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Case No. ICTR-96-7-1

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International Criminal Tribunal for Rwanda

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TRIAL CHAMBER II

OR: ENG.

Before: Judge William H. Sekule, Presiding  
Judge Yakov A. Ostrovsky  
Judge Tafazzal Hossain Khan

Registry: Mr. Abraham Koshopa

Decision of: 12 February 1998

Signed on: 23 February 1998

THE PROSECUTOR  
vs.  
SYLVAIN NSABIMANA

Case No. ICTR-97-29-1

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**DECISION ON THE DEFENCE MOTION FOR WAIVER OF TIME  
LIMITS FOR FILING PRELIMINARY MOTIONS AND THE  
PRODUCTION OF EVIDENCE.**

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The Office of the Prosecutor:

Mr. Frédéric Ossogo  
Mr. Jean-Pierre Gervais

Counsels for the Defence.

Ms. Josette Kadji  
Mr. Charles Tchakounte Patie

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**The International Criminal Tribunal for Rwanda ( "the Tribunal" )**

SITTING AS Trial Chamber II ( hereinafter referred to as " the Trial Chamber" ) composed of Judge William H. Sekule, Presiding, Judge Yakov A. Ostrovsky and Judge Tafazzal Hossain Khan;

CONSIDERING the indictment of 14 October 1997 indicting Sylvain Nsabimana for genocide, complicity in genocide, crimes against humanity, serious violations of Article 3 common to the Geneva Conventions of 1949 and Additional Protocol II thereto of 1977;

CONSIDERING THAT this Tribunal rendered a decision by Judge Aspegren on 16 October 1997 in which the indictment was confirmed on the basis that there was a *prima facie* case established pursuant to Article 18 of the Statute of the Tribunal;

CONSIDERING FURTHER THAT the initial appearance of the accused Sylvain Nsabimana took place on 24th October 1997;

BEING SEIZED OF the Defence motion, filed on 19 December 1997 pursuant to rule 72 of the Rules of Procedure and Evidence ("the Rules"), requesting the Trial Chamber to make an order for the suspension of time limits for preliminary motions and the production of evidence;

CONSIDERING the Prosecutor's written response dated 11 February 1998 in which the Prosecutor submits that the Defence's request for suspension of time limits for preliminary motions and the production of evidence is unfounded and unjustified;

CONSIDERING the provisions of rule 72 of the Rules regarding filing of preliminary motions;

CONSIDERING the provisions of Article 19 of the Statute of the Tribunal regarding the commencement and conduct of trial proceedings;

MINDFUL of Article 20 of the Statute of the Tribunal, Article 14(3)(e) of the International Covenant on Civil and Political Rights and Article 10 of the Universal Declaration of Human Rights all of which provides for the rights of the accused;

BOTH PARTIES having been heard on 12 February 1998;

**ARGUMENTS BY THE PARTIES**

WHEREAS in support of his motion requesting for the suspension of time and for the production of evidence, the Defence Counsel has primarily based his motion on rule 72 (A) of the Rules;



WHEREAS the Defence Counsel in support of his motion made the following specific submissions:

- (i) That the issue of the suspension of time within which to file preliminary motions and to produce evidence was a legal one based upon general principles of law particularly, the presumption of innocence, the equality of all before the law and the respect of the rights of the defence;
- (ii) That pursuant to rule 72 (A) of the Rules, the Prosecutor is required to disclose to the Defence Counsel all materials envisaged by rule 66(A) and in any case before the hearing of the case on its merits;
- (iii) That further pursuant to rule 66(A) (ii) the Prosecutor should make available to the Defence copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial no later than 60 days before the date set for trial;
- (iv) That the Defence could only act after the expiry of the sixty (60) days and was estopped from filing preliminary motions once the hearing on merits commenced. However, that the prescribed period could not begin to run for someone who could not validly act;
- (v) That pursuant to rule 72 of the Rules time limits within which preliminary motions must be raised by the Defence are specified but the Defence had difficulties with respect to the last day of the deadlines;
- (vi) That there was a need for clarifying the exact commencement of a trial on merit as this issue affects both parties in meeting their obligations under rule 67(A);
- (vii) That the Trial Chamber should order for the suspension of time limits within which to file preliminary motions by the Defence.

#### Response by the Prosecutor

WHEREAS the Prosecutor was of the view that the instant Defence Motion was ill founded and unjustified;

The Prosecutor contended as follows:

- (i) That the Defence's request to waive time limits, particularly the time limit specified within which to file a preliminary motion, was a general request;
- (ii) That Article 19 of Statute stipulates that proceedings should be conducted in accordance with the Rules;



- (iii) That pursuant to rule 72 (A) preliminary motions must be filed within sixty(60) days following disclosure of all materials by the Prosecutor to the Defence otherwise a waiver and not a suspension of the time limit would be necessary since the Trial Chamber has never before granted a suspension;
- (iv) That according to rule 72(F) of the Rules, a Trial Chamber may prescribe time limits for specific actions as the Trial Chamber ordered in the cases of *The Prosecutor v. Ferdinand Nahimana* Case number *ICTR-96-11-1* and *The Prosecutor v. Theoneste Bagosora* case number *ICTR-96-7-1* where the Trial Chamber prescribed time limits for specific actions;
- (v) That the proper interpretation of rule 72 (F) is that extension of time and not suspension of time may be granted by the Trial Chamber since suspension of time connotes *sine die* suspension rather than a waiver which is for a certain period;
- (vi) That in the instant case, there is no problem concerning the time limit since the prescribed period, admittedly, begins to run from the time of disclosure by Prosecutor on 11 February 1998.

**DELIBERATIONS**

The Trial Chamber notes that in support of his motion the Defence Counsel has generally referred to rule 72 which prescribes time limits within which preliminary motions should be filed. The Rules for filing preliminary motions are clear and in the event that these time limits are not observed, rule 72 (F) of the Rules provides a clear remedy whereby waiver of the time limit may be granted by the Trial Chamber, if the party concerned shows good cause.

Considering that in the instant case before the Trial Chamber supporting materials have just been disclosed to the Defence, the limitation period within which the Defence should file preliminary motions has just begun. This Chamber, therefore, opines that the issue of enlargement and suspension of time does not arise in this case.

The Trial Chamber takes cognizance of the Defence Counsel's request that the Chamber should give a decision on the issue of when a trial commences. The Trial Chamber notes that as the trial date for this particular case has not yet been fixed, the trial date is not important for the kind of remedy the Defence is seeking. It is, therefore, the considered view of this Chamber that in the instant case the matter is not yet ripe for interpretation as the issue has not yet arisen.



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With regard to the argument by the Defence Counsel that once proceedings of a case on its merits have commenced, preliminary motions could not be entertained, this Trial Chamber is not in agreement with this submission.

**FOR ALL THE ABOVE REASONS, THE TRIAL CHAMBER**

**DISMISSES** the Defence motion having regard to the fact that the main object of the motion has been achieved, that is to say, that the documents requested by the Defence Counsel have already been supplied by the Prosecutor out of court and by mutual negotiation. Consequently, the other question raised in the motion for "the suspension of time within which to file preliminary motions" does not call for the attention of the Trial Chamber at this stage.

Signed at Arusha, 23 February 1998.

Judge William Sekule,  
Presiding

Judge Yakov Ostrovsky  
Judge

Judge Taffazal H. Khan  
Judge

