

TRIAL CHAMBER II

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

Registry: Dr. Antoine Mindua

Decision of: 12 March 1998

THE PROSECUTOR  
VERSUS  
CLÉMENT KAYISHEMA  
OBED RUZINDANA

Case No. ICTR-95-1-T

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**DECISION ON THE PROSECUTION MOTION FOR DIRECTIONS FOR  
THE SCHEDULING OF THE CONTINUATION OF THE TRIAL OF  
CLÉMENT KAYISHEMA AND OBED RUZINDANA ON THE CHARGES  
AS CONTAINED IN THE INDICTMENT NO. ICTR-95-I-T**

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The Office of the Prosecutor:

Mr. Jonah Rahetlah  
Ms. Brenda Sue Thornton  
Ms. Holo Makwaia

The Counsel for the Accused:

Mr. Philippe Moriceau (for Clément Kayishema)  
Mr. Pascal Besnier (for Obed Ruzindana)

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

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

CONSIDERING the indictment submitted by the Prosecutor on 22 November 1995 against Clément Kayishema and Obed Ruzindana and confirmed on 28 November 1995 by Judge Navanethem Pillay pursuant to Rule 47 of the Rules of Procedure and Evidence ( "the Rules"), on the basis that there was sufficient evidence to provide reasonable grounds for believing that each accused had committed genocide, conspiracy to commit genocide, crimes against humanity and violations of Article 3 common to the 1949 Geneva Conventions and Additional Protocol II of 1977 thereto;

CONSIDERING THAT the initial appearance of the accused persons, namely Clément Kayishema and Obed Ruzindana, took place on 31 May and 29 October 1996 respectively;

CONSIDERING ALSO THAT the trial for the two accused commenced on 11 April 1997 and is expected to end by 13 March 1998;

TAKING INTO ACCOUNT THAT both Clément Kayishema and Obed Ruzindana have had assigned Legal Counsels since May 1996 and October 1996 respectively and that their Counsels have had the assistance of Co-Counsels since April 1997;

BEING AWARE THAT the Registry scheduled two adjournments, one from 8 May 1997 to September 1997 and also on 28 November 1997 to February 1998;

BEING NOW SEIZED OF the Prosecution Motion filed on 18 February 1998 pursuant to rule 73 of the Rules, requesting the Trial Chamber to order the uninterrupted continuation of the trial of the accused herein mentioned and the consultation of both parties in respect of the scheduling of this continuation;

CONSIDERING the Defence's response filed on 10 March 1998;

CONSIDERING Article 20 (4) (b) of the Statute of the Tribunal ( "the Statute" ) regarding the rights of the accused;

HAVING HEARD the oral arguments of the parties on 10 March 1998;

## PLEADINGS BY THE PARTIES

### THE PROSECUTION

The Prosecution submitted that save for a minimal break, the trial of the accused should continue uninterrupted once the Defence Counsels have commenced their case for the reasons stipulated below:-

- ( i ) that the Defence has had ample time to prepare their Defence given the fact that there were two lengthy adjournments on 8 May to 29 September 1997 and also on 28 November 1997 to February 1998;
- ( ii ) that the Prosecution has made its files available to the Defence for inspection although only one Defence Counsel inspected them on 8 March 1997;
- ( iii ) that overall the Defence has had an enormous amount of discovery, that is, over 3400 pages of material were disclosed during the course of the trial;
- ( iv ) that most of the Prosecution witnesses have been testifying on the four subject areas of the indictment.

### THE DEFENCE

The Defence in response contended :-

- ( i ) that the issues raised by the Prosecutor transcends mere scheduling because they pertain to the universal notions of justice and equality;
- ( ii ) that since the Prosecutor has had all the necessary time requested by her to present her witnesses, experts and investigators, the Prosecutor could not be heard to compromise equality simply because she would like to have quick justice under the guise of public opinion which should have no role in the deliberations of the Trial Chamber;
- ( iii ) that the Defence planned their schedule based upon the Court calendar issued by the Registrar indicating that on 12 March 1998 the case of Théoneste Bagosora would start and on 20 April 1998 the case of Elie Ndayambaje would commence, both trials to be heard by Trial Chamber II;
- ( iv ) that consequently, the Defence has organized their programme so that they may commence their case either in May or June 1998;



( v ) that the accused do not know the exact charges against them since the Prosecutor has proposed several modifications to the Indictment;

( vi ) that the Prosecutor has compounded the situation by rendering partial disclosure to the Defence which she continues to do to date;

( vii ) that it is of necessity that the Defence be granted time to organize the testimonies of their witnesses, to consult their clients and to lay a strategy which could not be possible until the Prosecutor presents her last witness;

( viii ) that the Registrar's office has so far not accorded the Defence full cooperation because it has not placed financial resources at the disposal of the defence despite having been requested to do so;

( ix ) that despite this state of affairs, the Defence has hired an investigator who has so far worked without pay;

( xi ) that the delay in disbursement of the funds necessary for the effective preparation of the Defence case has been detrimental to them because in some instances the Defence has lost its proposed witnesses and has had to start from scratch;

( xii ) that inequality of means exists between the Defence and the Prosecutor since the Prosecutor is an integral part of the United Nations whereas the Defence Counsels are not but they are ordinary legal practitioners who must continue with their daily routine and commitment outside the Tribunal where they are subjected to fiscal, administrative and ethical imperatives;

## PROSECUTOR'S REPLY

( i ) The Prosecutor noted the difficulty which the Defence was facing as a result of having based their schedule upon the Court Calendar issued by the Registry but submitted that this calendar was not conclusive and could be changed subject to the discretion of the Trial Chamber;

The Prosecutor further submitted as follows:-

( ii ) that in respect to the lack of knowledge about the charges levelled against the accused, the same indictment, dated 22 November 1995, has been relied upon since 11 April 1997 and moreover, the charges therein are clear;

( iii ) that she had fulfilled her obligation to disclose since she disclosed twenty eight ( 28 ) of the thirty six ( 36 ) Prosecution witnesses to the Defence on 26 March 1997. Further, that even some witness statements had been disclose, in a redacted form, before March 1997 and five ( 5 ) more witness statements were disclosed by 24 September 1997;

( iv ) that some of those statements which were submitted to the Defence in 1998, they related to places and incidences known to the Defence, notably, Mubuga and Bisesero and that even in respect of the remaining witness, Witness UU, his statement was disclosed on 26 January 1997 and he would testify on the same area;

( v ) that although the Prosecution sympathized with the Defence for the difficulties they were facing with the Registry, they should have raised them earlier to enable the Trial Chamber to address them and render a solution;

( vii ) that in respect to the differential status between the Prosecutor and the Defence, the Prosecution is not devoid of problems particularly logistical ones;

## DELIBERATIONS

The Trial Chamber has noted the submissions of both parties, particularly the complaints raised by the Defence, concerning the funding of their investigators and experts.

Concerning the rights of the accused, the Trial Chamber acknowledges that the rights of the accused should be protected and the trial should be conducted in a fair and equitable manner.

With regards to time within which the Defence should present their case, this Trial Chamber is of the view that pursuant to Article 20 ( 4 )(b) of the Statute, the accused should be accorded adequate time and facilities for the preparation of their case.



In view of the fact that pursuant to rule 85 of the Rules, presentation of the Prosecution case must be followed by the presentation of the Defence case, this Trial Chamber observes that in the course of trial both parties have had adequate time to prepare their cases. This Trial Chamber agrees with the view that the Defence must be accorded time within which to prepare and lay strategy for its defence.

In the spirit of cooperation between the parties, which this Trial Chamber has always emphasized, the Trial Chamber expects a reciprocal cooperation from the Prosecution when the Defence commences the presentation of its case.

**FOR THESE REASONS, THE TRIBUNAL HEREBY:**

1. GRANTS an adjournment to the Defence until 11 May 1998 for the resumption of the trial and for the Defence to start the presentation of their evidence. However, should the Defence Counsel be ready to proceed prior to that date, it should notify the Registry in advance to make the necessary arrangements in that regard.
2. URGES the Registrar to cooperate fully with the Defence pursuant to Article 17 of the Directive Concerning The Assignment of Defence Counsels and solve the logistical and financial problems of the Defence.

Arusha, 12 March 1998

Judge William H. Sekule,  
Presiding Judge

Judge Yakov A. Ostrovsky  
Judge



Tafazzal H. Khan  
Judge

(Seal of the Tribunal)

