judge Yakov A. Ostrovsky, Presiding Judge
Judge Lennart Aspegren
Judge Navanethem Pillay

Registrar:

Mr. Frederik Harhoff
Ms Prisca Nyambe

Decision of: 27 September 1996

The Prosecutor

vs

Jean-Paul AKAYESU

Case No. ICTR-96-4-T

**DECISION ON THE PRELIMINARY MOTION SUBMITTED BY THE
DEFENCE
ON THE FORM OF THE INDICTMENT AND EXCLUSION OF EVIDENCE**

The Office of the Prosecutor:

Judge Honoré Rakotomanana
Mr. Yacob Haile-Mariam
Mr. Mohamed Chande Othman
Mr. Pierre-Richard Prosper

Counsel for the Accused:

Mr. Johan Scheers

Case No. ICTR-96-4-T 2

REASONS FOR DECISION

On May 27 1996, the Defense filed a motion under Rule 73 of the Rules of Procedure and Evidence ("the Rules"), in which a number of complaints and objections were raised.

During the oral presentation of his motion, however, the Counsel for the Defense departed significantly from his written submission and limited himself to raising a number of complaints regarding the conditions of detention of the suspect in custody in Zambia and the delay in communicating the indictment and the supporting material to him.

The Chamber does not wish to contend the fact that the suspect was arrested by the Zambian authorities upon a request or a suggestion presented through the Rwandan Embassy in Pretoria, nor is the Chamber inclined to deny the possibility that the detention facilities in Lusaka may have been inadequate. Both objections, however, are beyond the realm of the Tribunal's competence. As neither of these elements, anyway, can invalidate the arrest or the transfer of the accused to the jurisdiction of the Tribunal, the Chamber feels that there is very little it can do about it.

The Chamber also notes that there has been, apparently, some delay in communication of the indictment and the supporting material in French to the Counsel for the Defense. The Office of the Prosecutor, however, is not bound by any specific time-limit in the Rules, save the provision in Rule 66 that it shall be done "as soon as practicable". Having heard the arguments of the Prosecutor, the Chamber is unable to establish that the Prosecutor is in violation of the Rules.

The Chamber further notes that some of the issues raised by the Defense lie beyond the framework of his written submission. As regards in particular the allegation made by the Defense that the witnesses to be brought by the Prosecutor are not reliable, the Chamber wishes to emphasise that this question remains to be examined during trial.

The Chamber, therefore, finds itself faced at this stage of the proceedings with a number of complaints presented by the Defense, which altogether appear as insufficient basis for a substantial ruling under Rule 73 of the Rules and the grounds stipulated therein.

THE TRIBUNAL,

SITTING as Trial Chamber 1 of the International Criminal Tribunal for Rwanda ("the Tribunal"), composed of Judge Yakov A. Ostrovsky as Presiding Judge, Judge Lennart Aspegren and Judge Navanethem Pillay,

CONSIDERING the indictment submitted on 13 February 1996 from the Prosecutor against Jean-Paul Akayesu pursuant to Rule 47 of the Rules and confirmed by the Tribunal on 16 February 1996,

TAKING INTO ACCOUNT that the Accused was arrested by the Zambian authorities on 10 October 1995, pursuant to the Tribunal's Warrant of Arrest of 16 February 1996, and was subsequently transferred to the Tribunal's Detention Unit on 26 May 1996

BEING SEIZED OF the motion filed by the Defense on 27 May 1996 in which the Defense raises several objections based on defects in the form of the indictment and on exclusion of evidence obtained from the Accused or having belonged to him, but in which the Defense further requests that the Accused be released,

HAVING THEN HEARD the pleading of the Defense in the course of the hearing of this motion held on 26 September 1996, during which, however, the Counsel for the Defense limited himself in essence to raising complaints about the conditions of custody in Zambia and delays in communicating the indictment and the supporting material to him, without any further reference to his written request for release of the Accused, all of which leaves the Chamber with insufficient basis for a substantial ruling under Rule 73 of the Rules,

TAKING IN ACCOUNT that the Defense has raised issues beyond the framework of the motion,

CONSIDERING FURTHER the Prosecutor's Brief in response to the Defendant's preliminary motion and accompanying documents, submitted on 5 September 1996,

HAVING ALSO HEARD the oral arguments of the Prosecutor to the complaints raised by the Defense Counsel during the hearing held on 26 September 1996, and noting his readiness to supply the Defense with the necessary documents,

TAKING INTO CONSIDERATION the reply provided by the Registrar to the questions raised by the Defense during the hearing held on 26 September 1996,

FOR THESE REASONS,

TAKES NOTICE of each issue upon its merits.

Arusha, 27 September 1996

Yakov A. Ostrovsky Lennart Aspegren Navanethem Pillay

Presiding Judge

Judge

Judge

(Seal of the Tribunal)