

ICTR-96-4-T
11.3.1998
(2305-2303)

2305

Case No. ICTR-96-4-T

UNITED NATIONS  NATIONS UNIES
ICTR
CRIMINAL REGISTRY
RECEIVED

International Criminal Tribunal for Rwanda 1998 MAR 11 P 4:42
Tribunal pénal international pour le Rwanda

CHAMBER I - CHAMBRE I

OR : FR

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

Registry: Mr. Antoine Kesia-Mbe Mindua

Decision of: 26 February 1998

**THE PROSECUTOR
VERSUS
JEAN-PAUL AKAYESU**

Case No. ICTR-96-4-T

**DECISION ON THE MOTION FOR THE
TRANSFER AND PROTECTION OF DEFENCE WITNESSES**


The Office of the Prosecutor:

Mr. Pierre-Richard Prosper

Counsel for the Accused:

Mr. Nicholas Tiangaye

Def.req/Decision/subpoena4/L925



1

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 Lennart Aspegren and Judge Navanethem Pillay;

HAVING BEEN SEIZED by the Defence in respect of a motion dated 25 February 1998 and received today, 26 February 1998, for the transfer and protection of detained witnesses, wherein it requests the Tribunal to order the transfer and appearance of five persons currently detained in prisons in Rwanda, referred to in the motion, by the pseudonyms "DKX", "DLX", "DMX", "DNX" and "DOX", and to ensure their protection;

HAVING HEARD the parties during the audience held to that end, today, 26 February 1998;

TAKING COGNIZANCE of the position of the Prosecutor who opposes the said Defence motion on the grounds it has been submitted at too advanced stage of the proceedings;

NOTING the provisions of Article 20 of the Statute of the Tribunal and Rule 90 *bis* of the Rules of Procedure and Evidence (the "Rules"), which relates to the transfer of a detained witness;

AFTER HAVING DELIBERATED,

WHEREAS in support of its motion, the Defence only argues that the hearing of the five above-mentioned witnesses is, undoubtedly, crucial for the establishment of the truth and that, since these witnesses are currently detained, it behoves the Tribunal to order their appearance and protection, in accordance with Rule 90 *bis* of the Rules;

WHEREAS the Tribunal recalls that, in its decision of 31 October 1997 rendered in the course of this case, which was cited by the Defence, it granted a first Defence motion for the transfer and appearance of three detained Defence witnesses, the Defence having convinced the Tribunal of the imperious need to hear these three particular witnesses in the discovery of the truth on the grounds that the statements of those witnesses, previously taken by the Office of the Prosecutor, were likely to exculpate in whole or in part the accused;

WHEREAS, in the present instance, the Tribunal notes, however, that the Defence has failed to show, either in its written motion or during its oral presentation, the efforts it may have made to contact the said witnesses, and hence, less still, previous investigations that it may have conducted on them;

WHEREAS, therefore, the Tribunal is of the opinion that the Defence is not in a position to demonstrate how the appearance of the said witnesses would, undoubtedly, be crucial to the establishment of the truth in this case;



Case No. ICTR-96-4-T

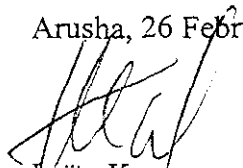
WHEREAS, consequently, the Tribunal believes that the Defence motion for the appearance, transfer and protection of the five witnesses known under the pseudonyms "DKX", "DLX", "DMX", "DNX" and "DOX", should be dismissed;


FOR THESE REASONS,

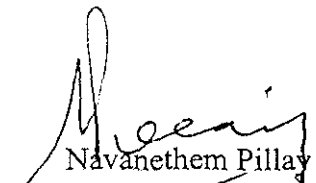
THE TRIBUNAL

DISMISSES the Defence motion of 25 February 1998 for the transfer and protection of five detained witnesses.

Arusha, 26 February 1998,


Laity Kama
Presiding Judge


Lennart Aspegren
Judge


Navanethem Pillay
Judge

(Seal of the Tribunal)

