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UNITED NATIONS NATIONS UNIES

International Criminal Tribunal for Rwanda
Trial Chamber 2

Before: Judge William H. Sekule, Presiding Judge
Judge Tafazzal H. Khan
Judge Navanethem Pillay

OR: ENG

Registrar: Mr. Frederik Harhoff

Decision of: 18 June 1997

THE PROSECUTOR
versus
JOSEPH KANYABASHI

Case No. ICTR-96-15-T

DECISION ON THE DEFENCE MOTION ON JURISDICTION

Office of the Prosecutor:

Mr. Yacob Haile-Mariam

Counsel for the Defence

Mr. Evans Monari
Mr. Michel Marchand

THE TRIBUNAL,

SITTING AS Trial Chamber 2 of the International Criminal Tribunal for Rwanda ("the Tribunal"), composed of Judge William H. Sekule as Presiding Judge, Judge Tafazzal H. Khan and Judge Navanethem Pillay;

CONSIDERING the indictment submitted by the Prosecutor against Joseph Kanyabashi pursuant to Rule 47 of the Rules of Procedure and Evidence ("the Rules") and confirmed by Judge Yakov A. Ostrovsky on 15 July 1996 on the basis that there existed sufficient evidence to provide reasonable grounds for believing that he has committed genocide, conspiracy to commit genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II thereto;

TAKING NOTE of the transfer of the accused from Belgium to the Tribunal's Detention Facilities on 8 November 1996 and his initial appearance on 29 November 1996 before this Chamber;

BEING NOW SEIZED OF the preliminary motion filed by the Defence Counsel on 17 April 1997 pursuant to Rule 73(A)(i) of the Rules, challenging the jurisdiction of the Tribunal;

HAVING ALSO RECEIVED the Prosecutor's response, filed on 22 May 1997, to the Defence Counsel's motion;

HAVING HEARD the parties at the hearing of the Defence Counsel's motion and the Prosecutor's response, held on 26 May 1997;

CONSIDERING the provisions of the UN Charter, the Statute of the Tribunal and the Rules, in particular Rules 72 and 73;

TAKING INTO CONSIDERATION the decision of 10 August 1995 of the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia in Case No. IT-94-1-T, The Prosecutor versus Duško Tadić; and the decision of 2 October 1995 rendered by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia in Case No. IT-94-1-AR72, on appeal of the said decision of the Trial Chamber.

AFTER HAVING DELIBERATED:

1. The Defence Counsel submitted his preliminary motion pursuant to Rule 73(A)(i) of the Rules 139 days after the initial appearance of the accused. By so doing, he manifestly exceeded the time-limit prescribed in Rule 73(B) of the Rules, which stipulates that preliminary motions by the accused shall be brought within sixty (60) days after the initial appearance, and in any case before the hearing on the merits. Rule 73(C) of the Rules further lays down that failure to apply within this time-limit shall constitute a waiver of the right, unless the Trial Chamber grants relief to hear the preliminary motion upon good cause being shown by the Defence Counsel.

2. The Trial Chamber, therefore, must first examine whether there are reasonable grounds for proceeding with the examination of this preliminary motion.

A. On the Consequence of the Defence Counsel's Failure to Submit his Preliminary Motion Within Sixty Days After the Initial Appearance Of the Accused.

3. Rule 72(B) of the Rules allows the Prosecution as well as the Defence to file preliminary motions and further establishes that the Trial Chamber shall dispose thereof *in limine litis*. The purpose of this requirement, evidently, is to ensure that all basic questions and fundamental objections raised by the parties against the competence, the proceedings and the functions of the Tribunal are properly addressed and dealt with before the beginning of the trial on its merits.

4. Rule 73(A) identifies some of the preliminary motions which must, for reasons of expediency, be raised and disposed of before the beginning of the trial on the merits, such as objections against the jurisdiction of the Tribunal or against defects in the indictment. Rule 73(B), accordingly, specifies that such motions must be filed within sixty (60) days after the initial appearance in order to ensure their consideration well in advance of the trial. Rule 73(C) goes on to establish that failure to meet the time-limit shall constitute a waiver of the right to submit such preliminary motions. If, however, the Defence shows good cause, the Trial Chamber might grant relief from this waiver. These Rules are clear and leave no room for misunderstanding.

5. The Trial Chamber notes, however, that the Defence motion was filed out of time, and was surprised that neither the Defence nor the Prosecutor made any reference to this fact when the preliminary motion was heard by the Trial Chamber. Defence Counsel did not file any request for a waiver and did not provide the Trial Chamber with any explanation for his failure to respect the prescribed time-limit. The Prosecutor, on her part, did not object to hearing this motion

6. Notwithstanding the fact that some of the questions raised by the Defence Counsel have already been addressed in the decision rendered on 2 October 1995 by the Appeals Chamber for the Former Yugoslavia, the Trial Chamber finds that, in view of the issues raised regarding the establishment of this Tribunal, its jurisdiction and its independence and in the interests of justice, that the Defence Counsel's motion deserves a hearing and full consideration. The Trial Chamber, therefore, grants relief from the waiver *suo motu* and will thus proceed with the examination of the Defence Counsel's preliminary motion.

B. On the Substance of the Preliminary Motion

7. In his preliminary motion, the Defence Counsel raised a number of challenges concerning the jurisdiction of the Tribunal. These challenges can be adequately condensed into the following five principal objections:

(i) That the sovereignty of States, in particular that of the Republic of Rwanda, was violated by the fact that the Tribunal was not established by a treaty through the General Assembly;

(ii) that the Security Council lacked competence to establish an ad-hoc Tribunal under Chapter VII of the UN Charter;

(ii) that the Security Council lacked competence to establish an ad-hoc Tribunal under Chap ter VII of the UN Charter;

(iii) that the primacy of the Tribunal's jurisdiction over national courts was unjustified and violated the principle of *jus de non evocando*;

(iv) that the Tribunal cannot have jurisdiction over individuals directly under international law; and

(v) that the Tribunal is not and cannot be impartial and independent;

8. The Prosecutor responded that the basic arguments in the Defence Counsel's motion were addressed by the Trial Chamber and, in particular, by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia in the Tadić-case. The Trial Chamber notes that, in terms of Article 12(2) of the Statute, the two Tribunals share the same Judges of their Appeals Chambers and have adopted largely similar Rules of Procedure and Evidence for the purpose of providing uniformity in the jurisprudence of the two Tribunals. The Trial Chamber, respects the persuasive authority of the decision of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia and has taken careful note of the decision rendered by the Appeals Chamber in the Tadic case.

B.1. On the Defence Counsel's Objection that the Sovereignty of States, in Particular that of the Republic of Rwanda, Was Violated by the Fact that the Tribunal Was Not Established by a Treaty Through the General Assembly.

9. The Defence Counsel submitted in his written and oral submissions that the Tribunal should and in fact could only have been established by an international treaty upon recommendation of the General Assembly, which would have permitted the member States of the United Nations to express their approval or disapproval of the establishment of an ad-hoc Tribunal. The Defence Counsel argued that by leaving the establishment of the Tribunal to the Security Council through a Resolution under Chapter VII of the UN Charter, the United Nations not only encroached upon the sovereignty of the Republic of Rwanda, and other Member States, but also frustrated the endeavours of its General Assembly to establish a permanent criminal court. The Tribunal, in the Defence Counsel's view, was therefore not lawfully established.

10. The Prosecutor, in response to this first objection raised by Defence Counsel, rejected the notion that the Tribunal was unlawfully established and contended that, since there was a need for an effective and expeditious implementation of the decision to establish the Tribunal, the treaty approach would have been ineffective because of the considerable time required for the establishment of an instrument and for its entry into force.

11. The Trial Chamber finds that two issues need to be addressed. One is whether the accused as an individual has *locus standi* to raise a plea of infringement of the sovereignty of States, in particular that of the Republic of Rwanda, and the other is whether the sovereignty of the Republic of Rwanda and other Member States were in fact violated in the present case.

12. As regards the first of these questions, the Appeals Chamber held in the Tadić-case that

> "To bar an accused from raising such a plea is tantamount to deciding that , in this day and age, an international court could not, in a criminal matter where the liberty of an accused is at stake, examine a plea raising the issue of violation of State sovereignty. "

The Trial Chamber agrees with this conclusion and accepts that the accused in the present case can raise the plea of State sovereignty. In any event, it is the individual and not the State who has been subjected to the jurisdiction of the Tribunal.

13. As regards the second question whether the sovereignty of the Republic of Rwanda has been violated by the Security Council's decision to establish the Tribunal, the Trial Chamber notes that membership of the United Nations entail certain limitations upon the sovereignty of the member States. This is true in particular by virtue of the fact that all member States, pursuant to Article 25 of the UN Charter, have agreed to accept and carry out the decisions of the Security Council in accordance with the Charter. For instance, the use of force against a State sanctioned by the Security Council in accordance with Article 41 of the UN Charter is one clear example of limitations upon sovereignty of the State in question which can be imposed by the United Nations.

14. The Trial Chamber notes, furthermore, that the establishment of the ICTR was called for by the Government of Rwanda itself, which maintained that an international criminal tribunal could assist in prosecuting those responsible for acts of genocide and crimes against humanity and in this way promote the restoration of peace and reconciliation in Rwanda. The Ambassador of Rwanda, during the discussion and adoption of Resolution 955 in the Security Council on 8 November 1994 declared that:

> "The tribunal will help national reconciliation and the construction of a new society based on social justice and respect for the fundamental rights of the human person, all of which will be possible only if those responsible for the Rwandese tragedy are brought to justice."

15. Against this background, the Trial Chamber is of the view that the Security Council's establishment of the Tribunal through a Resolution under Chapter VII of the UN Charter and with the participation of the Government of Rwanda, rather than by a treaty adopted by the Member States under the auspices of the General Assembly, did not violate the sovereignty of the Republic of Rwanda and that of the Member States of the United Nations..

16. The Defence Counsel further argued that the establishment of the Tribunal through a resolution of the Security Council effectively undermined the General Assembly's initiative to set up a permanent international Criminal Court. The Trial Chamber, however, mindful of the fact that such a tribunal may well be created by an international treaty, finds that this question has no bearing on the jurisdiction of this Tribunal and must therefore, be rejected.

B.2. On the Defence Counsel's Objections that the Security Council Lacked Competence to Establish an *ad-hoc* Tribunal under Chapter VII of the UN Charter

17. The second main issue addressed by the Defence relates to the interpretation and delimitation of Chapter VII of the UN Charter and more specifically to the contents and boundaries of the authority of the Security Council.

18. In his written and oral submissions, the Defence Counsel argued that the establishment of the Tribunal by the Security Council was ill-founded for five basic reasons:

(i) that the conflict in Rwanda did not pose any threat to international peace and security;

(ii) that there was no international conflict to warrant any action by the Security Council;

(iii) that the Security Council thus could not act within Chapter VII of the UN Charter;

(iv) that the establishment of an ad-hoc tribunal was never a measure contemplated by Article 41 of the UN Charter; and finally

(v) that the Security Council has no authority to deal with the protection of Human Rights.

The Trial Chamber will now examine each of these contentions in turn.

19. ***"The conflict in Rwanda did not pose any threat to international peace and security"***.

On several occasions, e.g. in Congo, Somalia and Liberia, the Security Council has established that incidents such as sudden migration of refugees across the borders to neighbouring countries and extension or diffusion of an internal armed conflict into foreign territory may constitute a threat to international peace and security. This, might happen, in particular where the areas immediately affected have exhausted their resources. The reports submitted by the Special Rapporteur for Rwanda of the United Nations Commission on Human Rights (see Doc. S/1994/1157) and also by the Commission of Experts appointed by the Secretary General (see Doc. S/1994/1125) concluded that the conflict in Rwanda as well as the stream of refugees had created a highly volatile situation in some of the neighbouring regions. As a matter of fact, this conclusion was subsequently shared by the Security Council and formed the basis for the adoption of Security Council's resolution 955 (1994) of 8 November 1994.

20. Although bound by the provisions in Chapter VII of the UN Charter and in particular Article 39 of the Charter, the Security Council has a wide margin of discretion in deciding when and where there exists a threat to international peace and security. By their very nature, however, such discretionary assessments are not justiciable since they involve the consideration of a number of social, political and circumstantial factors which cannot be weighed and balanced objectively by this Trial Chamber.

21. While it is true that the conflict in Rwanda was internal in the sense that it emerged from inherent tensions between the two major groups forming the population within the territory of Rwanda and otherwise did not involve the direct participation of armed forces belonging to any other State, the Trial Chamber cannot accept the Defence Counsel's notion that the conflict did not pose any threat to international peace and security. The question of, whether or not the conflict posed a threat to international peace and security is a matter to be decided exclusively by the Security Council. The Trial Chamber nevertheless takes judicial notice of the fact that the conflict in Rwanda created a massive wave of refugees, many of whom were armed, into the neighbouring countries which by itself entailed a considerable risk of serious destabilisation of the local areas in the host countries where the refugees had settled. The demographical composition of the population in certain neighbouring regions outside the territory of Rwanda, furthermore, showed features which suggest that the conflict in Rwanda might eventually spread to some or all of these neighbouring regions.

22. The Trial Chamber concludes that there is no merit in the Defence Counsel's argument that the conflict in Rwanda did not pose any threat to international peace and security and holds that this was a matter to be decided exclusively by the Security Council.

23. ***"There was no international conflict to warrant any action by the Security Council."***

The Defence Counsel further contends that there was no international conflict to warrant any action by the Security Council. This argument has been partly addressed in the preceding paragraphs in the sense that *if* the Security Council had decided that the conflict in Rwanda did in fact pose a threat to international peace and security, this conflict would thereby fall within the ambit of the Security Council's powers to restore and maintain international peace and security pursuant to the provisions in Chapter VII of the UN Charter.

24. The Security Council's authority to take such action, furthermore, exists independently of whether or not the conflict was deemed to be international in character. The decisive pre-requisite for the Security Council's prerogative under Article 39 and 41 of the UN Charter is not whether there *exists* an *international* conflict, but whether the conflict at hand entails a threat to international peace and security. Internal conflicts, too, may well have international implications which can justify Security Council action. The Trial Chamber holds that there is no basis for the Defence Counsel's submission that the Security Council's competence to act rested on a pre-existing international conflict.

25. ***"The Security Council could not act within Chapter VII of the UN Charter."***

During his oral submission, the Defence Counsel further added that the Security Council was not competent to act in the case of the conflict in Rwanda because international peace and security had already been re-established by the time the Security Council decided to create the Tribunal.

26. The Trial Chamber observes, once again, that this argument entails a finding of fact based on evidence and that, in any case, the question of whether or not the Security Council was justified in taking actions under Chapter VII when it did, is a matter to be determined by the Security Council itself. The Trial Chamber notes, in particular, that cessation of the atrocities of the conflict does not necessarily imply that international peace and security had been restored, because peace and security cannot be said to be re-established adequately without justice being done. In the Trial Chamber's view, the achievement of international peace and security required that swift international action be taken by the Security Council to bring to justice those responsible for the atrocities in the conflict.

27. ***"The establishment of an ad-hoc tribunal was never a measure contemplated by Article 41 of the UN Charter."***

The thrust of this argument lies in the contention that the establishment of an ad-hoc Tribunal to prosecute perpetrators of genocide and violations of international humanitarian law is not a measure contemplated by the provisions of Chapter VII of the UN Charter. While it is true that establishment of judicial bodies is not directly mentioned in Article 41 of the UN Charter as a measure to be considered in the restoration and maintenance of peace, it clearly falls within the ambit of measures to satisfy this goal. The list of actions contained in Article 41 is clearly not exhaustive but indicates some examples of the measures which the Security Council might eventually decide to impose on States in order to remedy a conflict or an imminent threat to international peace and security. This is also the view of the Appeals Chamber in the Tardic-case.

28. ***"The Security Council has no authority to deal with the protection of Human Rights"***

Finally, the Defence Counsel holds that the international protection of Human Rights is embedded in particular international instruments such as the global International Covenants on Civil and Political Rights & Social, Economic and Cultural Rights and in the regional conventions on Human Rights for Europe and Africa, all of which have established particular international institutions entrusted with the task of protecting the body of international Human Rights. The Defence Counsel claims, therefore, that the protection of Human Rights is not a matter for the Security Council.

29. The Trial Chamber cannot accept the Defence Counsel's argument that the existence of specialized institutions for the protection of Human Rights precludes the Security Council from taking action against violation of this body of law. Rather to the contrary, the protection of international Human Rights is the responsibility of all United Nations organs, the Security Council included, without any limitation, in conformity with the UN Charter.

B.3. On the Defence Counsel's Objections Against the Primacy of the Tribunal's Jurisdiction Over National Courts and Against Violation of the Principle of *Jus de non Evocando.*

30. Although the Defence Counsel did not explicitly challenge the primacy of the Tribunal's jurisdiction over national courts, this objection is implied in the Defence Counsel's contention that establishment of the Tribunal violated the principle of *jus de non evocando.*

31. This principle, originally derived from constitutional law in civil law jurisdictions, establishes that persons accused of certain crimes should retain their right to be tried before the regular domestic criminal Courts rather than by politically founded ad-hoc criminal tribunals which, in times of emergency, may fail to provide impartial justice. As stated by the Appeals Chamber in the Tadić-case: "As a matter of fact and of law the principle advocated by the Appellant aims at one very specific goal: to avoid the creation of special or extraordinary courts designed to try political offences in times of social unrest without guarantees of a fair trial." In the Trial Chamber's opinion, however, the Tribunal is far from being an institution designed for the purpose of removing, for political reasons, certain criminal offenders from fair and impartial justice and have them prosecuted for political crimes before prejudiced arbitrators.

32. It is true that the Tribunal has primacy over domestic criminal Courts and may at any stage request national Courts to defer to the competence of the Tribunal pursuant to article 8 of the Statute of the Tribunal, according to which the Tribunal may request that national Courts defer to the competence of the Tribunal at any stage of their proceedings. The Tribunal's primacy over national Courts is also reflected in the principle of *non bis in idem* as laid down in Article 9 of the Statute and in Article 28 of the Statute which establishes that States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber. The primacy thereby entrenched for the Tribunal, however, is exclusively derived from the fact that the Tribunal is established under Chapter VII of the UN Charter, which in turn enables the Tribunal to issue directly binding international legal orders and requests to States, irrespective of their consent. Failure of States to comply with such legally binding orders and requests may, under certain conditions, be reported by the President of the Tribunal to the Security Council for further action.

The Trial Chamber concludes, therefore, that the principle of *jus de non evocando* has not been violated.

B.4. On the Defence Counsel's Objections Against the Tribunal's Jurisdiction over Individuals Directly under International Law.

33. The Defence Counsel further contends that bestowing the Tribunal with jurisdiction over individuals is inconsistent with the UN Charter, for the reason that the Security Council has no authority over individuals, and that only States can pose threats to international peace and security.

34. The Prosecution responded to this contention by citing the Nüremberg Trials which, in the Prosecution's view, established that individuals who have committed crimes under international law can be held criminally responsible directly under international law. The Prosecutor further contended that attribution of individual criminal responsibility is a fundamental expression of the need for enforcement action by the Security Council. It is indeed difficult to separate the individual from the State, as the duties and rights of States are only duties and rights of the individuals who compose them, and as international criminal law, like other branches of law, deals with the regulation of human conduct. It is to individuals, not the abstract, that international law applies, and it is against individuals that it should provide sanctions. In the words of the Deputy Prosecutor in the trial against *Frank Hans* in 1946:

> "It seems intolerable to every sensitized human being that the men who put their good will at disposition of the State entity in order to make use of the power and material resources of this entity to slaughter, as they have done, millions of human beings in the execution of a policy long since determined, should be assured of immunity. The principle of State sovereignty which might protect these men is only a mask; this mask removed, the man's responsibility reappears."

35. The Trial Chamber recalls that the question of direct individual criminal responsibility under international law is and has been a controversial issue within and between various legal systems for several decades and that the Nüremberg trials in particular have been interpreted differently in respect of the position of the individual as a subject under international law. By establishing the two International Criminal Tribunals for the Former Yugoslavia and Rwanda, however, the Security Council explicitly extended international legal obligations and criminal responsibilities directly to individuals for violations of international humanitarian law. In doing so, the Security Council provided an important innovation of international law, but there is nothing in the Defence Counsel's motion to suggest that this extension of the applicability of international law against individuals was not justified or called for by the circumstances, notably the seriousness, the magnitude and the gravity of the crimes committed during the conflict.

36. In his submissions, furthermore, the Defence Counsel referred to a number of other areas of conflicts and incidents in which the Security Council took no action to establish an international criminal tribunal, e.g. Congo, Somalia and Liberia, and the Defence Counsel seems to infer from the lack of such action in these cases that individual criminal responsibility should not be taken in the case of the conflict in Rwanda. The Trial Chamber, however, disagrees entirely with this perception. The fact that the Security Council, for previously prevailing geo-strategic and international political reasons, was unable in the past to take adequate measures to bring to justice the

perpetrators of crimes against international humanitarian law is not an acceptable argument against introducing measures to punish serious violations of international humanitarian law when this becomes an option under international law. The Trial Chamber, thus, cannot accept the Defence Counsel's objections against the Tribunal's jurisdiction over individuals.

B.5. On the Defence Counsel's Objections Based on the Allegation that the Tribunal is not Impartial and Independent.

37. The Defense Motion asserted that the Tribunal was set up by the Security Council, a political body and as such the Tribunal is just another appendage of an international organ of policing and coercion, devoid of independence.

38. The Prosecutor, in response, challenged the claim in the Defense Motion that the Tribunal cannot act both as a subsidiary organ of the Security Council and as an independent Judicial body. He stated that although the ICTY and the ICTR share certain aspects of personnel, materials and means of operation, the Tribunal for Rwanda is a separate Tribunal with its own Statute, its own sphere of jurisdiction and its own rules of operation and as such it has legal independence.

39. This Trial Chamber is of the view that criminal courts worldwide are the creation of legislatures which are eminently political bodies. This was an observation also made by the Trial Chamber in the Tadić-case. To support this view, the Trial Chamber in that case relied on *Effect of Awards of Compensation made by the United Nations Administrative Tribunal* (1954) I.C.J. 47, 53; Advisory Opinion of 13 July), which specifically held that a political organ of the United Nations, in that case the General Assembly, could and had created "an independent and truly judicial body." Likewise, the Security Council could create such a body using its wide discretion under Chapter VII.

40. This independence is, for example, demonstrated by the fact that the Tribunal is not bound by national rules of evidence as stated under rule 89 A of the Rules of Procedure and Evidence. The Tribunal is free to apply those Rules of Evidence which best favor a fair determination of the matter before it as stipulated in rule 89(B) of the Rules.

41. Further, the judges of the Tribunal exercise their *judicial* duties independently and freely and are under oath to act honorably, faithfully, impartially and conscientiously as stipulated in rule 14 of the Rules. Judges do not account to the Security Council for their judicial functions.

42. In this Trial Chamber's view, the personal independence of the judges of the Tribunal and the integrity of the Tribunal are underscored by Article 12 (1) of the Statute of the Tribunal which states that persons of high moral character, integrity, impartiality who possess adequate qualifications to become judges in their respective countries and having widespread experience in criminal law, international law including international humanitarian law and human rights law, shall be elected.

43. This Trial Chamber also subscribes to a view which was expressed by the Appeals Chamber in the Tadic case that when determining whether a tribunal has been 'established by law', consideration should be made to the setting up of an organ in keeping with the proper international standards providing all the guarantees of fairness and justice.

44. Under the Statute and the Rules of Procedure and Evidence, the Tribunal will ensure that the accused receives a fair trial.This principle of fair trial is further entrenched in Article 20 which embodies the major principles for the provision of a fair trial, *inter alia,* the principles of public hearing and subject to cross examination. The rights of the accused are also set out such as the right to counsel, presumption of innocence until the contrary is proved beyond a reasonable doubt, privilege against self-incrimination and the right to adequate time for the preparation of his/her case. These guarantees are further included in rules 62, 63 and 78 of the Rules.The rights of the accused enumerated above are based upon Article 14 of the International Covenant on Civil and Political Rights and are similar to those found in Article 6 of the European Convention on Human Rights.

45. Defence Counsel argued that the obligation imposed on the Tribunal to report to the Security Council derogates its independence as a judicial organ. The Prosecutor contended that this obligation was discretionary. In fact it is mandatory. In Article 34 of the Statute, the Tribunal is duty bound to do this annually. This requirement is not only a link between it and the Security Council but it is also a channel of communication to the International community, which has an interest in the issues being addressed and the right to be informed of the activities of the Tribunal. In the Chamber`s view, the Tribunal`s obligation to report progress to the Security Council is purely administrative and not a judicial act and therefore does not in any way impinge upon the impartiality and independence of it`s judicial decision.

46. The Defence Counsel further contended that African jurisprudence and Human Rights Covenants were overlooked in the setting up the Tribunal. This contention cannot be correct because the important instruments on human rights in Africa, including the Charter of the Organization of African Unity (O.A.U.) and the African Charter On Human Rights ("the African Charter") were indirectly included in the law applicable to the Tribunal. Articles 3 and 7 of the African Charter on Human and People's Rights, for example, contain rights which are similar to those guaranteed in the Statute.

47. The Defence Counsel argued that the impartiality of the of the Tribunal has not been demonstrated for the reason that there has been selective prosecution only of persons belonging to the Hutu ethnic group.

48. In his response, the Prosecutor dismissed these allegations and stated that indictments have been issued against leading perpetrators of the genocide and that subject to the availability of evidence, he intended to prosecute Hutu and Tutsi "extremists". The use of the word "extremists" is inaccurate and unfortunate, in view of Article 1 of the statute.

49. The Trial Chamber simply reiterates that, pursuant to Article 1 of the Statute, all persons who are suspected of having committed crimes falling within the jurisdiction of the Tribunal are liable to prosecution.

50. The Trial Chamber is not persuaded by the arguments advanced by the Defence Counsel that the Tribunal is not impartial and independent and accordingly rejects this contention.

FOR THESE REASONS,

DECIDES to dismiss the motion submitted by the Defence Counsel challenging the jurisdiction of the Tribunal.

Arusha, 18 June 1997.

William H. Sekule
Presiding Judge

T. H. Khan
Judge

Navanethem Pillay
Judge

Pronounced in Open Court on the 3rd of July 1997

Presiding Judge

(Seal of the Tribunal)