


ICTR-96-4-T
27.2.1998
(2290-2288)

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UNITED NATIONS  NATIONS UNIES
International Criminal Tribunal for Rwanda **ICTR**
Tribunal pénal international pour le Rwanda **CRIMINAL REGISTRY**
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CHAMBER I - CHAMBRE I

1998 FEB 27 A 2:01

OR : FR

Before: Judge Laïty Kama, Presiding Judge
Judge Lennart Aspegren
Judge Navanethem Pillay

Registry: Mr. Lars Plum
Mr. John M. Kiyeyeu

Decision of: 17 February 1998

**THE PROSECUTOR
VERSUS
JEAN-PAUL AKAYESU**

Case No.: ICTR-96-4-T

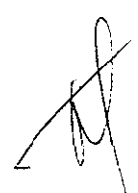
**DECISION ON A MOTION FOR SUMMONSES
AND PROTECTION OF WITNESSES CALLED BY THE DEFENCE**

Office of the Prosecutor:

Mr. Pierre-Richard Prosper
Mr. James Stewart

Counsel for the Defence:

Mr. Nicolas Tiangaye



Case No. ICTR-96-4-T

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "TRIBUNAL"),

SITTING as Trial Chamber I, composed of Judge Laïty Kama, Presiding Judge, and of Judge Lennart Aspegren and Judge Navanethem Pillay;

HAVING RECEIVED from the Defence a motion dated 2 December 1997 (the "motion") for the appearance and protection of two Defence witnesses, Jean Kambanda and Pauline Nyiramasuhuko, who have both been indicted by the Prosecutor before the Tribunal in cases nos. ICTR-97-23-I and ICTR-97-21-I respectively, and are currently detained by the Tribunal awaiting trial;

HAVING RECEIVED the Prosecutor's response, dated 12 February 1998, in which she does not object to the appearance and argues, on the contrary, that an accused may be obliged by a sovereign decision of the Tribunal to testify, even if the witness is opposed to testifying;

HAVING ALSO RECEIVED a response to the motion, dated 3 February 1998, from Ms. Nicole Bergevin, Counsel for Pauline Nyiramasuhuko, in which the Counsel informs the Tribunal of the refusal of the said accused to testify;

HAVING BEEN NOTIFIED by the Registry of the Tribunal that Jean Kambanda had received a copy of the motion and had stated that he did not wish to be represented at the hearing to consider the motion or to respond to the motion;

HAVING HEARD the Parties, as well as Ms Bergevin, during the hearing held to that effect on 13 February 1998;

AFTER HAVING DELIBERATED,

WHEREAS, in support of its motion, the Defence argued that hearing the said two accused would enlighten the Tribunal on events that took place in Taba Commune which have a direct bearing on the charges brought by the Prosecutor against Jean-Paul Akayesu and that, consequently, these testimonies would be useful for the discovery of the truth;

Whereas the Tribunal is of the opinion that each time it decides whether or not to call an accused on exceptional basis to testify in a case other than his or her own trial, the relevance and probative value of the evidence required from the accused should be weighed against the prejudice that the obligation to appear as a witness could possibly cause the accused;

WHEREAS although the provisions of Rule 90 (E) of the Rules of Procedure and Evidence of the Tribunal (the "Rules") provide that a witness may object to making any statement which might tend to incriminate him, the fact remains that the Chamber may, however, compel the witness to answer the question and that testimony compelled in this way could be used as evidence during subsequent prosecution for perjury, as provided for in Rule 91 of the Rules;

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Whereas, as regards an accused, the Tribunal is of the opinion that compelling him or her to appear as a witness could perhaps violate his or her fundamental right not to be forced to testify against himself or herself or to confess guilt, a right which is recognized under the provisions of Article 20 (4)(g) of the Statute of the Tribunal, and also under those of Article 14 (3)(g) of the 1966 International Covenant on Civil and Political Rights;

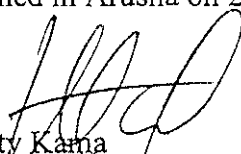
WHEREAS, accordingly, the Tribunal considers that in this case there is a risk that the appearance of the two accused as witnesses could cause prejudice to them;


FOR THESE REASONS

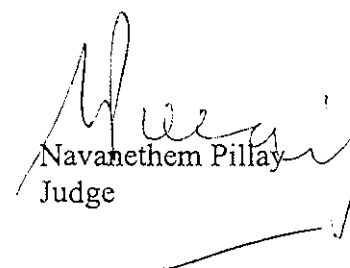
THE TRIBUNAL

DISMISSES the motion filed by the Defence for the appearance of the said two accused as witnesses.

Rendered on 17 February 1998,
Signed in Arusha on 23 February 1998.


Laity Kama
Presiding Judge


Lennart Aspegren
Judge


Navanethem Pillay
Judge

(Seal of the Tribunal)

